CHAPTER 1
CREATIVE FINANCING - - WHAT & WHY

WHAT: Different parties have different definitions of the term "*Creative Financing.*" But for us old timers, many of the techniques that are called "*Creative Financing*" today were considered basic financing 20 to 30 years ago. Since the late 1980's, the real estate industry has enjoyed very liberal, relatively low interest, third party financing. Therefore, basic financing today consists of the Buyer making a small to no down payment and borrowing the balance of the purchase price from a third party lender. For this reason, a commonly accepted definition of the term "*Creative Financing*" at the present is:

> "*Any financing negotiated by the parties in the transaction not involving a third party lender, or making a non-cash down payment.*"

WHY: In spite of today's extremely liberal third party financing, not every transaction qualifies. Even today it is typically not possible to finance the purchase of: vacant land, many vacation homes, mobile homes or mobile homes with land, older properties, and certain special use commercial properties. Studies have shown that the major reason that properties do not sell, is the lack of acceptable financing. For this reason, we still see many properties that can be sold only through the use of Creative Financing; for this reason every real estate practitioner should understand the basics of the topic, even if they only use this type of financing on an occasional basis.

Basic types of Creative Financing: The basic types of Creative Financing are:

- Barter and exchange
- Non-cash down payments
- Assumptions
- Seller Financing
- Creative combos

Barter and Exchange: Actually every transaction involves barter or exchange. After all, the typical cash transaction involves Sellers exchanging their property for the Buyers' cash. However, for the purpose of discussing Creative Financing we generally mean: exchanging property for other property, deeds of trust, personal property, or any item that is not cash.

Non-cash Down Payments: Non-cash down payments usually involve barter for a portion of the purchase price. The most common items used as non-cash down payments are: other real estate, debt obligations secured by other real estate, personal property, securities, exchange of services, or obtaining a down payment through grants or loans.

Assumptions: In assumption transactions, existing debt is left in place and is assumed by the Buyers. This can involve: a second deed of trust and an assumption, a Wrap Around deed of trust that includes the existing loan, or a down payment cash out to the amount of the loan assumed or could involve a partial down,.

Seller Financing: This is perhaps the most common form of Creative Financing and it involves a situation where the Buyers make a down payment to the Sellers and the Sellers take back a Promissory Note, secured by a Deed of Trust against the property sold, for the balance of the purchase price. A creative twist to this technique is the concept of "CA$H NOW Seller Financing," where the Sellers sell all or a partial interest in their Seller Financed Deed of Trust for cash at the closing table.

Creative Combos: This is where the fun starts! By using combinations of the other Creative Financing techniques and establishing non-traditional payment schedules to meet the needs of Buyers and Sellers, there is virtually no limit to the creativity that can be used in putting together a "win-win" transaction.

FINANCING OUTSIDE THE BOX: I sometimes refer to the use of Creative Financing techniques as "Financing Outside the Box." That's why it's the title of this booklet.

CHAPTER 2
WHEN AND WHY TO USE CREATIVE FINANCING

I would like to get into the topic further by discussing when and why you should use Creative Financing. Fortunately, we now live in a time when real estate financing is about as good as it's ever been in the history of the world. Unfortunately, not every property, nor every borrower will qualify for financing, even with today's easy terms.

Let's take a look at some of the major reasons why properties will not qualify for financing. While the following list is not totally inclusive, it does outline some of the major reasons, why lenders reject properties:

- The property is too old.
- The property is in poor repair.
- The property is located in an undesirable neighborhood.
- The property is dependent upon on site utilities (w*ell and septic tank*).
- The property is not of conventional construction.
- The construction of the property has not been completed.
- The improvements don't conform to the zoning.
- The property has too much land (*many lenders don't like to make loans on residential properties, situated on more than 5 acres of land.*)
- The land value is too high in relationship to the value of the improvements.
- The property is located in a remote location (*In many cases, lower 48 underwriters interpret this as being anywhere that is not on a paved road. Obviously, in Alaska, our definitions are somewhat different*)
- The property has been contaminated or is subject to potential contamination
- The property is of the wrong type (*e.g. gas stations, vacant land, hotel/motels, bars ,restaurants, junk yards*):

The foregoing examples are some of the reasons that the property may not qualify for financing. However, even if the property is acceptable collateral, it is possible that the borrowers may not qualify for financing. Some of the more common reasons that lenders reject borrowers are as follows:

- The borrowers' income is not high enough to meet lenders required payment ratios (*i.e. certain programs require that the home payments, including taxes and insurance, cannot exceed 28% of borrowers' income*).
- The borrowers' total payments, including house payments and other bills, exceed some ratio (*a common figure for this ratio is 33% of total income*).
- The borrowers' down payment may not be in the proper form. Unacceptable down payments include:
    - The down payment may have been borrowed.
    - The down payment may consist of an exchange of other real property or personal property.
    - The down payment may consist of buyer's services such as sweat equity.
- The borrowers may be self-employed.
- The borrowers may have had a recent change of job or profession.
- The borrowers may obtain too much income from rentals.
- The borrowers may own too much real estate.
- The borrowers may have had past credit problems.
- The borrowers may have recently moved and haven't yet sold their old home.
- The borrowers may have had a recent divorce.
- The borrowers may be employed in seasonal occupations.

As you can see from the above, there are many reasons why banks reject properties and reject borrowers. These are situations, that even with today's wonderful real estate financing, where it may be necessary to use Creative Financing. The next several chapters address different techniques of Creative Financing.

CHAPTER 3
THE CREATIVE USE OF BARTER

One of the most important concepts of Creative Financing, and indeed of all financing, is the concept of barter. Barter is simply the process of exchanging something that you have for something that you want more. It is the basis of every transaction and was the basis for all transactions prior to the creation of money. Money simply makes accounting easier, because it is a negotiable commodity that can be used in exchange for everything, whereas, barter involves exchanging something you have for something that someone else has.

For the purposes of discussing Creative Financing, I will define barter as the process of exchanging anything that is not money for purchase of real estate. One of the common forms of barter that we hear a lot about is the process of exchanging.
Actually, barter and exchanging are synonymous terms. But when people speak about exchanging they are often referring to the process of a tax-deferred exchange pursuant to Section 1031 of the IRS code. While Section 1031 exchanges are a very prudent way of minimizing the tax burden, it is possible to make exchanges that are not tax deferred. For purposes of Creative Financing we will not worry about the tax consequences of the exchange.

Only exchanges of real estate for real estate can be tax-deferred. In addition to exchanging real estate for real estate some of the more common types of barter include the following:

- Personal property for real estate
- Services for real estate (*one of the more creative uses of exchanging services for real estate was a real estate developer who had his barber provide him with a number of certificates good for one haircut as a down payment on a lot purchased by the barber*)
- Sweat equity. This is actually a form of exchanging services for real estate but it involves the Buyers performing work to repair or improve the value of the property being purchased.

Sweat equity arrangements should always be secured by a performance based Deed of Trust.

- Debt for real estate. Some of the more common forms of debt that are bartered for the purchase of real estate include the following:
  - Exchanging a Deed of Trust, which the Buyers hold on property previously sold, as part of the purchase price.
  - Creating a new Deed of Trust against equity in property that the Buyers already own and exchanging it as part of the purchase price.
  - Creating a Deed of Trust on property owned by others and exchanging it as part of the purchase price for the property being purchased. (*A good use of this technique is when parents want to help their children acquire property. They can create a Deed of Trust against their property and the children can exchange that as part of the purchase price of the property they desire*.)
  - Stocks bonds or other securities owned by the Buyers

To determine if the use of barter will assist in making the transaction, you should ask all Sellers the following questions:

- What do you plan to do with the cash you receive from the sale of your property?
- Is there any reason that you wouldn't trade part of the equity in your property for what you want?

To further determine if the use of barter will assist in making the transaction, you should ask all Buyers the following questions:

- What do you own that you are willing to sell to buy the real estate you want?
- Is there any reason you wouldn't trade that for the real estate you want?

Remember that items offered in barter can be accepted by the licensee as part of the real estate commission. If you aren't considering barter as part of the transaction making process, you may be missing out on transactions that could be made.

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CHAPTER 4
NON-CASH AND OTHER CREATIVE DOWN PAYMENTS

In the last chapter, I discussed the use of barter for part of the purchase price or as the down payment for purchase of real estate. In this chapter I would like to talk about other non-cash and creative types of down payments. While some of these will involve cash to the Sellers, they don't involve the Buyers writing a check.

Additional sources of down payment that don't involve the Buyers writing a check include the following:

Grants and Gifts. There are a number of charitable organizations that now specialize in making grants and gifts to Buyers for down payments to purchase property. In addition to these charitable organizations it is possible for Buyers to get a gift from relatives and friends.

Borrowing the Down Payment. It is possible to borrow the down payment by financing personal property such as an automobile (*this is the way I raised the down payment to purchase my first piece of real estate)* or refinancing other real estate. Borrowing against equity in other real estate is an excellent way of building a portfolio of investment properties and I have seen this technique used successfully many times. Other good sources for borrowing the down payment, in addition to borrowing from relatives, include borrowing against the cash value of an insurance policy due to the fact that it doesn't have to be repaid. It is also possible to borrow a cash advance on certain credit cards, although it is important that the Buyers don't overload on debt.

Sale of Cash Flows. Buyers can sell payments that they are receiving on a Deed of Trust, or they can sell payments they are receiving on structured settlement annuities, or they can even sell an inheritance that is tied up in probate to raise the cash to make the down payment.

Deferred Commission Notes. The Buyers can give a note to the real estate licensee as part of the commission, thereby reducing the need for part of the cash needed as a down payment. Such Notes should always be secured by a Deed of Trust against the Buyers' equity in the property.

Remember, anything that is of value to the Sellers, or to the licensee, can be accepted as a down payment or perhaps can be sold to raise cash for the down payment without the necessity of the Buyers writing a check for the down payment. USE YOUR IMAGINATION!

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CHAPTER 5
DON'T MAKE WRONG ASSUMPTIONS ABOUT ASSUMPTIONS!

In situations where the Sellers have an attractive existing loan, one of the easiest ways to quickly close a transaction, that is advantageous to both Buyers and Sellers, is to have the Buyers assume the existing loan.

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 a loan, only because no one bothered to ask the Lender if it would be okay to have the loan assumed by the new 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 a soon as the property is listed for sale.

There are three types of assumptions. While we generically 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 legally 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 higher 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 law suit 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 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. In that manner the Sellers could get back into title and cure the delinquency and then pursue legal action against the Buyers for their failure to pay the loan.

