

## Legal Terms in Land Records

We should say at the outset that we are not lawyers, but we have collected here a number of terms that appear in deeds, legal proceedings, and queries in the Usenet genealogy groups. We've done our best to decode their meaning.

The laws relating to land records are often dealt with by common law (unwritten law based on custom and precedent rather than laws passed by the government), and determining legal rights can be highly intricate.

### Legal and Other Terms

Administrator/administratrix - A person appointed by the court to settle the estate of someone who died instate. (Without a will)

Admit - see Copyhold.

Adverse Possession - Gaining title to another's land by exercising the rights of ownership of that land unchallenged for a period of time, typically on the order of five to ten years, and meeting other requirements (as set by each state). See seizin.

Alien - To transfer (lands, title) to another.

Alienation - A transfer of title or property to another.

Allodial - see alodium

Alodium - Land owned independently, without rent or other obligation to another. See Freehold Estate. The alodial (also allodial) system is opposed to the feudal system.

Assigns - Anyone acting on behalf of or in place of the nominal owner. The owner may have transferred his rights to someone else or appointed an attorney to act on his behalf.

At will - Terminable by the lord of the manor at any time.

Bargain - Mutual agreement among two or more people to exchange or purchase goods.

Bargain and Sale Deed - A type of deed in which title is transferred but in which there is usually no guarantee as to the validity of title.

Cadastral Map - Land ownership map. Generally used for tax purposes.

Chattel - A tangible, movable article of personal property, as opposed to real property.

Claim - see Entry.

Collateral - Property put up by someone getting a loan. If they fail to repay the loan, the property goes to the person granting the loan.

Condemn - The taking of privately owned land for public use by eminent domain. In the U.S. just compensation must be provided for any lands thus taken.

Consideration - The money (or other property) used to purchase land.

Copyhold - A tenancy at will that was recorded in a manorial court ownership roll. The lord of the manor maintained the list. Copyholds were not, strictly speaking, inheritable, but were customarily so. The land reverted to the landowner who would then admit the heir to the lands of the decedent.

Customary Estate - see copyhold

Decedent - one who has died.

Deed - A document giving the holder the title to property. More generally, any document sealing an agreement, contract, etc. The most common types of deeds Bargain and Sale, Quitclaim, and Warranty.

Deed of trust - A transfer of property to someone to be held in trust for another. See trust. More specifically, however, deeds of trust are used in a number of states instead of a mortgage to secure a loan. The deed of trust names the trustees in whom title is placed as security against failure to meet the terms of the loan.

Deed poll - A deed not indented, that is, a deed made by one party only. See indenture.

Dower - A wife's interest in her husband's property, inheritable at his death. English probate law set this at 1/3. Her thirds was a phrase used for this. In the U.S. it was common for a woman to formally relinquish her dower claim on land sold by the husband. This further guaranteed that the property was clear of all obligations. In some areas the lack of a dower relinquishment at the time of sale was proof that the man was single or widowed.

Easement - Use of a portion of property for some stated purpose without remuneration. Easements are not estates in that they do not convey ownership, but rather the use of the property in so far as needed for the stated purpose. An example is the easement a city may have to dig up part of your land to repair the water main.

Enfeoff - To invest with an estate held in fee.

Enfeoffment - Giving ownership in fee. A deed or legal document giving ownership in fee.

Entry - Filing of the intention to get a land grant or patent. This was the first step of a multi-step process of getting land, the other steps generally being Survey, and Grant.

Escheat - Land ownership reverting to the Crown, government, or estate owner because of a lack of heirs.

Estate - A property right held by someone. There can be many estates held on a single piece of property, for example, relating to specific uses of the property. Mineral rights, water rights, and so on are examples. Estates can be subordinate (lower in rank) to other estates.

et al - Latin term for and others

Executor/executrix - The person named in a will to carry out the terms of the will. See administrator.

Fee - Heritable land held in return for service to a lord.

Fee simple - Ownership of land that can be inherited by any heirs. To hold in fee means to possess.

Fee tail - Ownership of land restricted to a specified class of heirs, generally direct descendants.

Feoff - See fee

Feoffment - Transfer of inheritable real property.

Feoffee - One who benefits from a fief.

Feud - See fee.

Feudal system - The system of land holding in exchange for service, ultimately to the king. This is opposed to the alodial system.

Fief - See fee.

