

CIVIL GLOSSARY

Abatement of action: A suit which has been quashed and ended.

Accord: A method of discharging a claim upon agreement by the parties to give and accept something in settlement of the claim.

Actual malice: To win a defamation suit, public officials or prominent people, such as political candidates or movie stars, must prove that the offender made a false statement with actual malice. This means the statement was made with knowledge that it was false or with serious doubts about whether it was true.

Addendum: An attachment to a written document, For example, affidavits may be addendum's to a petition.

Administrator: An individual appointed by the court to manage the estate of a person who died without leaving a valid will.

Adversary system: The system of trial practice in which each of the opposing parties has full opportunity to present and establish his/her contention before the court.

Advisement: The consultation of the court, after the argument of a cause by counsel, and before delivering an opinion.

Agent: A person who has received the power to act on behalf of another, bind that other person as if he or she were themselves making the decisions.

In Probate: An attorney in fact under a durable or non-durable power of attorney, an individual authorized to make decisions for another under the "Colorado Patient Autonomy Act".

Affidavit: A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of a party making it, taken before a person having authority to administer such oath or affirmation.

Aggravated damages: Special and highly exceptional damages awarded by a court where the circumstances of the conduct have been particularly humiliating or malicious towards the Plaintiff/victim.

Alternative Dispute Resolution: Methods for resolving problems without going to court. Also known as ADR.

Answer: The pleading in a civil suit by which the defendant admits, denies or otherwise controverts the sufficiency of the allegations of facts set forth in the plaintiff's petition. It also contains defenses the defendant may have to the plaintiff's allegations.

Appeal: A request by the losing party in a lawsuit for a higher court to review a lower court decision.

Appearance: The act of showing up in court.

Application: A written request to the registrar for an order of informal probate or appointment under informal probate and appointment proceedings.

Appurtenance: Something that, although detached, stands as part of another thing. An attachment or appendage to something else. Used often in real estate context where an "appurtenance" may be, for example, a right of way over water – although physically detached, is part of the legal rights of the owner of another property

Arbitration: The referral of a dispute to an impartial third person chosen by the parties to the dispute. The parties agree in advance to abide by the arbitrator's decision following a hearing at which both parties have an opportunity to be heard. Sometimes three persons sit as an arbitration panel.

Arrears: A debt that is not paid on the due date adds up and accumulates as "arrears".

Assignment: The transfer of legal rights, such as the time left on a lease, from one person to another.

Assumption of risk: A defense raised in personal injury lawsuits. Asserts that the plaintiff knew that a particular activity was dangerous and thus bears all responsibility for any injury that resulted.

Attachment: An ancillary or auxiliary remedy by which the plaintiff acquires a lien upon property of the defendant to insure the satisfaction of a civil judgment.

Authenticated: Means certified, when used in reference to copies of official documents, and only certification by the official having custody is required.

Bad faith: Intent to deceive. Dishonesty or fraud in a transaction, such as entering into an agreement with no intention of ever living up to its terms or knowingly misrepresenting the quality of something that is being bought or sold.

Bankruptcy: Insolvency; a process governed by federal law to help when people cannot or will not pay their debts.

Bench warrant: An order issued by a judge for the arrest of a person.

Bill of particulars: A written statement specifying the details of the demand set forth in the petition in a civil action

Binder: An outline of the basic terms of a proposed sales contract between a buyer and a seller.

Breach of contract: The failure to do what one promised to do under a contract. Proving a breach of contract is a prerequisite of any suit for damages based on the contract.

Breach of trust: Any act or omission on the part of the trustee, which is inconsistent with the terms of the trust agreement; or the law of trusts. A prime example is the redirecting of trust property from the trust to the trustee, personally.

Brief: A written statement by counsel summarizing the facts of a case, the pertinent laws, and arguments of how the law applies to the facts supporting the lawyer's position.

Burden of proof: In civil cases, the plaintiff must prove her/his case with a "preponderance of evidence."

Buy-Sell agreement: An agreement among business partners that specifies how shares in the business are to be transferred in the case of a co-owner's death.

Case law: Also known as common law. The law created by judges when deciding individual disputes or cases.

Cease and desist order: An order of an administrative agency or court prohibiting a person or business from continuing a particular course of conduct.

Chapter 7 bankruptcy: A type of bankruptcy in which a person's assets are liquidated (collected and sold) and the proceeds are distributed to the creditors.

Chapter 13 bankruptcy: A type of bankruptcy in which a person keeps his assets and pays creditors according to an approved plan.