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 original Borrowers from their obligation on their loan. Clearly this is the best option for 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 is not a substitution. When a Lender consents to a sale, they merely waive the right to exercise their "Due on Sale" clause, but unless they specifically agree to release the Sellers from liability, consent to sale is not a Substitution.

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.

CHAPTER 6
WRAPS AND ALL INCLUSIVE DEEDS OF TRUST

In the last chapter I talked about the issue of assumptions. A wrap around or all inclusive Deed of Trust is another financing technique in which an existing loan is left in place. However, it is not assumed by the Buyers. Instead a new Note and Deed of Trust is created in which the Buyers pay the Sellers, and from those payments the Sellers satisfy the existing loan. There are two types of wrap arounds - - The Financial Wrap Around and the Zero Balance Wrap Around.

Financial Wrap Around: This type of Wrap Around is used in place of an assumption and a 2nd Deed of Trust and can result in the Sellers receiving a higher yield on the portion of the sale that they are financing than they would receive accepting a 2nd Deed of Trust. It is also a much safer alternative for Sellers, since the entire payment is made to them and then they (*acting through an escrow company or bank*) make the payments on the underlying first. As a result they always know whether or not the payment on the underlying first has been made. And if the Buyers default they can foreclose on their wrap around Deed of Trust and continue to make the payments on the underlying loan.

Financial Wrap Around Example: Lets look at an example and see how it increases the Sellers' return:

Purchase Price	$100,000
Down Payment	(10,000)
Wrap Around Deed of Trust	$90,000
Existing Loan	(60,000)
Seller's Equity in Wrap	$30,000

Because the Buyers don't have to pay costs of a new loan in a Seller Financed transaction, and because Sellers may be a little more liberal in examining credit, it is usually possible to have Buyers pay an interest rate on the Wrap Around that is higher than the interest rate on the existing loan. The following is an example in which the Sellers charged the Buyers 9% interest on the wrap around, while paying 6% interest on their existing loan.

	Annual Payments	Annual Interest
Wrap Around (9%)	$9,063	$6,100
Existing Loan (6%)	(6,076)	(3,600)
NET TO SELLERS	**$2,987**	**$4,500**

As the above calculations demonstrate, the Sellers in this transaction would receive 15% interest on their $30,000 equity, (*$4,500/$30,000=15%*).

Zero Balance Wrap Around: As discussed in the previous chapter, a Zero Balance Wrap Around is used to protect the Sellers in a Standard Assumption. Unlike the Financial Wrap Around above, the Zero Balance Wrap Around has a balance equal to the existing loan that is being assumed. Sometimes, Zero Balance Wraps are written where the Buyers make the payments to the Sellers and the Sellers then pay the underlying loan in an effort to avoid the "Due on Sale" clause. While this may make it harder for the Lender to learn that a sale has occurred, it is still a violation of the "Due on Sale" clause and can result in a foreclosure if the transaction is discovered. The proper use of the Zero Balance Deed of Trust is to protect the Sellers in a Standard Assumption when it is not possible to get the Lender to agree to a substitution. The Zero Balance Wrap Around therefore provides that in the event the Buyers fail to live up to their obligations to satisfy the existing loan being assumed, the Sellers could then foreclose on the property and correct the default. For these reasons I strongly recommend the use of the Zero Balance Wrap Around with Standard Assumptions.

CHAPTER 7
SELLER FINANCING ALWAYS MAKES THE SALE!

Buyers love Seller Financing! The fact that they deal directly with Sellers rather than a bank reduces closing costs, protects privacy of the transaction, and allows for flexible underwriting as well as creative structuring meeting the needs of both Buyers and Sellers. Also because no third party approval is required, closings are faster.

If you have any doubt about Buyers loving Seller Financing, try this test: P*repare two ads on the same property with identical wording in the text of the ad, and then on one ad use whatever headline you like and on the other one use the headline "Seller Financing" or "Owner Will Finance" and see which ad gets the most phone calls.* For Sellers who are looking to convert their real estate equity into an investment in a known asset with an interest rate higher than CD's or bonds, Seller Financing is an attractive alternative. However, in most cases, the Sellers need all or a substantial portion of the equity in the property they are selling to purchase another property. Assuming a typical down payment of 10%, a 6% selling commission, and a 1% closing cost, leaves only 3% of the selling price as net cash to the Sellers and many times that amount is insufficient to meet their needs. Fortunately, there is an answer to this dilemma.

Use "CA$H NOW Seller Financing". With this technique, a property can be made more marketable by the Sellers providing Seller Financing, which Buyers love, while at the same time getting the Sellers the cash they need. The solution involves a simultaneous sale of the Seller Financed Deed of Trust to a Note Investor at the closing table; thus, the Sellers are only financing the sale for the minute or two that it takes to close the second escrow in which all or a portion of their Note is purchased by the Note Investor for cash.

A Typical Example: A typical example would be the sale of a modest older home that does not qualify for conventional financing. Assume a sale price of $135,000 with $13,500 down payment, and Sellers taking back a Seller Financed Note for $121,500 at $1093.17 per month, including 9% interest with a final balloon of approximately $86,300 due in 10 years. At first glance, a 9% interest rate may seem high in the current market, but I see Seller Financed transactions all the time at 8% to 10%. Because the Buyers often don't qualify for conventional financing, and even those that do, are saving on closing costs, are able to deduct interest on tax returns, and because the transaction is easier and faster, they are willing to pay rates on Seller Financed transactions that are typically 2% to 4% more than the rate on institutional conforming mortgages.

There are Many Options. For the Sellers who need all or part of the equity from their property in cash, there are a number of options available. Four typical options that would work in this example are as follows:

CA$H NOW – Option 1: The Sellers could sell 119 payments for $71,850 CA$H NOW. With the down payment that means they would receive $85,350 CA$H NOW, plus they would receive the $86,300 balloon in ten years.

CA$H NOW – Option 2: If the Sellers needed more cash, they could sell 119 payments and 50% of the balloon for $84,350 CA$H NOW. With the down payment that means they would receive $97,850 CA$H NOW, plus they would receive the remaining $43,150 balloon in ten years.

CA$H NOW – Option 3: They could also sell the Note for the $121,500 full face value payable as $60,750 CA$H NOW and an additional $60,750 in 75 months. With the down payment that would be $74,250 CA$H NOW and with the $60,750 installment due in 75 months, that's a total of $135,000.

CA$H NOW – Option 4: If the Sellers needed as much cash as possible now, they could sell the entire Note for $97,300. With the down payment that's a total of $110,800 CA$H NOW. **Usually, sale of the entire Note is the worst option, but it is usually better than reducing the price low enough to find an all cash Buyer.**

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Other Examples: The above examples assumed a free and clear property, but of course if there were debt, part of the proceeds from the sale of the Note could be used to pay that off with the Sellers receiving the remainder. Other examples based upon different scenarios are shown in Appendix A or can be seen by going to our website: www.cash4you.net .

Contingent Sales: Sometimes a Seller may not want to sell the property unless they are sure they can sell the Note for enough cash to meet their needs. In that case, you can write the Earnest Money Agreement contingent upon selling the Note for sufficient CA$H NOW (***see Appendix B for an Earnest Money Addendum***).

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CHAPTER 8
HOW MUCH IS A SELLER FINANCED NOTE WORTH?

We are commonly asked, “How much is my Note Worth?” That is a question that is as hard to answer as, “How much is my house worth?” Neither question can be answered without having more information.

There are many factors that affect the value of a Note. These include the type of property, the amount of down payment, the Buyer’s credit rating, the interest rate on the Note and how fast is amortizes. In a typical real estate transaction there is nothing that the licensee can do about the type of property or the Buyer’s credit rating, but by knowing the factors that do influence value, you can make your client’s Note worth more. The major factors within your control are trying to maximize the down payment (*Don’t overlook other sources of down payment such as trades, loans from insurance policies, etc.*), increasing the interest rate and shortening the payoff period with a faster amortization and/or balloon payment (*assuming that there is a credible source of funding for the balloon payment*).

The factors that influence the cash value of a Seller Financed Note are shown in the following chart:

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VALUE	NOTE MATURITY	PROPERTY TYPE	LIEN PRIORITY	EQUITY	INTEREST RATE	BUYER CREDIT
HIGHEST	Short Amortization Period	Owner occupied single family, duplex to 4-plex, or condo	1st	25% +	Above Market	Good
↓	Longer Amortization with Balloon	Rented single family, duplex to 4-plex, condo, or mobile home less than 20 years old on permanent foundation Commercial & Apartments	2nd	20% +	Market	Average
↓	Longer Amortization without Balloon	Mobile homesmore than 20 years old on permanent foundation Other improved properties[1]	3rd	15% +	Below Market	Poor
↓		Mobile Homes on Rented Land or Improved Vacant Land[2]		10% +		
LOWEST						

[1] **Special use properties such as motels, restaurants, and interim uses or recreational cabins and mobile homes with land but without permanent foundations.**
[2] **Subdivided lots improved with all weather roads and all utilities necessary to develop.**

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CHAPTER 9
CREATING SELLER FINANCED SALES

In the previous chapter, I discussed how any property can be made more appealing to Buyers through the use of Seller Financing, because Buyers find it an attractive alternative. In addition to making any property more attractive, there are certain properties such as mobile homes, raw land, unfinished construction, or properties of unconventional construction (*or in poor repair*) that can only be sold through the use of Seller Financing. I also discussed how the Sellers' need for cash can be satisfied through sale of a Note at the closing table to a Note Investor.

In this chapter, I will address the essential elements involved in creating a Seller Financed transaction:

The Down Payment: An important element of a Seller Financed transaction is the down payment. Due to the fact that the Buyers in many such transactions have less than perfect credit, the down payment is far more important than it is in conventional financing. With larger down payments, the Seller Financed Note is more secure and as result can be sold for a higher price. The goal in every Seller Financed transaction should be to try for a down payment of at least 10%.. But remember, the advantage of Seller Financing is that it can be very flexible and creative. Therefore, the down payment can be in any form, can consist of anything of use or value to the Sellers, or can be anything of use or value to the licensee (*as all or part of the commission*). Examples of alternative down payments were discussed in Chapters 3 and 4.

Financing Documents: The difference between the selling price and the down payment consists of the Seller Financing. The Sellers are entitled to the same legal protection as any Lender and therefore the unpaid portion of the purchase price will be represented by a Promissory Note outlining the amount owed, the terms of repayment, and the interest on the unpaid balance. This Promissory Note is then secured by a Deed of Trust pledging the property being purchased as security for the Note. However, security does not have to be limited to only the property being purchased. If the down payment is low or if the Buyers have weak credit, it is possible to secure the Seller Financed Note by other property owned by the Buyers or perhaps their relatives.

