

## Glossary of Terms\*

**Account:** a detailed statement of the mutual demands in the nature of debit and credit between parties, arising out of contracts or some fiduciary relation.

**Accounts receivable:** an account reflecting a balance owed by a debtor; a debt owed by a customer to an enterprise for goods and services.

**Assignment:** the act of transferring to another all or part of one's property, interest or rights.

**Bailiff:** an official to whom some authority, care, guardianship or jurisdiction is delivered, committed or intrusted.

**Bailment:** a delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose under an express or implied-in-fact contract.

**Charge:** an encumbrance, lien or claim.

**Chattel mortgage:** a mortgage on goods purchased on installment, whereby the seller transfers title to the buyer but retains a lien securing the unpaid balance.

**Chattel paper:** a writing that shows both a monetary obligation and a security interest in or lease of specific goods.

**Collateral:** property which is pledged as security for the satisfaction of a debt. Collateral is additional security for performance of principal obligation.

**Collateral law:** largely civil law dispositions that affect the creation, perfection, and enforcement of collateral (security interests).<sup>1</sup>

**Collateral substitute:** a pledged good, right or title that is neither marketable nor legally enforceable but works as an incentive, screening, and sanction mechanism to ensure repayment of a debt.<sup>2</sup>

**Conditional sale:** a sale in which the buyer gains immediate possession but the seller retains title until the buyer performs a condition, especially payment of the full purchase price.

**Conveyance:** in its most common usage, transfer of title to land from one person, or class of persons, to another by deed.<sup>3</sup>

**Deed:** a written instrument, signed and delivered, by which one person conveys land, tenements or hereditament to another.

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\* *Black's Law Dictionary, 1999* (Black's) unless otherwise noted. Many of these definitions were used in International Labor Organization, *Collateral, Collateral Law and Collateral Substitutes* (1995).

<sup>1</sup> International Labor Organization, *Collateral, Collateral Law, and Collateral Substitutes* (1995) at 33-34.

<sup>2</sup> International Labor Organization, *Collateral, Collateral Law, and Collateral Substitutes* (1995) at 33-34.

<sup>3</sup> International Labor Organization, *Collateral, Collateral Law, and Collateral Substitutes* (1995) at 33-34.

**English mortgage:** in India, a mortgage in which no party is Hindu, Moslem, or Buddhist.<sup>4</sup>

**Fiduciary transfer:** a security interest, created by contract in present and future property remaining in the debtor's possession, that is narrower than the floating charge. Formally, "the mortgage is [treated as] a title transfer of the asset, conditioned on a re-transfer on payment of the debt"<sup>5</sup> but because the collateral must be identified at least generally a security interest over all assets cannot be created. The interest originated in German case law and has been adopted, in modified form, in other countries with a civil law tradition.

**Financial lease:** a fixed-term lease used by a business to finance capital equipment. The lessor's service is usually limited to financing the asset, and the lessee pays maintenance costs and taxes and has the option of purchasing the asset at lease-end for a nominal price.

**Fixed charge:** a charge on specifically identified collateral. When a floating charge crystallizes on specific assets, it becomes a fixed charge.<sup>6</sup>

**Floating charge:** a charge that is expanded to cover any additional property obtained by the debtor while the debt is outstanding. A charge that continues to exist even when the collateral changes in character, classification or location.

**Foreclosure:** a legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property.

**Guarantee:** an agreement in which the guarantor agrees to satisfy the debt of another (the debtor), only if and when the debtor fails to repay (secondary liability).<sup>7</sup>

**Homestead clause/exempt property laws:** laws passed in most states allowing a householder or head of a family to designate a house and land as his homestead, and exempting the same homestead from execution by creditors for his general debts.<sup>8</sup>

**Intangible property:** property that lacks a physical existence.

**Lien:** a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.

**Movable property:** property that is not real property,<sup>9</sup> and includes goods, equipment, livestock, documents and other intangibles.

**Pawn:** a pledge; a deposit of personal property made to a pawnbroker as security for a loan.

**Pledge:** a bailment, pawn, or deposit of personal property to a creditor as security for some debt or engagement.

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<sup>4</sup> India Local Lawyer.

<sup>5</sup> P. Wood, *Comparative Law of Security and Guarantees* (1995) at 16.

<sup>6</sup> This is not taken from Black's.

<sup>7</sup> International Labor Organization, *Collateral, Collateral Law, and Collateral Substitutes* (1995) at 33-34.

<sup>8</sup> International Labor Organization, *Collateral, Collateral Law, and Collateral Substitutes* (1995) at 33-34.

<sup>9</sup> This is not taken from Black's.



**Post-dated check:** a check that bears a date after the date of its issue and is payable on or after the stated date.

**Proceeds:** something received upon selling, exchanging, collecting or otherwise disposing of collateral. Proceeds differ from other types of collateral because they constitute any collateral that has changed in form. For example, if a farmer borrows money and gives the creditor a security interest in the harvest, the harvested wheat is collateral. If the farmer then exchanges the harvest for a tractor, the tractor becomes the proceeds of the wheat.

**Promissory note:** an unconditional written promise, signed by the maker, to pay absolutely and at all events a sum certain in money, either to the bearer or to a person therein designed or his order, at a time specified therein, or at a time which must certainly arrive.

**Real property:** land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.

**Redemption:** the right of a debtor, and sometimes of a debtor's other creditors, to repurchase from a buyer at a forced sale property of the debtor that was seized and sold in satisfaction of a judgment or other claim against the debtor, which right usually is limited to forced sales of real property.

**Risk premium:** extra interest paid to a lender, over amounts usually considered normal, in return for their undertaking to engage in activities more risky than normal.<sup>10</sup>

**Securitize:** to convert (assets) into negotiable securities for resale in the financial market, allowing the issuing institution to remove assets from its books to improve its capital ratio and liquidity while making new loans with the security proceeds.

**Secured transactions:** transactions that involve the giving of a security interest covering any transaction, regardless of its form, that is intended to create a security interest in personal property or fixtures, including goods, documents and other intangibles.<sup>11</sup>

**Security:** an obligation, pledge, mortgage, deposit, lien, etc. given by a debtor in order to assure the payment or performance of his debt by furnishing the creditor with a resource to be used in case of failure in the principal obligation (see collateral).

**Security agreement:** an agreement which creates or provides for a security interest between the debtor and the secured party.

**Security interest:** a right given to one party in the asset of another to secure payment or performance of an obligation.<sup>12</sup>

**Surety:** a person who is primarily liable for the payment of another's debt or the performance of another's obligation.

**Title deeds:** deeds which constitute or are the evidence of title to lands.<sup>13</sup>

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<sup>10</sup> International Labor Organization, *Collateral, Collateral Law, and Collateral Substitutes* (1995) at 33-34.

<sup>11</sup> "Secured Transactions Glossary", *EBRD Law in Transition, Autumn 2000* at page 27.

<sup>12</sup> "Secured Transactions Glossary", *EBRD Law in Transition, Autumn 2000* at page 27.

<sup>13</sup> International Labor Organization, *Collateral, Collateral Law, and Collateral Substitutes* (1995) at 33-34.

**Trust:** a fiduciary relationship regarding property and subjecting the person with the title to the property to equitable duties to deal with it for another's benefit; the confidence placed in a trustee, together with the trustee's obligations toward the property and the beneficiary.

**Writ of execution:** formal, written command of a court directing a sheriff or other official to enforce a judgment through process of execution.

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