Charging lien: Entitles a lawyer who has sued someone on a client's behalf the right to be paid from the proceeds of the lawsuit, if there are any, before the client receives those proceeds.

Civil action: Action brought to enforce, redress, or protect private rights. In general, all types of actions other than criminal proceedings.

Class action suit: A lawsuit in which one or more parties file a complaint on behalf of themselves and all other people who are "similarly situated" (suffering from the same problem). Often used when a large number of people have comparable claims.

Clear and convincing evidence: The level of proof sometimes required in a civil case for the plaintiff to prevail. Is more than a preponderance of the evidence but less than beyond a reasonable doubt.

Collateral: An asset that a borrower agrees to give up if he or she fails to repay a loan.

Comparative negligence: Also called comparative fault. The doctrine by which acts of opposing parties are compared in fault on a percentage basis. A party who is 50 percent or more at fault cannot recover. A party who is less than 50 percent at fault may recover, but at the reduced percentage.

Compensatory damages: Money awarded to reimburse actual costs, such as medical bills and lost wages. Also awarded for things that are harder to measure, such as pain and suffering.

Complaint: In a civil action, the document that initiates a lawsuit.

Contingency fee: Also called a contingent fee. A fee arrangement in which the lawyer is paid out of any damages that is awarded. Typically, the lawyer gets between one-fourth and one-third. If no damages are awarded, there is no fee.

Contributory negligence: In any action based upon the negligence of the defendant, the plaintiff's own contributory negligence may either defeat or reduce the amount of recovery.

Counterclaim: A claim presented by a defendant against the plaintiff following the claim of the plaintiff.

Creditor: A person (or institution) to whom money is owed.

Damages: The monetary compensation which may be recovered by a party for personal injury, or loss or damage to one's property or rights as a result of another party's unlawful act or negligence.

Debtor: A person who owes money, goods or services to another.

Deed: A written legal document that describes a piece of property and outlines its boundaries. The seller of a property transfers ownership by delivering the deed to the buyer in exchange for an agreed upon sum of money.

De novo: Latin meaning "new". A new trial in which the result of the first trial is immaterial.

Default: A default occurs when a party fails to plead or to take certain other required steps within the time allowed, or fails to appear at trial.

Default judgment: When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, she/he is in default and a judgment by default may be entered by the clerk of court.

Depose: To make a deposition, to give evidence in the shape of a deposition, to make statements which are written down and sworn to; to give testimony which is reduced to writing by a duly qualified officer and sworn to by the deponent.

Deposition: The testimony of a witness, taken in writing, under oath or affirmation, in answer to questions. This is held out of court with no Judge present, but the answers often can be used as evidence in the trial.

Directed verdict: A motion made at the end of a party's case arguing that the opposing party has failed to present sufficient evidence for the case to proceed to the next stage.

Duces tecum: Latin meaning "bring with you". Used most frequently for a species of subpoena (as in "subpoena duces tecum") which seeks not so much the appearance of a person before a court but the surrender of a thing (document or some other evidence) by its holder, to the court, to serve as evidence in a trial.

Due process: The idea that laws and legal proceedings must be fair. The Constitution guarantees that the government cannot take away a person's basic rights to "life, liberty or property, without due process of law." Courts have issued numerous rulings about what this means in particular cases.

Early neutral evaluation: An early intervention in a lawsuit by a court appointed evaluator, to narrow, eliminate, and simplify issues and to assist in case planning management. Settlement of the case may occur.

Easement: Gives one party the right to go onto another party's property. Utilities often get easements.

Encumbrance: Any claim or restriction on a property's title.

Enjoin: To order a person to perform, or to abstain and desist from performing, a specified act or course of conduct.

Escrow: Money or documents, such as a deed or title, held by a third party until the conditions of an agreement are met. For instance, pending the completion of a real estate transaction, the deed to the property will be held "in escrow."

Escrow account: A special account in which a lawyer or escrow agent deposits money or documents that do not belong to him or his firm.

Escrow agent: In some states, this person conducts real estate closings and collects the money due the parties.

Estate: All the property a person owns.

Exempt property: In a bankruptcy, the possessions that a person is allowed to keep.

Exhibit: A paper document or other physical object introduced into evidence during a trial, hearing, or deposition.

Foreclosure: When a borrower cannot repay a loan and the lender seeks to sell the property.

Garnishment: The act of taking a person's wages to satisfy a judgment. Also known as a wage execution.

