

USER GUIDE

The *Encyclopedia of Real Estate Terms* is a comprehensive guide to the meaning, use and significance of over 10,000 words and phrases used in real estate (or more precisely 'real property'), combined with pointers to many issues that arise from an understanding of those terms. It is based on material from North America, the United Kingdom and France, as well as Australia, New Zealand and other Commonwealth countries. The Encyclopedia's aim is to help the user to understand the meaning of a particular term and its many facets; to appreciate its significance in practice; and to provide a ready means for further reference and specialist research. Although the Encyclopedia is based on real property, many (if not most) terms associated with personal property are also included. As far as possible, material from different countries is set out to indicate the appropriate differences, and also the similarities.

Alphabetical order

Words are placed in word-by-word order (ignoring apostrophes). Hyphenated words that are essentially separate words are treated as such; whereas compound words (which in most cases can be joined without hyphenation) are treated as single words. Thus, **package-deal contract** comes before **package insurance policy**; **cooperator** comes before **co-ownership**; and **coal** comes before **co-assurance**. Also, English language words are placed before French language words when the terms are identical, so that **entrepreneur** precedes *entrepreneur*^(F).

Where two similar or derivative words or terms are used together (as with **dominant estate** or **dominant tenement**), these also are in alphabetical order, unless one spelling or form of usage is used predominates more than another, as with **step-up** or **step-down rent**.

Cross-references

Cross-references are marked in **boldface type**. Such entries may be in the body of the text or at the end where they are prefaced by 'Cf', 'See' and 'See also'. These cross-references are an integral part of the Encyclopedia. Such terms need to be understood and, if necessary, referred to for a complete understanding of any particular entry. The insertion of a cross-reference is based on various criteria: related meaning, related subject matter, entries that contain other supporting (or contradicting) material, or entries that contain additional sources of reference (in particular, additional bibliographical references). In many cases, the significance of the points surrounding any word or phrase are only fully appreciated by understanding a cross-referenced term, e.g. **trade fixture** requires an understanding of **fixture**; **commission** is dependent on **procuring cause** or **ready, able and willing**; **exclusionary zoning** should be contrasted with **inclusionary zoning**; and a **lease** compared to a **licence**. Boldface is only used to emphasize a term the first time it appears in an entry, but the importance of that term's meaning is equally important in any subsequent usage.

Bibliographical references

Complete details of all books (authors, title, publishers and year of publication) are provided in Appendix A, **Bibliography**.

The bibliographical references are designed to assist the user to find readily additional sources of material. Thus, many of the entries are followed by one or more bibliographical references, which are provided to assist the user to consult books that may be to hand, or to assist additional research. In the vast majority of cases, these references have been selected to amplify the primary points that are made in this Encyclopedia, and enable the user to go straight to the most authoritative sources—referenced in many cases by volume number (where applicable) and by chapter or page.

The references are placed according to their length of coverage (with, as a rule, entire books placed after references to a part of a book, and major loose-leaf or multi-volume reference works placed at the end). Where the extent of the information is fairly similar, the entries are placed in alphabetical order by primary author.

US bibliographical references are placed first. These are succeeded by non-US publications—the titles of which are in *italics*. Titles from Australia, Canada, Ireland, New Zealand, Scotland, Singapore and other Far East countries are placed first (after US titles). UK titles are at the end.

Thus, the following references are given for **easement**:-

- Anno: 24 ALR4th 1053: Location of Easement.
Anno: 42 ALR4th 462: Drainage Servitude—Extinguishment by Prescription.
R.J. Werner. *Real Estate Law* (11th ed. Upper Saddle River, NJ: 2002), Ch. 4 'Easements'.
E.H. Rabin et al. *Fundamentals of Modern Property Law* (4th ed. New York: 2000), Assignments 19–22, 'Express Easements', Assignment 23, 'Non-Express Easements'
G.J. Siedel & J.K. Cheezem. *Real Estate Law* (4th ed. Cincinnati, OH: 1999), pp. 92–133.
J.W. Singer. *Property Law, Rules, Policies and Practices* (4th ed. Frederick, MD: 2006), § 5.3. 'Easements'.
W.B. Stoebuck & D.A. Whitman. *The Law of Real Property* (3rd ed. St. Paul, MN: 2000), Ch. 8 'Servitudes: Easements and Profits'.
J.W. Bruce & J.W. Ely. *The Law of Easements and Licenses in Land* (Boston, MA: Loose-leaf).
2 *American Law of Property* (Boston, MA: 1952), §§ 8.1—8.108.
3 *Tiffany on Real Property* (3rd ed. Chicago: 1939), §§ 756–828.
3 *Powell on Real Property* (Albany, NY: ©1997-), §§ 34.01—34.22.
7 *Thompson on Real Property* (2nd ed. Charlottesville, VA: ©1994-), Ch. 60 'The Law of Easement'.
25 *Am.Jur.2d.*, Easements and Licenses (Rochester, NY), §§ 1–136.
28A *Cor.Jur.Sec.*, Easements (St. Paul, MN), §§ 1–211.
A.J. Bradbrook et al. *Australian Real Property Law* (3rd ed. Sydney: 2002), Ch. 17 'Easements, Profits and Rentcharges'.
P. Butt. *Land Law* (Australia) (5th ed. Pyrmont, NSW: 2006), Ch. 16 'Easements and Similar Interests'.
S. Hepburn. *Principles of Property Law* (Australia) (Sydney: 1998), pp. 265–96.
A.J. Bradbrook & M.A. Neave. *Easements and Restrictive Covenants in Australia* (2nd ed. Sydney: 2000).
Sackville and Neave Property Law: Cases and Materials (7th ed. Sydney: 2004), Ch. 10 'Easements and Profits à Prendre'.
Anger and Honsberger: Law of Real Property (Canada) (2nd ed. Aurora, ON: 1985), pp. 925–73.
G.W. Hinde & D.W. McMorland. *Land Law in New Zealand* (Wellington: 1997), pp. 605–49.
J. Pugh-Smith et al. *Neighbours and the Law* (4th ed. London: 2006), Ch. 2, Part II—Acquisition of Easements and Profits.
R. Card et al. *Estate Management Law* (6th ed. Oxford: 2003), Ch. 33 'Easements'.
N.P. Gravells. *Land Law: Texts and Materials* (3rd ed. London: 2004), Ch. 7 'Easements'.
J-A. MacKenzie & M. Phillips. *Textbook on Land Law* (11th ed. Oxford: 2006), Ch. 20 'Easements and Profits a