Collection Escrow Instructions: The final financing document is the Escrow Collection Instructions to the bank or escrow company that will act as neutral agent for both Buyers and Sellers. This enables them to collect the payments from the Buyers, remit them to the Sellers, calculate the interest and unpaid principal balance, and provide the required annual reporting to the Internal Revenue Service. Also, the escrow company holds the reconveyance documents to remove the Deed of Trust from title after the Note is paid.

Casualty Insurance on the Property: I am constantly amazed at how many improved properties are sold using Seller Financing without requiring the Buyers to insure the property for it's full replacement cost, and without naming the Sellers as Loss Payees. In the last nine years we have had five properties, on which we had purchased Deeds of Trust, burn to the ground. Fortunately, we had enforced the provisions of the Deed of Trust requiring the Buyers to carry insurance naming us as Loss Payees. This is such an important issue, that no Seller should sign the documents transferring ownership of the property until the Buyers have provided an Insurance Binder for the full replacement cost of the property and showing the Sellers as Loss Payees.

Real Property Taxes: Although all Deeds of Trust require the Buyers to pay the real property taxes before delinquent, and provide that failure to do so is a default on the terms of the Note and Deed of Trust, many Buyers fail to pay the real property taxes until they are threatened with foreclosure. Fortunately, in Alaska it takes several years before the Government forecloses on the property, thereby eliminating the property as security for the Seller Financed Note. However, it is something that can and does happen. Even if the Sellers foreclose, it is a very unpleasant surprise to do so and find that several years of property taxes are past due. The best way of resolving this issue is to register with the Tax Reporting Service at a cost of little over $70 so that the Sellers receives notification when taxes are due and when they have not been paid.

Mortgagee's Title Insurance: In most transactions, the Sellers pay the premium to provide the Buyers with Owners Title Insurance, but neglect to insure their own interest. One of the real bargains in title insurance premiums is the simultaneous issue of a Mortgagee's Title Policy that insures the Sellers' title interest in the Deed of Trust against the property. While the losses to Sellers through poor title do not occur often, they do occur. When the cost is only $75, I can think of no reason not to always have the Sellers purchase a simultaneous issue Mortgagee's Title Policy.

The Devil is in the Details: The above is a brief explanation of the process of creating Seller Financed transactions. In the next chapters I will discuss each legal document and each issue in greater detail.

CHAPTER 10
MORE ON DOCUMENTING SELLER FINANCED SALES

I ended the last chapter discussing some of the issues in Seller Financed Sales and made the closing observation that **"The Devil is in the Details."** Beginning with this chapter, and for the next several chapters, I will discuss some of the details of creating properly documented Seller Financed transactions. Most of the time you will have a reasonably documented transaction by just giving the title company the economic details and letting their attorney prepare the paper work. However, you can always do a better job for your client if you really understand more about the important details.

The Promissory Note: The first document used in all Seller Financed transactions is the Promissory Note. Every Promissory Note will state the amount of the unpaid debt, the interest rate charged on that debt, and a description of when and where the payments are to be made. Remember, payments don't have to be monthly, they can be made annually, quarterly, or on any other schedule agreed to between Buyers and Sellers. I'll discuss more on this later in Creating "Win-Win" Transactions - - Chapter 18. There are some significant elements that may not be included in the Promissory Note unless specifically requested. Some of the more important of these include:

Late Payment Penalty: Unless you specifically request it, very few title companies will provide for a late payment penalty. My experience has convinced me that a late payment penalty does provide a major incentive for on time payment, and if the payment is late, at least the Sellers collect extra income for waiting. The first decision in creating a late payment penalty is to decide on the grace period. Most banks, on residential transactions, allow 15 days. My firm uses 10 days on Commercial Loans and I know of one private local Lender who uses 4 days. Any payment made during the grace period is not subject to a late payment penalty, but payments not made during that period should be subject to some penalty. The banks typically charge 5% of

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the payment. We charge 10% on our Commercial Loans and I have seen penalties as high as 25% of the amount past due.

Penalty Interest: Although not typical in residential transactions, many Commercial Loans provide for penalty interest in addition to the late payment penalty, if the loan becomes delinquent for a longer period of time, such as 30 days. For example, in our Commercial Loans, if the loan becomes delinquent for more than 30 days the base interest rate is increased by 5%. This is a fairly typical provision in many Commercial Loans and I know of one Lender who doubles the interest rate if the payment is more than 4 days late.

Who is Guarantying the Note: It is important to be sure that the person signing the Note is personally guarantying that payment is made. In the case of corporations, LLC's, and certain other entities, the person signing the Note may be doing so only in their official capacity. In that case, the Note is only guarantied by the corporation or LLC, (*which may be an entity with very limited assets)* although the owner may be a person with a high net worth whose financial strength was a factor in accepting the purchase offer. Any time the Buyer is an entity rather than an individual, it is a good idea to have the Note signed on behalf of the entity and then guarantied by key officers and owners. It is also important to carefully read the Note to be sure that it is a Note providing for an unconditional guaranty of payment rather than being written as a "Non-Recourse Note," in which case the only remedy is foreclosure on the property.

Interest Rates: Make certain that when setting interest rates that you're making an "*apples to apples*" comparison. In a conventional, conforming transaction, the Buyers must meet high credit standards and the required payments on the Note must be less than the underwriter's determined percentage of income. One of the advantages of Seller Financing is that it allows flexibility and as a result, the Buyers' credit may not be perfect and/or the required payments may be a major portion of their income. Therefore, the interest rate should be commensurate with the risk involved. Persons with poor credit do not deserve the same low rate that is available to persons with excellent credit. It is also important to remember that as a result of the Sellers providing Seller Financing, the Buyers' closing costs are usually lower than with a conventional loan. Therefore,

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Buyers don't mind paying a little higher interest rate. Even in this low interest environment, where conventional conforming loans have interest rates of a little more than 6%, I commonly see Seller Financed transactions with an interest rate of 8% to 10%.

Beware of Usury: A real trap for the unwary is Alaska's weird usury law. If the amount of the debt is less than $25,000, it is illegal to charge an interest rate that is more than 5% over the Federal Reserve Discount Rate. On the date that I am writing this the discount rate is 6.25% (*this rate can be found on the financial pages of the Anchorage Daily News*) and thus the maximum interest for debts of $25,000 or less is 11.25%! Failure to comply with the usury limit can cause total forfeiture of all interest and additional penalties, so be very careful on this issue!

The Note is an Enforceable Instrument by Itself. Although Notes are usually secured by a Deed of Trust, it is important to remember that the Note, by itself, is an enforceable legal document. This may not mean much if the Buyers have a low net worth, but in a transaction where wealthy people sign the Note it is sometimes advantageous to merely sue on the Note rather than foreclose on the property. (*More on this later*). Although 99% of the time the Sellers use the right to foreclose on the property as the protection for non-payment, **it is a good idea to prepare the Note as if it were the only document being used!**

CHAPTER 11
THE DEED OF TRUST SECURES THE PROMISSORY NOTE

In the last chapter, I discussed the importance of the Promissory Note in documenting the terms for the financed portion of the sales price in a Seller Financed transaction. I also recommended that it was a good idea to write the Promissory Note as if it were a stand alone document. However, I also recommended that in every Seller Financed transaction, the Promissory Note should be secured with a properly drafted Deed of Trust. While it is possible to enforce the Promissory Note as stand alone documents, in most defaults, the best remedy is to foreclose on the property through use of the Deed of Trust.

Elements of the Deed of Trust: There are three parties to every Deed of Trust. The first party is known as the Trustor. This is the same as the Payor on the Promissory Note (*since we are talking about Seller Financing this person is synonymous with the Buyer*). The next party is the Beneficiary of the Deed of Trust (*in Seller Financed transactions this is the Seller*). The third party is the Trustee, which in most cases is a title company but could be any competent individual of legal age or other legal entity. While the Trustor (*Buyer*) has full use and beneficial ownership of the property, nominal title is held by the Trustee for the purposes of foreclosure in the event of default. The Deed of Trust is always recorded with the District Recorder to place a public lien against the title to the property.

Default for Non-Payment: The primary purpose of the Deed of Trust is to provide protection to the Sellers in the event the Buyers default in making payments. In such an instance the Sellers may foreclose on the property and then resell it again. While this is the primary purpose of the Deed of Trust, there are other provisions within the Deed of Trust that require protection of the property so it maintains its value as security for the Promissory Note. Other provisions within the Deed of Trust that can cause default, and therefore a reason to foreclose, include the following:

- Failure to Insure the Property: If the property is an improved property, the Deed of Trust will typically require the Buyers to have the property insured for its full replacement cost, but at least for the amount of the unpaid debt, so that in the event that the property is destroyed by some form of casualty loss, the unpaid obligation to the Sellers will be satisfied from the insurance proceeds.

- Failure to pay Property Taxes: The government's right to collect property taxes is a lien against title that is superior to all other liens. In the event property taxes are not paid, the government can foreclose on the property, and after a period of time can resell it to a new purchaser free and clear of the Deed of Trust which is legally extinguished by the government's Tax Foreclosure (*it is important to note however, that this in no way relieves the Buyers of liability under the Promissory Note*). For this reason, Deeds of Trust provide that if Trustors (*Buyers*) fail to pay the property taxes when due, this is a default under the terms of the Deed of Trust and would allow the Sellers to foreclose.

- Failure to Maintain: Since maintenance of the property is important to preserving its value, most Deeds of Trust provide that the Buyers are obligated to maintain the property in good condition and that failure to do so also constitutes a default, which would allow for foreclosure.

Due on Sale Clause: Virtually all loans made today by institutional Lenders are secured by a Deed of Trust containing a Due on Sale clause. This clause provides that in the event the property is sold without the permission of the Beneficiary (*the Sellers in the case of a Seller Financed transaction*) that such action constitutes a default under the terms of the Deed of Trust and permits foreclosure. A well written Due on Sale Clause is usually broad enough and specific enough so that all of the dodges commonly advocated by people to avoid the Due on Sale Clause do not work. Many Due on Sale Clauses even provide that if the property is leased for a term of over several years the Due on Sale Clause is applicable. Most of the tactics advocated to avoid the Due on Sale Clause do not actually avoid the Due on Sale Clause, but they may make it more difficult for the Beneficiary to detect the violation. I recommend Due on Sale Clauses in all Seller Financed Deeds of Trust because they do provide the Sellers with an opportunity to renegotiate the transaction if the property is ever sold.