Gross negligence: Failure to use even the slightest amount of care in a way that shows recklessness or willful disregard for the safety of others.

Implead: To sue; to prosecute. To bring a new party into action on grounds that the new party is, or may be, liable to the party who brings him or her in, for all or part of the subject matter claim.

Inadmissible: Information that which, under the established rules of evidence, cannot be admitted or received.

In Camera: Latin for "In chambers"; referring to a hearing or inspection of documents that takes place in private, often in a Judge's chambers.

Incapacitated person: Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of rugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

Indigent: Meeting certain standards of poverty, thereby, qualifying a criminal defendant for a public defender, waiver of fees and court-appointed counsel.

Infringement: Unauthorized use, typically of a patent or copyright.

Injunction: A court order directing a person to refrain from doing something or ordering the person to do something.

In limine: Latin meaning "at the beginning or on the threshold". A motion "in limine" is a motion that is tabled by one of the parties at the very beginning of the legal procedures.

Interlineation: An addition of something to a document after it has been signed.

Interlocutory: Provisional, temporary, not final. Refers to orders and decrees of a court.

Interim order: One made in the meantime, and until something is done.

Interrogatories: Written questions offered by one party and served on an adversary, who must provide written answers under oath.

Intervenor: A person who voluntarily interposes in an action or other proceedings with the leave of the court.

Joint property: Sometimes called joint tenancy. Property that names a co-owner on its deed or title. Co-owners retain ownership of the property upon the death of a co-owner. A co-owner in a joint property arrangement cannot give away his or her share of the property.

Joint tenants with right of survivorship/community property with the right of survivorship: The purposes of this code only includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

Judgment: In a civil case, the official decision of a court determining the rights of the parties involved.

Laches: A legal doctrine whereby those who take too long to assert a legal right, lose their entitlement to compensation. When you claim that a person's legal suite against you is not valid because of this, you would call it "estoppel by laches".

Liability: Any legal responsibility, duty or obligation.

Lien: A claim that a person has upon the property of another as security for a debt owed.

Lis pendens: Latin meaning "a pending suit". Jurisdiction, power or control which courts acquire over property in suit pending action and until final judgment.

Litigant: A party to a lawsuit, one engaged in litigation usually spoken of active parties.

Litigation: A law suit, legal action, including all proceedings therein.

Litigious: A person found of litigation, prove to engage in suits. That which is contested in a court of law.

Magistrate: Any person other than a judge authorized by statute or by Colorado Rules for Magistrates to enter orders or judgments in judicial proceedings.

Med-arb: A process in which parties begin by mediation, and failing settlement, the same neutral third party acts as arbitrator of the remaining issues.

Mediation: A confidential process whereby a trained neutral third party assists disputing parties to reach their own solution.

Motion: An application for a rule or order, made to the judge.

Motion for directed verdict: A request made by the defendant in a civil case. Asserts that the plaintiff has raised no genuine issue to be tried and asks the judge to rule in favor of the defense. Typically made after the plaintiff is done presenting his or her case.

Motion for summary judgment: A request made by the defendant in a civil case. Asserts that the plaintiff has raised no genuine issue to be tried and asks the judge to rule in favor of the defense. Typically made before the trial.

Notice of appeal: The document a person must file with the trial court in order to pursue an appeal.

Notice of *les pendens*: A notice filed on public records for the purpose of warning all persons that the title of certain property is in litigation and they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

Obligee: The person who is to receive the benefit of someone else's obligation, that "someone else" being the obligor.

Obligor: The person who is contractually or legally, committed or obliged, to providing something to another person, the recipient of the benefit being called the obligee.

Partition: A court action to divide property. Typically taken when a property is jointly owned and a dispute arises about how to divide it.

Plaintiff: The initiator of a lawsuit in civil proceedings, this person may also be known as "claimant", "petitioner", or "applicant".

Pleadings: That part of a party's case in which he/she formally sets out the facts and legal argument which support that party's position.

Power of attorney: A document which gives a person the right or authority to make binding decision for another.

Preponderance of evidence: The greater weight of evidence, or evidence that is more credible and convincing to the mind.

Prima facie: Latin for a legal presumption of “on the case of it or at first sight”. Refers to the minimum amount of evidence a Plaintiff must have to avoid having a case dismissed. It is said that the Plaintiff must make a prima facie case.

Pro Se: (pronounced pro say) Latin phrase that means "for himself." A person who represents himself in court alone without the help of a lawyer is said to appear pro se.