Prendre’.

R.J. Smith. *Property Law* (4th ed. Harlow, Essex: 2003) Ch. 20 ‘Easements and Profits’.

E. H. Burns. *Maudsley & Burn’s Land Law: Cases and Materials* (8th ed. London: 2004), Ch. 10 ‘Easements and Profits à Prendre’.

Megarry’s Manual of the Law of Real Property (8th ed. London: 2002), pp. 413–51.

Cheshire and Burn’s Modern Law of Real Property (17th ed. Oxford: 2006), Ch. 18 ‘Easements and Profits’.

Megarry & Wade: The Law of Real Property (6th ed. London: 2000), §§ 18-040 et seq.

C. Sara. *Boundaries & Easements* (4th ed. London: 2005), Part II ‘Easements’.

16(2) *Halsbury’s Laws of England*, Easements and Profits à Prendre (4th ed. Reissue), §§ 1–284.

Gale on the Law of Easements (17th ed. London: 2005).

See also Appendix A, **Bibliography: Real Property Law**.

Accordingly, the American reader can find more details on this subject in such books as those by J.W. Singer or by R.A. Cunningham et al., or can go to the major multi-volume sets such as the American Law of Property; Thompson on Real Property; Powell on Real Property; “American Jurisprudence” (Am.Jur.2d); or “Corpus Juris Secundum” (Cor.Jur.Sec) (with the appropriate volume indicated at the start of the reference).

The Australian reader can consult A.J. Bradbrooke, P. Butt, and others that follow.

The Canadian reader can consult *Anger and Honsberger*.

Those concerned mostly or entirely with aspects of English law, can consult J. Pugh-Smith or any of the subsequently mentioned authors, or the multi-volume *Halsbury’s Laws of England*. Finally, the major text on the subject is *Gale on Easement* (first published in 1839 and now in its 17th edition).

A detailed Bibliography on ‘Real Property Law’ is set out in Appendix A. (Further, a cross-reference to **servitude** or *servitude*^(F) provides further material on this term under those entries, based on French, Roman or American law).

The year and place of publication is provided. However, those publications without any date are multi-volume, loose-leaf or ring bound sets, with regular updating services. ©1994- (or other appropriate year of publication) is used to indicate multi-volume sets with the first year of publication of the current set.

Full details of all these publications are set out in Appendix A, **Bibliography**.

Case Citations

Cases from non-US sources are in *italics* (including cases from English, Scots, or other Commonwealth courts), with the year after the name of the case. United States cases are in Roman type, with the year of the decision at the end.

Parenthetical designations after cases (such as (Aus), (Can), (Ind), (Ire), (Ken), (Scot), (NZ)) indicate the appropriate jurisdiction. Every effort has been made to indicate the court of jurisdiction and to state when the decision is from an appellate court. (See 'Abbreviations' after this User Guide for further sources of reference.)

Quotations from cases have been selected in many instances to emphasize the meaning or pedigree of a term, or to amplify the point being referenced. Thus, in some cases a definitional quotation may be preferred, leaving the other citations or reference sources to provide more particularity. In several entries, cases and material have been included to emphasize the etymology of a word or phrase, but with a preference for material that relates to real estate issues. In this way, the reader is encouraged to consider the broad range of possible uses of a word or phrase, as much as any singular or isolated meaning. Nonetheless, numerous leading cases and precedents (in many instances spanning over 500 years) are included, together with the page reference that indicates where the meaning or point at issue is discussed in depth.