Other Deed of Trust Provisions: There are an unlimited number of other provisions that can be provided for in a Deed of Trust, with their violation constituting a default and reason for a foreclosure. Such additional provisions may provide for limitation on how the property is used during the term of the debt. Other common provisions also prohibit alteration or changes to the property, prohibitions against clear cutting trees, excavation, and removal of minerals or anything else that is deemed important to the preservation of the value of the property. While some of these provisions may be similar to deed covenants, they are different in the respect that they last only until the debt is repaid. At that time they cease to exist, whereas deed covenants can be for a much longer period of time.

Other uses for Deeds of Trust: Although Deeds of Trust are usually used to secure a debt, they can be used to secure any type of promise or contractual obligation in which the person benefiting from the promise or obligation may foreclose on the property if the promise is not fulfilled.

Don't treat Deeds of Trust as "Standard" or "Boiler Plate": A Deed of Trust is a very powerful legal document that can be custom tailored to meet the needs of the parties thereto. It is a good idea to be aware of the possibilities and always read every Deed of Trust to learn if there is some unusual provision contained therein.

CHAPTER 12
OTHER IMPORTANT DOCUMENTS
IN SELLER FINANCED TRANSACTIONS

In the last two chapters, I have discussed in detail Promissory Notes and Deeds of Trust which are both very important documents in Seller Financed transactions. However, there are other documents that are also important in Seller Financed transactions.

The Collection Escrow: Alaska and most other western states use the enlightened approach of having a impartial party (*bank or escrow company*) collect the payments due on the Promissory Note and account for principal, interest, and unpaid balance. In many other states (*when are they going to learn?*) the typical process is for the Buyers to make the payments directly to the Sellers and hope that they agree upon the calculation of principal and interest and that when the debt obligation is finally paid off, the Sellers are around to provide the reconvenyance documents.

In Alaska, we have several local banks and several independent escrow companies that provide collection and escrow services. Although it is common for the escrow company to provide both collection and escrow services, it is possible to separate these services. In the case of a collection account only, the escrow company only collects the payments, does the accounting and transmits the Seller's money where directed. In a "Collection Escrow" the escrow company also holds the reconveyance documents in escrow so that there is no problem in removing the Deed of Trust from title once the debt has been paid. This eliminates problems with clearing up titles when Sellers die, move, or become legally incapacitated.

Another valuable service of escrow companies, is handling the payment of underlying debt in Wrap Around transactions. **In fact, in a Wrap Around transaction, I don't know any safe way of structuring the transaction without the use of an escrow company.**

Under the Internal Revenue Code, persons collecting over $600 per year in interest are obligated to report that information to the Internal Revenue Service and provide the Payor with a form 1098. This valuable service is also provided by escrow companies. In summary, it is my opinion that every Seller Financed transaction should be set up with an escrow collection account.

Loss Payee Endorsements on Insurance Policies: I have previously discussed the importance of having the property insured, so that in the event of a casualty loss of the improvements there is sufficient money to satisfy the debt. Unfortunately, the mere existence of insurance does not guarantee protection of the Sellers. Insurance companies do not run title reports, but rather rely upon information contained in their insurance policy. If the Sellers are not named as the Loss Payee, by a Loss Payee Endorsement to the policy, in the event of a casualty loss, the insurance proceeds will be paid to the Buyers. Sometimes, Buyers decide not to rebuild and I know of cases where they have decided that their insurance windfall is a sign for them to relocate and let the Sellers foreclose on a vacant lot. Therefore, it is important that the Sellers' interest in the insurance policy be represented by a Loss Payee Endorsement to the policy, which means that in the event of a loss, the Sellers' name will also be on the insurance check. Most Deeds of Trust give the Beneficiary (*Sellers*) the option to demand payment in full from the insurance proceeds or to allow the Buyers to rebuild, but have control of the funds to guarantee that the security for the Deed of Trust is rebuilt.

Tax Reporting Services: An easy way to monitor whether or not real property taxes are being paid is to subscribe to a tax reporting service. This way the Sellers knows about a delinquency in tax payment as soon as it occurs, rather than waiting several years and having to pay several years back taxes to protect their interest.

Mortgagee's Title Insurance: In most transactions the Sellers pay for an Owner's Title Policy to insure the interest of the Buyers. However, for only $75 more it is possible to get a simultaneous issue of Mortgagee's Title Insurance Policy which guarantees the interest of the Sellers by insuring that the Deed of Trust is a valid Deed of Trust secured by the property sold. Admittedly the risk to Sellers of poor title is not great, but for $75 why take the risk?

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CHAPTER 13
EVERYTHING IS NEGOTIABLE

In a typical transaction financed by a conventional loan the major issue of negotiation between Buyers and Sellers is the price, but may also include negotiation of move in date, and who pays for needed repairs. In the case of Seller Financing, there are a lot more negotiable items, because every element of the financing is negotiable. Some of the major issues that are negotiated in a Seller Financed transaction and their ramifications include the following:

- Amount of Down Payment: Remember that in a Seller Financed transaction the down payment does not have to be all cash, but can include exchange of tangible items and agreements to provide future services.

- Interest Rate: Typically, interest rates in a Seller Financed transaction are higher than conventional transactions. As I will discuss later under structuring, it is possible that interest rates can be both variable and set in fixed steps or various combinations thereof.

- Amortization Period: The amortization period is the number of years that it would take to amortize the loan with level payments. However, it is possible to provide for stepped payments that increase periodically and/or to provide for a loan term (*final balloon due date*) that is shorter than the amortization period.

- Guaranties: It is possible to negotiate a Note that is "Non-Recourse" which means that in the event of default, the Sellers' only remedy is to foreclose on the property. When Buyers are corporations or other entities it is important to have the officers and shareholders guaranty the Note, because if they don't the only recourse is against the corporation or entity itself, which may have only limited assets.

- Balloon Payments (*Bumps*): It is possible to negotiate for balloon payments to be made at various times in addition to the periodic payments. Balloon payments that do not result in a final pay off of the debt are often referred to as "Bumps." In Alaska a common form of balloon payment is one made annually out of the Permanent Fund Dividend.

- Final Balloon Due Date: This is the date at which the unpaid balance must be paid. It is important that final balloons are credible. In structuring them it is important to answer the question, "*Where will the money come from?*" If there isn't an easy answer to that question, such balloon payment generally results in a foreclosure or the need to renegotiate the terms.

- Grace Period: How long a period do the Buyers have to make the payment after the due date without incurring a late payment penalty or a default?

- Late Payment Penalty: This is the amount of penalty that is charged to the Buyers for not making the payment within the required grace period. Penalties of 5% to 10% of the payment due are common.

- Insurance: When the property being sold is an improved property, it is important to have the property insured with the Sellers named as Loss Payees. However, the requirement for insurance is negotiable and the amount of the insurance is also negotiable, although it is usually in the best interest of both parties to have insurance for the full replacement cost.

- Collection Administration: This involves negotiating how and where the payments will be made. It is usually advantageous to both parties to have the payments made through an independent escrow collection licensee.

- Right of Inspection: This is a clause which grants the Sellers the right to inspect the property at periodic intervals to determine if it is being maintained. In the case of many commercial loans a detailed annual inspection and review of financial reports is required.

- Release Clauses: In the case of larger acreage sold with the potential for subdivision, it is possible to negotiate provisions where a portion of the property will be released from the security of the Deed of Trust in return for specific additional payments.

- Provisions Against Waste and Destruction: Generally, most Deeds of Trust have some type of generic provision against waste and destruction. However, when there are other specific characteristics of the property such as big trees, it may be necessary to negotiate specific clauses against clear cutting or other similar provisions.

- Security Agreements on Personal Property: When the property sold includes personal property such as the case of motels or apartments, it is possible to negotiate an additional Security Agreement securing that personal property, in addition to the real property.

- Default on Senior Mortgages: When the unpaid obligation to the Sellers is junior to an existing Note and Deed of Trust (*mortgage*) it is possible to have a provision that any default on a senior obligation is also a default on the subject obligation.

- Environmental Warranties: Such warranties provide that the property will not be used in any manner that would create hazardous contamination.

- Underwriting Package: It is possible to negotiate how much information the Buyers provide the Sellers. Typical items would include: credit reports, financial statements, income verification, employment verification, and tax returns.

- Additional Collateral: In cases where the down payment is low it is possible to negotiate that the Buyers provide additional collateral (*secured by a Deed of Trust*) as security for the Promissory Note.

- Substitution of Collateral: It is possible to provide in a Deed of Trust, that under agreed conditions and circumstances, that the Deed of Trust against the property being sold can be released and the obligation then secured by a Deed of Trust against a substitute property. **This can be a useful clause in creative financing but can be a trap for the unwary!**

- Subordination to Refinance: If it is not likely that the entire debt could be refinanced, it is possible to provide that in the event of refinancing, all or a portion of the subject Deed of Trust could be subordinated to such refinancing.

- Payment Moratorium: This clause is usually limited to commercial transactions and provides that if the property does not produce a certain amount of income there may be a moratorium period when either none, or only a portion, of the payment must be made.

- Discount or Penalty for Early Payoff: It is possible to negotiate a discount if the property is paid off early. Or if the Seller would like to continue receiving interest, it is also possible to provide that there is a penalty for early pay off. In Alaska, it is generally not possible to charge an early pay off penalty on residential properties.

CHAPTER 14
WHOM DO YOU REPRESENT

As you know, a licensee has a great deal of responsibility to the principal and must at all times represent the principal's interest. In a Seller Financed transaction the licensee is usually the most knowledgeable person in the transaction, as discussed in the previous chapter, and since there are many negotiable items, the licensee in a Seller Financed transaction does have an additional obligation to represent the principal's interest in negotiating the financing. However, whether you are representing the Buyer or Seller you can make a substantial difference in the many negotiable items.

Below is a table showing the possible different positions that you may be negotiating for depending upon whether you are representing the Seller or the Buyer.

ISSUE	REPRESENT SELLER	REPRESENT BUYER
Amount of Down Payment	High down payment	Low or no down payment
Interest Rate	High interest rate	Low interest rate
Amortization Period	Short amortization period	Long amortization period
Guarantees	Full personal guarantee	Non-recourse
Balloon Payments	Early and large	None
Final Balloon Due Date	As soon as feasible	As late as possible
Grace Period	Not more than 15 days	30 days or more
Late Payment Penalty	Large penalty	No penalty
Insurance	Full replacement cost	Same
Collection Administration	Payments made through reputable bank or escrow company	Same
Right of Inspection	Absolute right whenever desired	None- right of privacy
Release Clauses	None or large principal pay downs	Small principal pay downs
Provisions Against Waste & Destruction	Strong and explicit provisions with right of inspection	None- One man's improvement is another man's waste.
Security Agreements on Personal Property	Strong agreements collateralized by personal property	None
Default on Senior Mortgage	Automatic default on subject mortgage	Silent on issue

Environmental Warranties	Strong environmental warranties	None
Underwriting Package	Full underwriting package	None – Trust Me!
Additional Collateral	As much as possible	None
Substitution to Collateral	No	Yes - with easy standards
Subordination to Refinance	No	Yes – full subordination to maximum loan (Cranking the mortgage)
Payment Moratorium	No	Yes – no negative guarantee
Discount or Penalty for Early Payoff	Depends on client objectives	Discount for early payoff

CHAPTER 15
UNDERWRITING PRIVATE FINANCING

First let's define the term underwriting:

> "Underwriting is a fancy term used by Lenders for the "*due diligence*" process of investigating a Borrower's credit history and capacity to repay a loan."