Pro bono: For the good; used to describe work or services done or performed free of charge.

Promissory note: A written document in which a borrower agrees (promises) to pay back money to a lender according to specified terms.

Protective order: In litigation, an order that prevents the disclosure of sensitive information except to certain individuals under certain conditions. In a domestic dispute it's an order that prevents one party from approaching another, often within a specified distance.

Protective proceedings: A proceeding to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.

Punitive: Punitive damages are damages on an increased scale, awarded to the plaintiff in a civil case over and above what will compensate for ordinary loss, in an effort to punish the defendant or to set an example for wrongdoers.

Quash: To overthrow, vacate, to annul or void a summons, indictment, or subpoena.

Quitclaim deed: A deed that transfers the owner's interest to a buyer but does not guarantee that there are no other claims against the property.

Real property: Land and all the things that are attached to it. Anything that is not real property is personal property and personal property is anything that isn't nailed down dug into or built onto the land. A house is real property, but a dining room set is not.

Rebuttal: The introduction of evidence that may show statements of witnesses are not true.

Replevin: An action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken or who wrongfully detains Replevin is designed to permit one having right to possession to recover from another who has either wrongfully taken or detained property

Reply: In its general sense, the plaintiff's answer to the defendant's statement or counterclaim.

Respondent: The party that responds to a claim filed in court against them by a Plaintiff.

Restitution: The requirement that an offender provide financial remuneration for the losses incurred by the victim.

Sequestration of witnesses: A discretionary action by the court excluding witnesses from the courtroom while earlier witnesses are being examined.

Service of process: The act of notifying the other parties that an action has begun and informing them of the steps they should take in order to respond.

Settlement: The resolution or compromise by the parties in a civil lawsuit. In Probate: In reference to a decedent's estate, means the full process of administration, distribution and closing.

Settlement Conference: An informal assessment and negotiation session conducted by a legal professional who hears both sides of the case, may advise the parties on the law and precedent relating to the dispute, and suggest a settlement.

Standing: The legal right to initiate a lawsuit. To do so, a person must be sufficiently affected by the matter at hand, and there must be a case or controversy that can be resolved by legal action.

Statutes of limitations: Laws setting deadlines for filing lawsuits within a certain time after events occur that are the source of a claim.

Stay: An order stopping a judicial proceeding or execution of a judgment.

Strict liability: A concept applied by courts in product liability cases in which a seller is liable for any and all defective or hazardous products that unduly threaten a consumer's personal safety.

Subpoena: An order to a witness to appear and testify at a specified time and place.

Summons. An order to a sheriff or other officer to notify a named person that a civil action has been commenced against him or her and that he or she is required to appear within a specified period and answer the complaint. A written order or notice directing that a person appear before a designated court at a stated time and place and answer to a charge against him or her. The document initiates all civil law suits and is referred to as process.

TRO Temporary Restraining Order (TRO): An order granted without notice or hearing, maintaining the status quo until a hearing to determine the propriety of injunctive relief, temporary or permanent. In other states and in the federal courts this can be referred to as a protective order.

Traverse: Signifies a denial; where a Defendant denies any material allegation of fact in the Plaintiff's declaration.

Vicarious liability: When one person is liable for the negligent actions of another person, even though the first person was not directly responsible for the injury. For instance, a parent sometimes can be vicariously liable for the harmful acts of a child and an employer sometimes can be vicariously liable for the acts of a worker.

Voir dire: Literally. "to speak the truth." the preliminary examination of prospective jurors or witnesses. Such an examination of a witness (outside the presence of a jury) may determine whether evidence is admissible. Pronounced "vwa dear".

Wage execution: Also known as garnishment.

Ward: A person for who a guardian has been appointed. Minor Ward – is a minor whom a guardian has been appointed solely because of minority.

Waiver: The intentional and voluntary relinquishment of a legal right.

Writ: An order issued from a court requiring the performance of a specified act, or giving authority to have it done.

Writ of attachment: A writ employed to enforce obedience to an order or judgment of the court by taking, apprehending or seizing.

Writ of certiorari: An order by the appellate court that is used when the court has discretion on whether or not to hear an appeal. If the writ is denied, the court refused to hear the appeal and, in effect, the judgment below stands unchanged. If the writ is granted, then it has the effect of ordering the lower court to certify the record and send it up to the higher court that will use its discretion to hear the appeal.

Writ of execution: A writ to put in force the judgment or decree of a court by taking property of the Debtor in satisfaction of a debt.