

# CREATIVE MORTGAGE TALK

A Periodic Newsletter on Creative Financing

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## QUALIFYING FOR LOW INTEREST LOANS

In previous editions of this newsletter I discussed how interest rates are now near the low end of their range over the past 50 years. Unfortunately, the bad news is that Lenders have now gone back to strict underwriting standards and as a result many people cannot qualify for such loans. In fact many people who could've gotten a loan last year can no longer qualify. Therefore, one option to consider is the assumption of an existing loan. Many sales in recent years were made with no, or very low, down payments, and since appreciation has slowed there are many Sellers who do not have a great deal of equity. Therefore, if their existing loan is one that is on favorable terms, it may be attractive to have the Buyers pay cash for the equity and assume the existing loan. If the Sellers' equity exceeds the Buyers' down payment capacity the Buyers can give the Sellers a Seller Financed Second Deed of Trust for the balance of their equity. (*More on this topic in the next edition*)

Just because the existing loan has a "Due on Sale" clause in the deed of trust, does not mean that it can't be assumed. It only means that if the Lender does not consent to the sale, they could call the loan due. I have seen many transactions in which needless refinancing costs have been paid, and transactions have been delayed while refinancing the loan, only because no one bothered to ask the Lender if it would be okay to have the loan assumed by the Buyers. With a local Lender, it is not usually a time-consuming process to get an answer, but in cases where the loan is serviced out of state, the

best time to ask the question is as soon as the property is listed for sale.

Unfortunately, there many cases where you will not be able to find someone who can give you an answer on assumption and then the decision must be made as to whether it is worth the risk of going ahead with the transaction and the possibility that the Lender may invoke the "Due on Sale" clause. **It is very risky for a Licensee to encourage an assumption transaction without getting the consent of the Lender to waive the "Due on Sale" clause unless both Buyers and Sellers are well-informed about the risk of such action. Therefore, when you're unable to get the consent of the Lender you should only proceed with the transaction by having your attorney prepare a disclosure document to both Buyers and Sellers outlining the risk and then having each of them sign a copy of this disclosure acknowledging the receipt of the disclosure.** Obviously, there are some cases where one or more of the parties may not be willing to go forward with the transaction after receiving the disclosure, but I believe that many Buyers and Sellers in the current market will recognize that it is unlikely that a property will be foreclosed upon if the payments are being made.

### WORDS OF WISDOM

*"If you have made mistakes, there is always another chance for you. You may have a fresh start any moment you choose, for this thing we call "failure" is not the falling down, but the staying down."*

**Mary Pickford**

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For Mortgage Investments: [www.investinmortgages.net](http://www.investinmortgages.net)

**All Assumptions are Not Equal:** There are three types of assumptions. While we generally use the term “assumption” for all three types, it is important to understand the different types of assumptions and the ramifications to both Buyers and Sellers. The three types of assumptions are:

- Taking title “subject to”
- Standard assumption
- Substitution

**Taking title “subject to”:** With this type of assumption, the property is deeded to the Buyers subject to the existing loan. The Buyers do not agree to assume the obligation to pay the loan. Of course, they could lose their equity through foreclosure if they failed to make the payments. Taking title “subject to” is, for the Buyers, the equivalent of having a non-recourse loan. For certain partnership purchases, where it is important for limited partners to have a high tax basis, it is very important to have non-recourse financing. With a “subject to” transaction the Sellers remain fully liable for the loan.

**Standard Assumption:** This is the most common form of assumption and usually results in a provision in the deed, or a separate agreement, whereby the Buyers agree to accept full responsibility for payment of the loan and hold the Sellers harmless. In these situations the Buyers become totally responsible for the loan, but the Sellers’ only option for enforcing that obligation is a lawsuit against the Buyers. Since the Lender is not a party to the standard assumption agreement the Sellers are still fully responsible to the Lender, but could, of course, sue the Buyers for any damages suffered. A way of protecting the Sellers in standard assumptions is to simultaneously create a so-called “zero balance” deed of trust, which allows the Sellers to foreclose on the subject property if the Buyers default. This allows the Sellers to get back in to title and cure the delinquency. *(More on this topic in the next edition)*

**Substitution:** With a substitution there is a three-way agreement whereby the Buyers agree to assume the loan and the Lender agrees to release the Sellers from their obligation on the loan. Clearly this is the best option for the Sellers, but is one that is often difficult to get Lenders to agree to. **It is important to note that the Lender’s consent to the sale by not exercising their “Due on Sale” clause is not a substitution unless they specifically agree to release the Sellers from liability.**

**WHILE THE USE OF ASSUMPTIONS CAN BE A VERY USEFUL TOOL IN CREATIVE FINANCING TRANSACTIONS, AS OUTLINED ABOVE, THERE IS A LOT MORE TO ASSUMPTIONS THAN MOST FOLKS ASSUME!**

### **CASH NOW SELLER FINANCING™**

With today’s financing, many properties and many Buyers will **not** qualify for a bank loan. The way to sell non-financeable properties is to use Seller Financing. **Buyers love it!** Unfortunately, many Sellers will not consider this effective and time proven financing option because the Buyers’ down payment is not enough to meet their needs.

The answer to this dilemma is simple. We will pay **CASH NOW** for Seller Financed Notes with a simultaneous closing so the Sellers walk away from the closing with the cash they need.

### **A FREE WEBINAR**

To learn more about this concept, visit our website at [www.Cash4You.net](http://www.Cash4You.net) and take our new Webinar titled **“MORE SALES WITH CASH NOW SELLER FINANCING™.”**

THINK POSITIVE,  
MAINTAIN PERSPECTIVE,  
AND YOU WILL DO FINE IN 2009!