One of the great advantages of private financing is to avoid the time and hassle of bureaucratic underwriting and to be able to structure transactions that are "*win-win*" for both the Buyers and Sellers. However, the Sellers (*who become the Lenders in a Seller Financed Transaction*) do have the right to evaluate the risk involved in extending Seller Financing to the Buyers and should always do what the "*prudent man*" would do. But what would the prudent man do?

- Does the down payment speak for itself? (*With a very large down payment the Buyers' credit and income levels may not really be important*).

- Or is it important to know something about the Buyers' credit history and their capacity to pay?

It's a good idea for "*the prudent licensee*" to do what the "*prudent man*" would do. Therefore it is always important for the licensee to discuss the fundamentals of loan underwriting with the Sellers, keeping in mind that the licensee's obligation is to advise and assist the Sellers, but the licensee should **NEVER DECIDE FOR THE SELLERS**. The five essential elements of underwriting are:

- The Financial Statement

- The Income and Expense Statement (*can be combined in one form with the Financial Statement*).

- Credit Report

- Tax Returns

- Employment verification.

Financial Statement: The Financial Statement will show whether the Buyers' guaranty means anything. Buyers with no other assets mean that the Sellers' remedy in the event of default is limited to foreclosure. The Financial Statement will show if the Buyers are good managers of their financial affairs by indicating whether their net worth is realistic for their age, occupation, and income. It can also indicate if the Buyers may be on the brink of bankruptcy because their liabilities equal or exceed their assets. A very important positive aspect of asking for the Financial Statement is to determine if the Buyers have more cash or assets that can be used to increase the down payment.

Income and Expense Statement: This can be part of a general "Application for Seller Financing" (***see Appendix C for a copy of this form***) that also includes the Financial Statement. It is useful in determining if the Buyers are living within their means and if they can really afford the payments on the property being purchased. One of the major advantages of Seller Financing is to avoid bureaucratic income to payment ratios, but if the income statement indicates that the required payments are 60% of the Buyers' income, it is very doubtful that they will be able to make the payments as agreed. It can also be a useful tool in determining if the Buyers are being truthful, by showing whether their stated income agrees with income tax returns and/or employment verification.

Credit Report: Of all the underwriting information, I personally believe this is the most important information. People, who pay their bills on time and as agreed, generally continue to do so. Those who have shirked their responsibility in the past, have a high probability of doing so in the future. This does not mean that credit reports are 100% accurate. My experience is that they are probably 70% to 80% accurate in predicting future payment. There are many cases where good people have poor credit. Some credit problems that may not necessarily indicate future problems, if they can be adequately explained, include the following:

- Foreclosures during the real estate crash of the late 1980's.

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- Problems created as a result of a divorce.
- Problems created as a result of a family illness or accident.
- Problems created as a result of death in the family.

Credit reports are also important in indicating if the Buyers are handling their current obligations. This current information is far more important than historical problems. A credit report may also indicate if there are debts not disclosed in the Financial Statement or Income and Expense Statement. For licensee protection, it is my recommendation that a licensee always recommends in writing to the Sellers that they get a credit report before accepting a transaction involving Seller Financing.

Tax Return: Tax Returns can be useful to verify the accuracy of the Income Statement and, for self-employed persons, may be the only source of employment verification. Tax Returns can also be useful clues to unreported liabilities such as alimony, business debt, or payments on other real estate. Likewise, they can also provide clues to other unreported income such as receipt of alimony, receipt of rents or payment on receivables that may provide a clue to other assets that could be exchanged for part of the down payment (*or indicate a capacity to make larger payments*).

Employment Verification: This is probably the least used element of underwriting in private financing, but can be important if the Buyers' ability to make the payments is an issue of concern. It will be more important in situations in which the down payment is small. Employment Verification can be written or oral, **but if it is oral, the verification of employment should always be done by the Sellers and not the licensee.** The Employment Verification can determine if the Buyers are telling the truth about their salary, as stated in the Income and Expense Statement, and is therefore another check on their truthfulness.

ABOVE ALL USE JUDGEMENT. Always keep in mind that one of the advantages of Seller Financing is fast processing, flexibility and avoidance of bureaucracy. However, the amount of underwriting required will depend upon the Buyers' equity in the property and the Sellers' risk tolerance. For licensees, I believe that it is very important to discuss the issues of underwriting with the Sellers and assist them in gathering the information that they deem necessary. On simultaneous closings, where our firm is buying the Note, we always get a credit report and a financial statement and income and expense statement, which are combined in a two page "Application for Seller Financing."

It is also important to use the underwriting process to renegotiate a transaction rather than rejecting it. If the Buyers are weak, look for opportunities to get additional down payment or other collateral pledged for the Note (*many licensees overlook the fact that a Seller Financed Note can also be secured by other property owned by the Buyers or their relatives*) or by structuring the payments to fit the Buyers ability to pay (*more on this later*).

Finally BE CREATIVE- - Don't be a banker!

CHAPTER 16
WHEN THINGS GO WRONG YOU CAN MAKE THINGS RIGHT

While it is usually in the Sellers best interest to sell the property for cash, this is not always possible. Unfortunately, some Buyers and some properties simply do not qualify for institutional financing. In such cases the only real alternative to keeping the property forever is to sell it using Seller Financing. Unfortunately, some Sellers allow themselves to get permanently locked into ownership of property they don't want or need because of their fear of default and foreclosure. By becoming knowledgeable about these issues, and counseling your clients, you can help them overcome their fears.

The first course of action is to help them with underwriting, as discussed in the previous chapter. Show the Sellers that by verifying the Buyers' credit, getting some financial information on them, and structuring the transaction properly, with a well written Note and Deed of Trust that requires late payment penalties, they can substantially reduce the likelihood of default. Even if default does occur, in a well written Note and Deed of Trust (*as discussed in Chapters 10 and 11*) there are a number of protections for the Sellers (*Now the Beneficiaries of the Deed of Trust*).

The three most common forms of default are:

- Failure to pay the property taxes.
- Failure to insure the property.
- Failure to make the payments in a timely manner.

In the event of failure to pay the taxes, the standard Deed of Trust allows the Sellers to pay those taxes on the Buyers' behalf and add the cost to the balance owed. However, since it is usually about three years before title of the property is put in jeopardy by the failure to pay taxes there is usually plenty of time to act. The best way to keep the amount of taxes from becoming a large obligation is to enroll the Sellers in a tax reporting service at the time of sale so that they receive notification in the event that property taxes are not paid.

The standard requirement in Deeds of Trust is that the property remains insured at all times with the Sellers named as Loss Payees. In the event the Buyers fail to pay the insurance or don't renew it, the insurance company will notify the Sellers if the Sellers are named as Loss Payees in the insurance policy. Under the terms of the standard Deed of Trust the Sellers can purchase insurance and add the cost to the balance owed.

The most common form of default is the failure to make payments in a timely manner. If the Sellers act quickly and notify the Buyers of the default when it occurs, most Buyers begin paying on time. Some people are just careless and only pay the squeaking wheel. On the other hand, if the Buyers do have a true problem such as illness, divorce or loss of employment, by contacting them early the Sellers will learn the situation and can perhaps suggest alternative solutions. If the Buyers are not able to make payments, a Deed in Lieu of Foreclosure can be negotiated. This will save the Sellers the cost of foreclosure and can be done in a manner so that the Buyers' credit is not hurt by the action. If the Buyers' problem is only temporary, payments can be restructured to something they can handle. (*My policy is always to ask for an increase in interest rate anytime restructuring occurs*). By acting quickly and dealing with people on a personal basis, it is often possible to resolve a default before it becomes serious.

While defaults are seldom fun, Sellers who have the proper knowledge and who act quickly can usually keep them from becoming a nightmare.

CHAPTER 17
FORECLOSURES AND LITIGATION OPTIONS

In the last chapter, we discussed types of defaults and some default remedies, such as restructuring the Note or a Deed in Lieu of Foreclosure. In the event such negotiations are not successful the Seller (*now the beneficiary on the Deed of Trust*) has two foreclosure options and one non-foreclosure litigation option. In the order of their most common usage, these options are:

Typical Non-Judicial Foreclosure: In this type of foreclosure the Seller/Beneficiary invokes the right to foreclose through a Trustee Sale without the necessity for litigation. After a default has occurred for at least 30 days (*or more if required by the Deed of Trust*) the Seller/Beneficiary closes out the escrow account and then usually turns the file over to an attorney. The attorney prepares a Beneficiary's Affidavit and a Declaration of Default. This is then delivered to the Trustee, who executes a Notice of Default and records it. This Notice of Default is mailed to the defaulting Buyer (*now the Trustor*) and any other parties in interest. The Trustee must also post a Notice of Sale in three public places within 5 miles of the sales location and must advertise the Notice of Sale in a newspaper of "general circulation" four times within 30 days prior to the sale.

Assuming that the default is not cured by payment of all past due payments and foreclosure costs, the property is then sold by the Trustee to the highest bidder. The Seller/Beneficiary, may enter a non-cash bid equal to the amount owed, including accrued interest, late fees and foreclosure costs. If this is the high bid, title to the property then passes to the Seller/Beneficiary. In this type of foreclosure the Buyer/Trustor has no right of redemption and the Seller/Beneficiary has no right to deficiency judgment in the event that the value of the property has decreased. If all steps are performed on a timely basis, such a foreclosure can be accomplished in about 90 to 120 days and costs typically fall in the range of $2,500 to $3,500.

