

Glossary of Terms

Acknowledge

A declaration by someone that something is true.

Affidavit

A sworn statement; written oath such as acknowledgment.

Affirmation

A solemn declaration; a non-religious oath.

Agency

The legal relationship between a principal and his agent arising from a contract in which the principal engages the agent to perform certain acts on the principals behalf.

Agency Disclosure

A written explanation to be signed by a prospective buyer or seller, explaining to the client the role that the broker plays in the transaction. The purpose of disclosure is to explain whether the broker represents the buyer or seller or is a dual agent (representing both) or a subagent (an agent of the sellers broker). This allows the customer to understand to which party the broker owes loyalty.

Agent

A person (natural), corporation, society, association or partnership (legal persons) acting by authority of a principal in a realty transaction for compensation.

Agreement of Sale

A bilateral contract whereby buyer promises to buy and seller promises to sell by execution and delivery of deed; also know as Purchase and Sale Agreement (P&S). Agreement means the same as Contract.

Amortization

Act of liquidating an indebtedness by equal and periodic payments usually monthly; this direct reduction method means each payment remains constant but ratio of principal and interest changes with an increasing larger portion credited to reducing debt; savings and loan associations popularized method.

Appraisal

An estimate of value.

Appreciation

Increase in value resulting from market forces such as demand stronger than supply.

Attachment

A writ issued, beginning or during a legal action commanding sheriff to attach (seize) property, rights and effects of defendant to satisfy possible credit demands of plaintiff if judgment comes out in plaintiffs favor.

Attorney-in-Fact

Anyone who is authorized in writing to perform certain acts for another under written power of attorney; valid only during lifetime of party giving this power.

Bill of Sale

A written instrument which is the evidence of transfer of one persons right in personal property to another.

Business Size

General Business Brokerage

Businesses priced under \$500,000, annual revenues of less than \$750,000, and with less than 10 employees. This category represents almost 80 percent of all businesses.

The Larger Business

Businesses priced between \$500,000 and \$3 million, annual revenues between \$750,000 and \$2 million, and less than 20 employees. This category represents about 10 percent of all businesses.

The Mid-Size Company

Businesses priced between \$3 million and \$30 million, annual revenues between \$2 million and \$6 million, and between 20 to 100 employees. This category represents approximately 10 percent of all businesses.

The Large Company

Businesses priced over \$20 million, annual revenues over \$30 million, with over 100 employees. This category represents slightly over 1 percent of all businesses.

Business Reference Guide 2003

Capital Expenditures

Investments of cash for improvements to remain competitive in a business.

Capitalized Items

Have an economic life of one year or more and the cost is moved to the balance sheet, and then these costs can be written down by depreciation or amortization over time.

Cash Flow

Profit after principal and interest are deducted from net operating income (NOI).

Closing Costs

Costs of seller and buyer at conveyance of realty.

Closing Statement

A written accounting of funds to seller and buyer at passing of papers.

Collateral

A security, such as a mortgage, given to protect debt.

Commingling

The mixing of funds held for the benefit of others with the brokers personal or business funds.

Commission

Money or other valuable consideration given to broker by principal for services rendered; amount is by agreement.

Conditional Sales Contract

A contract in which owner retains title until buyer has met all terms and conditions; a familiar device in land sales; also called land contract or installment contract. Buyer acquires equitable title until final payment; after delivery of deed, buyer has legal title.

Consideration

Something of value exchanged between parties of a contract; money, services, goods or promises.

Contract

A legal instrument between two parties to do or not to do something; in reality, it must be in writing to be enforceable.

Counter Offer: voids first offer and creates new offer.

Covenant

A promise in an agreement or contract agreeing to performance or nonperformance of certain acts, or requiring or preventing certain acts or uses.

Confidentiality Agreement

A pact that forbids buyers, sellers, and their agents in a given business deal from disclosing information about the transaction to others.

Deficiency Judgment

Court award to lender if sale at public auction does not equal mortgage debt.

