# Class 3 – Key Terms

**Default** – A failure to fulfill a contract, agreement, or duty, especially a financial obligation such as a note.

**Opportunity to cure** – Time period within which the party in default has an opportunity to cure the default and continue with performance of the contract

**Workout** – Used to describe the various activities undertaken to deal with a mortgagor who is in financial trouble. There are six alternatives to consider in a workout:

1. Restructuring the mortgage loan
2. Transfer of the mortgage to a new owner
3. Voluntary conveyance of the title to the mortgagee (lender)
4. A “friendly foreclosure.”
5. A prepackaged bankruptcy.
6. A “short sale” with the lender agreeing to a sales price less than the loan balance.

**Restructure** – Loans can be restructured in many ways. Such restructuring could involve lower interest rates, accruals of interest, or extended maturity dates.

**Extension Agreement** – Seek permission from the mortgagee to extend the mortgage terms for a period of time.

**Novation** – A legal process where one party transfers the responsibility of the loan agreement to someone else.

**Deed in Lieu of Foreclosure** – The conveyance to the mortgagees in exchange for a release from the mortgage debt.

**Short Sale** – A sale of real estate in which the proceeds from the sale fall short of the owed balance on a loan secured by the property sold. In a short sale, the mortgage lender agrees to discount the mortgage loan balance because of an economic or financial hardship on the part of the mortgagor.

**Specific Performance** – An order of a court, which requires a party to perform a specific act, usually what is stated in a contract

**Remedies for Default in a Purchase Contract**

**Seller’s Remedies**

1. Specific performance
2. Sue for damages
3. Terminate and receive earnest money

**Buyer’s Remedies**

1. Specific Performance
2. Sue for damages
3. Terminate and receive earnest money
4. Extend Time for Performance

**Remedies for Default in a Lease**

**Tenant Remedies for Landlord Default**

1. Request repairs
2. Terminate

**Landlord Remedies for Tenant Default**

1. Terminate Possession, but not lease
2. Terminate Lease
3. Sue for damages
4. Enter Premises & Perform Obligations
5. Lockout
6. Holdover
7. Terminate Electricity
8. Report to Credit Agencies

**Acceleration of Rent** – All rent owed is due upon receipt.

**Lock Change** – A landlord may only exercise a lock-out if your lease allows your landlord to do so. The landlord must always provide you with a key to re-enter the residence. A landlord may temporarily prevent you from entering your leased premises only when (1) your rent is not completely paid and only if the landlord follows very strict rules and promptly allows you back in the premises; (2) there is an emergency situation and the landlord needs to conduct bona fide repair, or (3) you have abandoned the premises.

**Lis pendens** – A written notice that a lawsuit has been filed concerning real estate, involving either the title to the property or a claimed ownership interest in it.

**Eviction** – A lawsuit filed by a landlord to remove persons and belongings from the landlord's property.

Mitigation of damages / duty to relet –

**Alternate Dispute Resolution (ADR)** – Refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration.

**Mediation** – A voluntary dispute resolution process; all parties must consent to participate in good faith and work toward a mutually agreeable resolution. Mediating parties are not bound to resolve their dispute (although mediated settlements, once reached, can be made binding if the parties decide to draft a contract called a settlement agreement). Mediations are not "decided" in favor of one party or another; rather, the mediator simply facilitates the negotiation process.

**Arbitration** - A dispute resolution process in which a neutral party (the arbitrator) hears a dispute between one or more parties and, after considering all relevant information, renders a final decision in favor of one of the parties. Arbitration decisions may be either binding or non-binding, depending on the terms of the arbitration agreement. Binding arbitration decisions may be confirmed by a court and carry the same significance as a court judgment.