Judicial Foreclosure: Under this type of foreclosure, a suit is actually filed with the court system and a judge must approve foreclosure and sale of the property. After the court approves a foreclosure sale, the property is sold to the highest bidder. Again, the Seller/Beneficiary may make a non-cash bid at a "fair amount", which term is not precisely defined. After the sale, the Seller/Beneficiary petitions the court for an order confirming the sale, subject to the Buyer/Trustor's one year right of redemption, and asks the court for a judgment against the Buyer/Trustor for the difference between the amounts owed less the sale price of the property. After receipt of the Deficiency Judgment, Seller/Beneficiary is free to pursue normal judgment remedies such as attaching bank deposits, garnishing wages and attaching and forcing the auction of other assets. Due to the chilling effect of the Buyer/Trustor having a one year right of redemption, such sales are usually at less than their current market value. As a result the Seller/Beneficiary can usually get a deficiency judgment unless the Buyer/Trustor had a large equity in the property. This type of foreclosure can often take six months,or more, to complete, plus an additional year for the right of redemption. I have heard of reported costs in the range of $7,000 to $12,000. This remedy should only be considered if the value of the property is less than the amount owed, and there is belief that the Buyer/Trustor has other liquid assets that can be seized.

Suit on Note: With this remedy the Seller does not foreclose on the property, but instead sues on the Note, and after obtaining a judgment may pursue normal judgment remedies, such as attaching bank deposits, garnishing wages, and attaching and forcing the auction of other properties. This type of judicial action usually takes less time, and costs less than a Judicial Foreclosure. It is useful only if the Buyer/Trustor has liquid assets that can be found and attached. This course of action is useful when a "well-to-do" Buyer/Trustor has abandoned the property and/or allowed its value to deteriorate through lack of maintenance.

Foreclosure and/or litigation are never fun, and I always recommend an attempt to negotiate, as discussed in Chapter 16. However, if negotiation is not successful the Seller/Beneficiary does have the advantage of choosing from the three courses of action, the one that he believes will provide the best financial results. As a note of caution, I point out that I am not an attorney and the above explanations are only summary descriptions of legal options available. **None of these three remedies should be attempted without seeking legal advice**.

CHAPTER 18
CREATING "WIN-WIN" TRANSACTIONS

The process of creating a "*win-win*" transaction is similar to the process of converting the ugly duckling into the beautiful swan. A property that is difficult to sell due to the fact that there is no financing available can become an attractive and very saleable property by using Seller Financing that is structured to meet the needs of both the Buyers and the Sellers.

Client Counseling: The foundation of creating "win-win" transactions is client counseling. You must know the needs of both Buyers and Sellers to maximize the advantages for both. In most cases the greatest need of the Sellers is enough cash at closing to buy a "move-up" property or satisfy some other need. Fortunately, CA$H NOW Seller Financing can usually satisfy this need (*see Chapter 7*). Once the Sellers' cash needs are satisfied, they are usually quite flexible in meeting Buyers' needs.

The Buyers may require some type of flexible payment schedule, or an irregular payment schedule or some other type of creative payment schedule that is not usually available through conventional financing. Through counseling and finding out what their needs really are, you can often create enough financing benefits to make an otherwise "*less than perfect property*" the perfect property for the Buyers whose needs are met by "*win-win*" financing.

Use your Imagination: Remember that almost anything is possible if the Buyers and Sellers can agree. Payment schedules that mirror Buyers' cash flows are safer than fixed schedules and are therefore more advantageous to Sellers and result in a "*win-win*" transaction. If you can reduce the agreement between Buyers and Sellers to simple language, it can be accomplished.

Working with Lawyers: Creatively structured transactions don't lend themselves to standard legal forms and therefore in such transactions it is important to have a better than average lawyer prepare the documents. I recommend use of only experienced real estate transaction lawyers.

The best way of getting the lawyer to prepare the legal documents that accomplish what is intended is to give the lawyer a plain language explanation of what is being proposed. If payments are based upon a formula, prepare a couple of examples of the calculations using different assumptions.

In selecting a lawyer, remember that title company lawyers are neutral and do not represent either party. However, in a true "*win-win*" transaction they can usually do an excellent job because they are experienced real estate transaction lawyers and will prepare documents that do not provide an advantage to either party. However, in some cases it may be better to have a lawyer who can advocate your client's interest.

Creative Payment Types: Although there are countless varieties of creative payment types most are some version, or some combination of, the following:

- Variable Payment Schedules: In this type of structuring, rather than having a fixed monthly payment the scheduled payments can be adjusted to meet the needs of Buyers or Sellers. Step Payment Schedules are one excellent example of a variable payment schedule.

- Variable Interest Rates: By using variable interest rates tied to the Consumer Price Index or some similar index it is possible to allow Buyers to start off with a lower interest rate while still protecting Sellers from inflation. Also variable interest rates can be used as an incentive for early payoff and can be used in lieu of an early final balloon payment.

- Seasonal Payment Schedules: Such payment schedules can be used to meet the needs of Buyers who have only seasonal employment and are also an excellent way of structuring the sale of businesses that are subject to seasonal fluctuations in income.

- Performance Based Payment Schedules: Such payment schedules are ideal for mediating differences between

Buyers' and Sellers' expectations on income properties and businesses.

- Interest Only and Negative Amortization: Interest only loans or loans with negative amortization are a way of reducing Buyers payments and are particularly useful if the property in question is a turn around property that needs renovation. Such payment schedules are also helpful in periods of high interest rates.

Don't forget 2fers: A 2fer is where you earn two commissions while working with one client. Creative licensees who are able to structure "*win-win*" transactions that maximize the selling potential of difficult to sell properties are usually the licensees selected by the Sellers when they become Buyers of a larger and more expensive "*move-up*" property.

So don't be afraid to think outside the box!

CHAPTER 19
GETTING CREATIVE – PART 1

I
In Chapter 18, I summarized the various creative payment types. In this chapter and the next, I will discuss the various types of creative payments in greater detail.

Step Mortgages: Step Mortgages are an excellent way of meeting Buyers' cash flow needs while at the same time providing faster amortization for the Sellers. A payment schedule that starts off based upon payments calculated upon a 30 year amortization schedule that are increased 2% per year will amortize in approximately 19 years. Such a schedule probably reflects the income expectations of most Buyers and as a result does not create a payment problem. In addition, to paying the loan faster, a Step Amortization schedule saves the Buyers a considerable amount of interest. From the Sellers perspective, instead of waiting 30 years for their payments, they get their money faster and if they should choose to sell the Seller Financed Note for CA$H NOW they will receive a higher price. In the past, many people avoided such payment schedules due to the math involved. However with today's fast computers it is relatively easy to make the necessary calculations and print out amortization schedules so that both Buyers and Sellers can see what to expect.

Annual Balloon Payment (*PFD Payments*): Another way of shortening the payment period of a Note and allowing the Buyers to become debt free faster, while at the same time saving interest is to require an annual balloon payment in addition to the monthly payments. Because of Alaska's Permanent Fund Dividend most Buyers are capable of making an additional $1,000, or more, balloon payment in the month of October when they receive their Permanent Fund Dividend. Again, this type of payment schedule also provides benefits for the Sellers as they get their loan paid faster and it also increases the cash value of their Note if they want to sell it for CA$H NOW.

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Payments Adjusted to Fit Buyers Debt Load: As we pass through life there are times when our debt obligations increase or decrease. A payment schedule that recognizes this fact is one in which the Buyers are more likely to make their payments on time and, as a result, the Seller Financed Note is much safer for the Sellers. Some examples of such adjustable schedules would be to have the payments increase for young college graduates after they have paid off their student loans. For Buyers in second marriages the payment could be increased at the end of the obligation to pay alimony or child support. Likewise, this process could be reversed for someone receiving alimony or child support so that their payments would be higher during that period of time but would decrease after those payments have stopped.

Payments Adjusted to Accommodate Family Values: Payments can also be adjusted to accommodate child rearing and other family values. This provides greater benefit to the Buyers, thereby making the Seller Financed Note safer for the Sellers. An example would be to have lower initial payments for a mother with a young child who plans to seek employment when the child enters school. But, increase them at that time. Another example would be to decrease payments for Buyers during the years their children are in college and then increase them again after the children graduate from college.

Variable Interest Rates: It is also possible to combine the variable payment schedules with variable interest rates to again reflect the Buyers greater ability to make payments if there is higher inflation, which means that their income would probably increase. Such variable interest rates will also protect Sellers against inflation and therefore make them more willing to accommodate variable payment schedules that are attractive to the Buyers. Using the combination of variable payments and variable interest rates makes it possible to create real "*win-win*" transactions.

CHAPTER 20
GETTING CREATIVE – PART 2

In Chapter 19, I discussed several creative payment types and mentioned how these variable payment schedules could be combined with variable interest rates to meet the objectives of both Buyers and Sellers.

Reasons For and Basis of Variable Interest Rates: Because of low interest rates in recent years many Sellers may be reluctant to commit to a long term Seller Financed Note at today's interest rate. By providing for an adjustment in interest rates Sellers can be protected against interest rate risk and therefore are likely to be more flexible in providing creative payment schedules that are more affordable to Buyers.

While most banks and other financial institutions use some type of variable interest rate mortgages they often base their interest rate on their cost of funds or some obscure publication from the Federal Reserve Bank. In private financing, the interest rate should be based upon issues that effect both Buyers and Sellers.

Adjust Rates Based Upon Consumer Price Index: Most people are aware of the Consumer Price Index which is published by the US Department of Labor as a measure of inflation. Today's inflation rates are low, but in the past they have been significantly higher. Therefore, Sellers are more likely to be flexible in meeting Buyers needs if they have some protection against inflation on the interest rate they charge. An easy way of providing inflation protection to the Sellers is to index the rate based upon the Consumer Price Index. Since the Consumer Price Index is often used in adjusting wages and employment contracts it is quite probable that if the interest rate goes up so will the Buyers' income, and as a result they will have no difficulty in making payments based upon increased interest rates.

If the Consumer Price Index is at 2% and an initial interest rate of 6% is negotiated, the real rate of interest is 4%. Therefore, it would be possible to provide that the interest rate be adjusted periodically to a rate of 4% greater than the annualized Consumer Price Index for the previous year.

Rates on Certificates of Deposit: Today if Sellers received all cash and they put the money in a Certificate of Deposit they would receive about 1.5% to 2% interest. However, I can remember a time in the past when I owned a Certificate of Deposit that was paying 13.5%. While Sellers may be willing to finance the sale of their property at a 6% interest today, because it is 4% to 4.5% greater than a CD rate, if rates on Certificates of Deposits go up, it may be possible in the future to invest cash in an insured CD at a rate greater than that being paid on a Seller Financed Note. Therefore, it may be desirable to adjust the interest rate based upon some percentage rate greater than the rate paid on CD. If one year CD paid 1.5% and the Seller Financed Note is at 6%, the risk premium is 4.5%. Therefore, the interest rate could be adjusted annually to be 4.5% more than the one year CD paid by banks. To make this type of index work, it is advisable to specify which bank's CD rates will be used and it is usually a good idea to specify rates paid by major banks as their rates are more likely to be published and therefore easier for both parties to verify.