Freehold - see fee simple

Grant - Transfer of title from the government to the first titleholder of a piece of property. This term is generally used by states and the federal government. See also patent.

Grantee - The person receiving a grant, or buying property.

Grantor - The person issuing the grant, or selling property.

Headright - A Virginia system of land patents, prevalent in the 1600s in which immigrants, including minor children, were entitled to 50 acres of land apiece. It was customary for the person paying passage to claim the headright, though the right appears to belong to the immigrant. Headrights could be sold or assigned to others. A headright system was also used in other states including South Carolina and Georgia.

Importation right - See headright.

Improve - To make land more valuable by clearing and planting. Land that was not improved by the owner might revert to the government.

Indenture - A written agreement. (Originally, the document was written in duplicate, and the two copies placed side by side and indented, or cut, with a wavy line so they fit together perfectly.) See also deed poll.

Intestate - Having no will. If someone dies intestate, the court appoints an administrator to settle the estate.

Instrument - Legal document.

Investiture - See livery of seizin.

Lease and Release - A practice in early Virginia that is equivalent to a sale. It was accomplished by a two

step process of leasing the property in question to the buyer, then releasing the buyer of the lease obligation.

Livery - Delivery of ownership.

Livery of Seizin - An open and notorious public ceremony conferring ownership of a freehold estate.

Message - A dwelling house with its adjacent buildings and lands appropriated to the use of the household.

Moiety - One half. One of two equal parts. A share or portion.

Mortgage - Today we think of this as a secured loan (for example, a loan with a house as collateral). In older times it was often written as a regular deed of sale with a condition attached such that the sale was void if certain payments are made by a certain date. With a mortgage, if the borrower fails to pay the mortgage note off, the mortgagor must successfully sue in order to sell the property and recover the loan. See deed of trust for a different way of establishing security for a loan.

Patent - Transfer of title from the government to the first titleholder of a piece of property. This term was generally used by the Crown or its representative. See also grant. Planting and Seating - See improve. In Virginia colonial law a patentee was required to cultivate an acre of land and build a small house on the property, otherwise the patent would revert to the government.

Possessory - Relating to ownership.

Prove Up - See Improve.

Probate - The process of proving a decedent's will and settling the estate. The signing of a will was typically witnessed by neighbors, who would later swear in court that they saw the decedent sign the will prior to death. This proved that the will was actually that of the decedent.

Quitclaim Deed - A common type of deed in which the seller relinquishes claim to whatever rights were held on the property, but does not guarantee that the property is actually free of claims by others.

Quitrent - A rent paid in lieu of required feudal services. See fee and socage. The quitrent can be considered a real estate tax.

Real property - Land. See also chattel.

Remainder - Transfer of ownership to someone on the death of another. For example, land may be sold to person A for use during their lifetime, but then remaindered to person B at the death of A.

Revert - Return of ownership to a former owner (or heirs).

Seizin - Ownership or in fact possession of a freehold estate. Inferred here is an increasing degree of ownership with the passage of time, as the possessor makes productive use of the land. Seizin was originally not an estate, but a way to gain one, as by adverse possession. This is rooted in the Roman concept that whoever worked the land should be its owner.

Sergeantry - Non-military service to a lord in exchange for land.

Socage - Holding of land by a tenant in return for fixed payment or for non-military service to the lord. This system was eventually replaced by our system of taxation. See quitrent.

Soke - The jurisdiction of a court.

Straw Deed, Strawman Deed - Two deeds filed in succession, the first from party A to party B, second from B back to A. This was used to sidestep legal restrictions of sales between spouses or joint owners, or to incorporate a new survey description. Party B is a trusted intermediary, either a close friend or attorney.

Tenement - Permanent property, whether concrete or not, such as land, buildings, cars, or the stock represented by a stock certificate. In most common usage it means a house or building.

Teste - Witness.

Testate - Having a will.

Thirds - see dower

Title - Legal ownership as evidenced by a deed or other instrument.

Trust - Confidence placed in someone by giving them property to be held or used for another's benefit. The property held in trust.

Trustee - An individual to whom another's property is entrusted.

ux - Latin term for and wife

Warrant - A governmental order authorizing some action. An arrest warrant instructs a sheriff to arrest someone. A land warrant instructs a state to issue land to someone.

Warranty Deed - A deed in which the seller warrants having a valid title and that the property is clear of any liens.

Waste Land - Land that has not been claimed, or which has escheated.

**Sources:**

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Discussions with several lawyers