A case reference that follows a quoted source does not necessarily contain exactly the same quotation. For example, the statement that an easement arising by **implied grant** must be "necessary to the reasonable enjoyment of the property granted *Wheeldon v Burrows* (1879) 12 ChD 31, 49", is followed by *Fletcher v. Fuller*, 120 US 534, 7 S Ct 667, 30 L Ed 759, 762 (1886); and *Wolek v. Di Feo*, 60 NJ Super 324, 159 A.2d 127, 130 (1959). In this instance, the United States Supreme Court discussed the "rule of presumption" of an implied grant and New Jersey Appellate Division discussed the need for the easement to be "apparent". However, as far as possible, such cases have been selected either because they provide a similar or related quotation (because the subsequent case reinforces the quotation) or because the case broadens the point made in the initial quotation. Nonetheless, in most instances the rulings are similar.

Clearly no one case (or group of cases) can have application to all jurisdictions. However, under many entries, cases have been selected to demonstrate the evolution of the law and to point out similarities or differences. In particular, to highlight the general principles of a complex subject, as well as to draw attention to areas where caution is the essential order of the day.

Gender pronouns

Pronouns that are used in a general context are usually in the masculine form. This follows common historical practice and no offence is intended, and, it is hoped, none is taken. It can only be pleaded that 'he or she' may be considered unnecessarily verbose in some contexts; in other contexts, the use of 'she' may be taken as gender specific.

National or linguistic references

Many terms are marked to indicate that they are more applicable to a particular country or have a linguistic meaning that derives, or may be applied, more in one country than another. However, as real estate investment becomes more international, many terms creep into usage elsewhere—especially terms of financial usage (e.g. ‘collateralized mortgage obligation’ and ‘home equity loan’). On the other hand, terms that were once used in one country (e.g. ‘conditional fee’ in England) have now become obsolete there, but remain in use in some jurisdictions in the United States.

The abbreviations are used to indicate the country of primary (but not necessarily exclusive) usage:

(AmE) Terms or spellings that are used in American English. Such terms or spellings may be used also in other English speaking countries (and there may be local variants that are not included in this book). However, these terms are not generally used in the United Kingdom and in many cases the alternative use is indicated as a cross-reference.

(Aus) Terms used wholly or predominately in Australia.

(Can) Terms used wholly or predominately in Canada.

(Civ) Terms of civil law derivation.

(BrE) Terms or spellings that are used in British English. Such terms or spellings are also used in other English speaking countries (although there may be local variants that are not included in this book). However, these terms are not generally used in the United States and in many cases the alternative use is indicated as a cross-reference.

(Eng) Terms that originate from, and are used wholly or predominately in, English law. Such terms may be used in other English speaking countries (especially those that have adopted the common law), but they are not generally used in the United States. Many of the terms marked (Eng) are used in other countries whose real property law is based on English common law. Many of these terms are also applicable in the rest of the United Kingdom, but in many instances the statutory law provisions differ, accordingly the entry in its entirety may only be applicable in England and Wales. In most cases, tax terms are equally applicable to Scotland and Northern Ireland, although there may also be local variations.

(F) As well as being terms of the French language, many of these terms are based on the French Civil Code and are equally applicable in other French speaking jurisdictions (notably Louisiana and Quebec). As a rule, a term is followed by a direct translation in the lower case, e.g. *dessaisir*^(F) can be translated as ‘to **release**’, and *rendement*^(F) as **yield**.

(HK) Terms that are used wholly, or predominately, in Hong Kong.

(Ire) Terms that are used wholly, or predominately, in Irish land law.

(NZ) Terms that are used wholly, or predominately, in New Zealand.

(Scot) Terms that are used wholly, or predominately, in Scots law.

(US) Terms that are used wholly, or predominately, in the United States; especially in a legal context. Such terms may be used in other English-speaking countries (especially in the context of finance and commerce). Generally the most commonly used definition is included and variations between jurisdictions are included, but space does not permit for the inclusion of all variations. The bibliographical references should also be consulted for a more in depth analysis of a term.

Statutory references

United States statutes are set out in the following form: Fair Housing Act of 1968, Real Estate Settlement Procedure Act of 1974, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, generally followed by the reference to the United States Code Annotated (USCA).

English statutes are set out in the form: Housing Act 1985, Law of Property Act 1925, Town and Country Planning Act 1990.

A summary of some of the major landmark statutes of English and United States law are set out in **Appendix B**.

Spelling

Spelling is based predominately on the Oxford English Dictionary or Webster’s Third New International Dictionary, with a slight preference being given to American English. Certain major spelling differences follow the American usage, notably:

American

British

| | |
|---------------------------|---------------------------|
| acknowledgment | acknowledgement |
| amortization/amortize | amortisation/amortise |
| capitalization/capitalize | capitalisation/capitalise |
| center | centre |
| check | cheque |
| collateralization | collateralisation |
| color | colour |
| defense | defence |
| fulfill | fulfil |
| installment | instalment |
| -ize | -ise |
| judgment | judgement |
| license | licence |
| meter | metre |

However, in entries that relate predominately to usage in Great Britain (especially those based on current English law), British spelling is preferred. It is hoped that, in this way, the spelling will correspond to that which is most familiar to an enquirer referring to a particular entry.