Adjustments Based Upon Treasury Bonds: Just like rates can be adjusted based upon changes in CD rates, it is possible to do the same thing based upon Treasury Notes of various maturities. In Commercial Mortgages, it is fairly common to have adjustments based upon the rates on 10 year Treasury Bonds and because yield data on such Treasury Bonds is readily available the rate on 10 year Treasury Bonds is, in my opinion, a good index.

Prime Rate: Almost all business loans from banks are tied to the prime rate charged by that bank, which is usually tied to the Federal Funds Rate that is established by the Federal Reserve Bank for short term loans between banks. Because adjustment of interest rates based upon the prime rate is a common practice in business and commercial loans, it is probably a good index for a Seller Financed properties secured by a commercial or investment property. However, it tends to be a very volatile rate and often has no correlation to changes in income for Buyers and alternative investments available to Sellers. For that reason I don't recommend it in residential transactions.

Market Rates: An excellent index for adjusting rates on residential transactions is to tie the interest to an index used for residential financing. The interest rate could be adjusted to be the same rate, or in recognition that there may be greater risk in a Seller Financed transaction, could be slightly higher than the market rate. One index that I think is particularly good for this type of adjustment is the FNMA index for loan commitments. This index is published in the financial section of the Anchorage Daily News, so it is easy to check by both Buyers and Sellers.

CHAPTER 21
GETTING CREATIVE – PART 3

Step Rates: In Chapter 19, I discussed the advantages of Step Mortgages. The same concept can be used for interest rates, but the reason for using them is somewhat different. The main purpose of providing for incremental increases in the interest rate is to encourage refinancing by the Buyers at the earliest opportunity. This means that if the property is one for which no institutional financing is ever likely to be available, it would not be realistic to use a step interest rate to encourage refinancing in that case.

The first time I used step interest rates was in a transaction about 30 years ago when I was purchasing an apartment building from a Seller who insisted upon having a final balloon payment due within ten years. Since I knew from experience, that sometimes commercial financing is not readily available, and not being too good at predicting financial events 10 years into the future, I was reluctant to agree to an absolute balloon payment. However, since I wanted to buy the property, I suggested a compromise whereby in the event that I did not pay the loan off in 10 years, the interest rate would increase and would increase incrementally each year thereafter until the loan was paid. This made the Seller comfortable, as he knew that I would have a very positive financial incentive to seek refinancing if it were available. He also knew that if I didn't pay him off he would be receiving a greater return for having his money tied up for a longer period of time. Since then I have used this technique on a number of occasions to mediate differences between Buyers and Sellers, when the Sellers wanted to have their money as soon as possible, but when the Buyers were reluctant to commit to balloon payments.

Setting the Interest Rate Adjustment Formulas: In using adjustable interest rates the formula should be as simple as possible, and should be thoroughly understood by both parties.

I recommend that written examples of both upward and downward adjustments, using the formula, be contained within the written documents so there is a clear understanding of how the formula will work. Since there is dangers of any formula resulting in drastic changes in the event there are rapidly changing economic situations, I recommend that there should be both minimum and maximum caps. I believe that the adjustment caps used by institutional lenders are reasonable, and recommend them in Seller Financed Notes. Typically, they provide for a maximum adjustment of 2% in any year and a maximum adjustment of 6% over the life of the loan. Some institutional lenders adjust rates anytime there is a change in the index. I consider that to be too complicated for most Buyers and Sellers, and frequent changes are very difficult to administer and may not be acceptable to the escrow collection company. I therefore recommend that rates should be changed only once or twice a year on the same date.

Finally, whatever index is used for adjusting rates, it should be one that can be easily found in common publications. It is unlikely that either Buyers or Sellers subscribe to the Federal Reserve Bank publications, and therefore the index should be one that is published in a larger local newspaper. In many cases the Wall Street Journal is used because it publishes virtually every index imaginable.

Counseling is the Key: As I have stated in previous chapters, the key to Creative Financing is counseling. I believe that anytime there is a willing Buyer and a willing Seller, it is possible to mediate their different expectations if you take the time to counsel them and understand what their true needs are. Many times the Buyers have an affordability problem, and therefore some of the variable payment schedules discussed in Chapter 19 may be appropriate for meeting their needs. On the other hand, flexible Sellers who are willing to meet the needs of Buyers have the right to expect a better than market interest rate and some type of protection against increasing inflation. Therefore, the combination of variable payments and variable interest rates can provide a wide variety of solutions that will result in "*win-win*" transactions for both parties!

CHAPTER 22
GETTING CREATIVE – PART 4

Seasonal Payment Schedules: Some occupations receive most of their annual income at one time (*i.e. commercial fishermen and farmers*). Others receive most of their income during only a portion of the year, or operate only on a seasonal basis. Examples would be someone working in the construction industry or the tourism industry. As I have previously discussed, when Sellers are willing to structure payments to meet Buyers needs, both parties benefit. By structuring payments that correspond with Buyers' cash flow, payments are more likely to be made and thus result in a safer Note for Sellers. Also when Sellers accommodate the needs of Buyers, allowing them to acquire real estate, the Buyers are often willing to pay a higher purchase price or a higher interest rate. Therefore, using seasonal payments schedules for Buyers with seasonal income will usually result in a better transaction for both parties.

While I do believe in structuring the bulk of payments to adjust to seasonal income, there is a high risk in annual payment Seller Financed Notes when there is only a low down payment. When only a small down payment is made, the amount of accrued interest on the unpaid balance could easily equal or exceed the amount of the down payment before the first annual payment is due. Therefore, if there is a default on the first payment there would be no protective equity for the Sellers. Rather than just an annual payment, I usually recommend small monthly payments with a larger annual payment when the Buyers receive the bulk of their income. In the case of Buyers who receive most of their income during a certain season, payments should be higher in those months, but there should be some requirement for smaller payments in the remaining months. By requiring some payment in every month, the amount of accrued interest will not be as large, and the discipline of making monthly payments helps to keep the Buyers focused on the fact that they do have a financial obligation to pay.

Performance Based Payment Schedules: Since Performance Based Payment schedules are based upon income from the property being purchased, they are not appropriate for residential transactions.

However, they can be a very useful tool in the sale of commercial or income properties to mediate differences between Buyers and Sellers expectations on income produced by the property or business being purchased.

One common type of Performance Based payment schedule is to tie payments to cash flow. A good example of this is the Alaska Housing Finance Corporation's "*soft second*" program for low income housing. Under the AHFC program, the required payment on the soft second is equal to the difference between net operating income produced by the property and the payments due on the traditional first loan. With this formula, payments on the second are higher in good years, lower in poor years and would result in no required payments in years where net operating income is insufficient to cover debt service on the first loan. While AHFC's program relates to second Deeds of Trust, the same principal could be applied to first Deeds of Trust by setting payment as some percentage of the net operating income from the property.

During the dark days of the 1986 to 1989 real estate crash, one common workout technique was to adjust the payments to 100% of the net operating income, with any unpaid interest accruing to be paid at a later time after operating income improved.

Another version of a Performance Based Payment Schedule is the "No Negative Guaranty," where payments on a Sellers' second are due only to the extent that there is cash flow remaining after paying the first. This technique is often used to get Buyers to pay a higher price than they would if fixed payments were required. Another variation of this technique, and a way of maximizing the sales price, is to require payments on a second only to the extent that cash flow after paying the first exceeds some percentage of the down payment. This type of payment structure guarantees that the Buyers will begin receiving "cash on cash" on their investment from day one. By relieving them of some of the payment risk they will typically pay a higher purchase price.

Another technique in establishing Performance Based Payment Schedules is to have the principal on the Note established based upon some future event dependent upon performance of the property. An example would be to require a fixed payment deemed to be interest only, with the final principal on the Note established at a later time as the difference between a future appraised value minus the down payment and any senior debt. In lieu of the requirement for an appraisal, the principal could be established based upon the capitalized value of the net operating income at some date in the future, with the principal then being equal to the difference between that calculated value minus the down payment and the senior debt.

Interest Only and Negative Amortization: In periods of very high interest, such as we experienced from 1978 to 1982, it is sometimes necessary to provide Seller Financing that is interest only, or require payments that are less than the actual amount of interest accruing. (*In this period of historically low interest rates, I don't recommend such techniques unless the property is a fixer upper that will require time to produce a reasonable net income*). The real issue, in interest only and negative amortization loans, is to develop a plan of how the loan will be satisfied. In periods of very high interest it is probably reasonable to anticipate that interest rates will eventually drop and refinancing will occur. Or in periods of rapid appreciation it may be reasonable to assume that property appreciation will eventually allow for refinancing. But what happens if your crystal ball gets cloudy? Therefore it is often advantageous to begin requiring increased payments after a period of time so that eventually the accrued interest will be paid. With interest only, and particularly with negative amortization loans, it is often a good idea to require additional collateral so that the amount of debt secured by the property does not result in debt that is greater than the value of the property.

Keep an Open Mind: There is no one right way for every transaction. **The key to closing more transactions is to carefully listen to the wants and needs of both Buyers and Sellers, and keep an open mind to structuring a payment schedule that satisfies both.**

CHAPTER 23
IMPROVING LOW DOWN OFFERS

In structuring any type of real estate financing there is one formula that is almost always true:

Low Down Payments + Poor Credit = DEFAULT

With conforming conventional financing it is possible to get financing with low, or in some cases, no down payment. But the Buyers are carefully scrutinized for credit characteristics and demonstrated ability to pay. In other cases, Buyers who are not quite perfect in the credit category are able to get low down payment financing as a result of government subsidies and insurance. My advice is to let the government handle the social programs. Therefore, in structuring Seller Financed transactions, every effort should be made to get as much down payment, or Buyer equity, in the transaction as possible, to provide protective equity that allows the Sellers to take back a reasonably safe Seller Financed Note.

You will note that in the previous paragraph, I spoke of both down payments and equity. Obviously, a high down payment is the best option, but as I will discuss later, there are other ways of increasing the Buyers' equity to increase Sellers' security. In Chapter 3, I discussed two important qualifying questions that should be asked of every Buyer. These questions are:

- What do you own that you are willing to sell to buy the real estate you want?

- Is there any reason that you wouldn't trade that for the real estate you want?