Depreciation

Decrease in value for various reasons

Due diligence is often performed on the acquirer as well as the target

The M&A Dictionary

Earnest Money

Deposit or binder given with Agreement to Buy.

Equity

Value or interest an owner of realty has above any debt on property; difference between value and mortgage debt.

Escrow

The holding of something of value by a person (escrowee or escrow agent) for the benefit of other parties.

Exclusive Right to Sell

An employment agreement and contract giving the broker the right to receive a commission if the property or business is sold by anyone including the seller during the term of the agreement.

Expense

Anything that a company buys that has an economic life of less than one year. It shows up immediately on the income statement.

Fiduciary

A position of trust (e.g. broker to principal).

Finders Fee

Fee to broker for arranging loan for client; can also mean fee to broker for locating a property for client

Gross Lease

Owner receives rent and pays out expenses such as in apartment leasing; Net Lease: owner receives rent and tenant also pays out expenses normally paid by owner such as taxes, etc.

Irrevocable

Unchangeable.

Judgment

A court action describing indebtedness of one to another.

Lease

Contract between lessor (landlord) and lessee (tenant) for exclusive possession of realty for specified period under specific terms after which property reverts to lessor.

Leaseback

The purchase of improved property and the leasing of it back to seller; creates capital and favored tax treatment for seller.

Leasehold

The interest which a lessee has in realty.

Letter of Intent

A document agreement between a buyer and a seller used in connection with the acquisition of a company. The letter of intent describes the basic terms and conditions of the transaction between the buyer and the seller, including price, due diligence periods, exclusivity or no-shops, and the basic conditions to closing the deal. Customarily presented before a definitive purchase agreement is entered into, the letter of intent provides a road map for the parties involved in the transaction.

Lien

A debt; a claim against property for payment of some debt.

Lis Pendens

Notice filed in a registry of deeds warning all persons that title to certain property is in litigation.

Listing

A written engagement (contract) between a principal and an agent authorizing the agent to perform services for the principal involving the principals property (business). Generally the services provided by the agent involve the proposed sale of the principals property or business. Also, the property or business listed by the agent is called a Listing.

List

To obtain a Listing

Types of Listings**Exclusive Right to Sell**

An employment agreement and contract giving the broker the right to receive a commission if the property or business is sold by anyone including the seller during the term of the agreement.

Exclusive Agency

An employment agreement and contract giving only one broker the right to sell the property, for a specified period of time, and allowing the owner only to sell the property or business without paying a commission.

Open Listing

An employment agreement and contract given to any number of brokers without any liability to pay a commission to anyone except the one who first secures a buyer who is ready, willing and able to meet the terms of the listing or presents an offer acceptable to the seller. The sale of the property or business terminates all open listings, and in most cases, the seller may cancel an open listing at any time. In many states an open listing must have an expiration date.

*The M&A Dictionary

Procuring Cause

A legal term that means the cause resulting in accomplishing a goal. Used in real estate [or business brokerage] to determine whether a broker is entitled to a commission.

Dictionary of Real Estate Terms

Representation

A statement or condition made that something is true or accurate.

SBA Lender Status

CLP (Certified Lender Program)

This process is for the more sophisticated and experienced lenders who have graduated beyond GP status. Typically, the lender now submits a complete package to the SBA and as a CLP Lender they are guaranteed a 3-day turnaround from the SBA.

GP (General Program)

This is the lowest rating and is given to lenders who know little about the SBA process. These lenders must submit each loan application to the SBA for additional underwriting and ultimate approval. This process can take up to two weeks with multiple requests for additional information.

PLP (Preferred Lender Program)

This is the top designation and enables the respective lenders to approve their own loans with no additional underwriting by the SBA. Typically, this designation means that the lender has sufficient experience and track history to adhere to SBA standards and make quality loans.

Courtesy: Ed McCormick, Simple SBA.com

Stipulation

To make a special demand for something as a condition of an agreement.

Warranty

An expressed or implied statement that a situation or thing is as it appears to be or is represented to be.