I pointed out that these questions are important in finding out what Buyers may have that would be acceptable to the Sellers as a down payment, or acceptable to the licensee as part of the commission. In addition to cash, some of the more common items that can be bartered as a down payment include:

- Automobiles
- Recreational Vehicles
- Boats
- Other Real Estate
- Deeds of Trust against other property
- Or anything else of use to the Seller or Licensee

I also discussed that, in certain cases, it may be reasonable for Buyers to raise additional cash for down payments by borrowing. Some of the more common ways of borrowing money for down payments include:

- Refinance Automobiles or Recreation Vehicle
- Refinance other Real Estate
- Borrow against cash value of Life Insurance Policies
- Loans from Relatives
- Loans from Investors or Banks
- Advances on Credit Cards
- Refinance Automobiles or Recreation Vehicle
- Refinance other Real Estate
- Borrow against cash value of Life Insurance Policies

I also discussed that, in certain situations, there are other ways of raising money which include the following:

- Sell Lottery Winnings paid in installments
- Sell Structured Settlement Annuities made in installments.
- Sell inheritance tied up in probate
- Trade gift certificates from the Buyers' business
- Have the Licensee agree to accept a deferred commission to provide more cash to the Seller

Increase Equity Without an Additional Down Payment: After all the options for increasing down payments have been considered, there are other options which allow for increasing equity, that have the same effect as a larger down payment because additional security is provided to the Sellers. Some of these techniques include the following:

Sweat Equity: If the value of the property could be increased by having the Buyers make improvements to the property, then have them obligate themselves to make such improvements within a specified time period and secure that obligation with a Performance Based Deed of Trust. In my personal experience, I have found that Buyers who become involved in improving a property often become more emotionally committed to the property, and as a result become a better credit risk.

Get Additional Security: While the primary security for the Seller Financed Note will be a Deed of Trust against the property being sold, it is always possible to get Deeds of Trust against other property as additional security for the Note. This can include Deeds of Trust against other real property owned by the Buyers or property owned by their relatives. A good use of this technique is for young Buyers who have parents willing to help them, but who are unable to make a large down payment. In such cases, it is possible to take a Deed of Trust against the parent's property as additional security for a Seller Financed Note (***Remember, when the standard non-judicial foreclosure method is used, third party guaranties are extinguished. But a foreclosure against the property sold and the parent's property is going to make the parent's guaranty very meaningful!***). In addition to Deeds of Trust against other real property, it is also possible to take a Security Agreement on personal property (*e.g. boats, cars, rv's, snow machines, etc.*) owned by the Buyers or their relatives.

Require Balloon Payments and Faster Amortization: Other ways of increasing equity are to require early balloon payments to pay down the debt obligation. One popular method of doing this in Alaska is to require an annual balloon payment in October when the Permanent Fund Dividends are paid. Other options include having faster amortization schedules so that the loan is paid down, such as using Step Payment schedules which have been discussed in earlier chapters.

Make the Interest Rate Commensurate with the Risk: A final factor to consider in improving low down offers is that low down offers are riskier, and therefore if the Sellers are willing to take the risk of selling to weak credit Buyers with low down payments, the Sellers should be compensated for taking this risk by charging a higher interest rate. It must be remembered, that Buyers who don't meet the credit and income standards necessary for a conforming conventional loan should not expect to get the same interest rate. Even in this market of historically low interest rates on conforming conventional loans, most Seller Financed transactions that I see have interest rates from 8% to 10%. Because most Seller Financed transactions do not involve as great a cost in loan fees and closing cost as required for conforming conventional loans, most Buyers are willing to pay the additional interest rate to secure the financing they need to acquire the property they want. In addition to compensating the Sellers for assuming greater risk, higher rates also encourage Buyers to refinance with conventional loans as soon as they acquire sufficient equity or have improved their credit standing. Therefore, such interest rates will often result in a faster pay off to the Sellers.

The Key is Commitment: The key to creating safe Seller Financed transactions is finding Buyers who are committed to the property. The best way of insuring such commitment is to have them give as much as possible, either in the form of cash or barter, to insure their commitment to the property. In cases where the Buyers' resources are limited, commitment can be obtained through having the Buyers make repairs to the property or paying down the loan on a faster amortization schedule, which in addition to increasing their commitment to the property, also saves them substantial interest.

CHAPTER 24
PROS AND CONS OF BALLOONS

There are basically three types of balloon payments:

1. The most common type of balloon payment is the final balloon payment in which the unpaid balance is due and payable as of a certain date.

2. Another type of balloon payment is the partial balloon which may occur only once or may be required on a periodic basis. These types of balloons are sometimes referred to as "bumps." An example of this type of balloon payment is an annual balloon payment made from the Permanent Fund Dividend.

3. Contingent balloons are used when there's a possible source of additional cash that may be received by the Buyers, but when that cash is not guaranteed.

Balloon payments are very common in commercial loans. Even though the amortization schedule may be 20 to 30 years, it is not uncommon to have a commercial loan with a final balloon payment due in 5 to 10 years. This same technique can be used in Seller Financing to help Sellers get their money sooner. However, for balloon payments to have value to Sellers they must be credible balloons that will actually be made. Balloons based only upon hope and prayer, rather than reality, usually ends up in default and/or Buyer bankruptcy.

Final balloons should be realistic in terms of time and likely property appreciation:

- It is unlikely that Buyers with a 5% down payment will be able to refinance in two years

- A realistic goal is to time the final balloon payment when it is likely that the unpaid debt will be 75%, or less, of the value of the property

- I have found from experience that balloons scheduled for only two or three years after closing will seldom be made, unless the Buyers made the purchase with a large down payment

Partial balloons (*or bumps*), are a very useful tool to help Buyers build equity and save interest in the process. Likewise, because they are building Buyers' equity they make the Sellers' positions safer and provide that the Sellers will receive their money faster. In the event that the Sellers decide to sell their Seller Financed Note, a Note which pays off faster as a result of periodic balloon payments will have a greater value than a longer amortizing Note. In Alaska, one of the most common types of partial balloons is to require a balloon payment in late October of each year after the Buyers receive their Permanent Fund Dividends.

Sometimes, Buyers believe that they will be receiving a lump sum of cash, and in an effort to induce the Sellers to accept their offer, will agree to make a balloon payment when and if they receive such cash. Some of the more common examples of such contingent balloon payments are as follows:

- Anticipation of receipt of an inheritance.

- Expectation of proceeds from a lawsuit such as a personal injury lawsuit or an award from the Exxon Valdez litigation (*but remember that one has been ongoing since 1989*).

- A bonus from employment.

Sometimes Buyers are hesitant to commit themselves to making a balloon payment because of uncertainty what the future may bring. In such cases there are other techniques that can be used. For example, rather than requiring a final balloon payment, use some type of step payment amortization schedule for both the payments and interest rates to increase both before and after a certain period of time. In such a situation if the Buyers can obtain refinancing and make a balloon payment they will be inclined to do so rather than face the increasing interest rates and payments.

A positive incentive for an early balloon is a discount for early pay off. Generally, this should be a declining percentage for the amount of the discount so that there is a larger discount if the loan is paid in five years but less of a discount if it's not paid until 10 years.

When used properly, balloon payments can be an excellent technique in structuring a Seller Financed transaction that will save the Buyers interest and get the Sellers their money faster. However, as I stated above, the most important thing is that the balloon payments be believable and credible. They should not just be based upon hope and prayer, but should be based upon a likely source of cash that will be received by the Buyers, or in a situation that is likely to result in refinancing.

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CHAPTER 25
YOU BE THE CHEF

I began this booklet by defining Creative Financing as:

- **CREATIVE FINANCING** -- "Any financing negotiated by the parties to the transaction not involving a third-party lender or the payment of a non-cash down payment"

Quite frankly, the topics I've discussed in this booklet are not particularly creative. More accurately, they are discussions of various financing techniques not involving a third-party lender and a discussion of how they can be used to solve real-world client issues. The real creativity comes when you take several of these techniques and put them together in a unique blend of financing that relates to the needs of your clients.

WHY CREATIVE FINANCING: The reason that a knowledge of creative financing is important is that not every transaction qualifies for third-party financing, and the lack of acceptable financing is a major reason that properties do not sell, even in a strong real estate market such as exists today.

In a typical transaction involving third-party financing, the lender is responsible for preparing all of the legal documents that incorporate the loan terms. However in the case of Creative Financing it is usually the Licensee who is responsible for communicating to the attorney or title company the terms of the agreement. Therefore, it is important to thoroughly understand legal documents used in financing, such as the Promissory Note, Deeds of Trust, and Escrow Collection Instructions and also have an understanding of what happens when there is a default. With this basic knowledge and understanding of various Creative Financing techniques it is possible to mix these ingredients into an unlimited number of combinations that can be used to solve any financing problem.

In addition to understanding the basic legal issues that are involved in Creative Financing documents and having an understanding of the various elements of Creative Financing, the real key is CLIENT

COUNSELING. The only purpose of Creative Financing is to develop a solution that allows a willing Buyer to purchase real estate. Only when you understand the needs of both the Buyers and Sellers is it possible to develop a Creative Financing solution that will make transactions come together. It is my belief that one of the greatest failures of a Real Estate Licensee is to have a situation in which there is a willing Buyer and a willing Seller and yet the transaction does not close. When there is a Buyer who wants to buy the property and a Seller who wants to sell the property, it is usually possible to develop some form of financing that will allow the transaction to occur. Usually, the reason it doesn't close is that one party, or the other, is given only a limited menu of financing options.

I believe one of the major reasons for transactions not closing is accepting the statement of the Sellers that "*we want cash*." As I've stated several times in this booklet, it is important that every Seller be asked the following questions:

- "What do you plan to do with the cash you receive from the sale of your property?"
- “Is there any reason that you wouldn't trade part of the equity in your property for what you want?"

With this information in hand it is usually possible to develop some type of a financial solution that gives the Sellers what they want to achieve with the cash.

Equally important is, asking questions of Buyers. The two questions that should be asked of every Buyer are:

- "What do you own that you're willing to sell to buy the real estate you want?"
- "Is there any reason you wouldn't trade that for the real estate you want?”

With this information it is often possible to develop non-cash alternatives for the Buyers to pay a portion of the purchase price of the property.

In this booklet, I've attempted to describe the ingredients and the techniques for mixing them together to legally develop financing solutions to every transaction. Now it is up to you to take these ingredients and mix them up in your own recipe. **YOU BE THE CHEF!**

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PART 2

FINANCING OUTSIDE THE BOX

INTRODUCTION TO COMMERCIAL FINANCING

CHAPTER 1
INTRODUCTION TO COMMERCIAL FINANCING
(Part 1)

Commercial financing is defined as: "Any real estate financing not secured by residential property (i. e. #1 to 4 unit residences)."

The most common types of commercial financing involve the following types of properties:

- Apartments
- Office Buildings
- Retail Buildings
- Warehouse and Other Industrial Buildings
- Land Developments

There are a number of differences between commercial financing and residential financing. Some of the major differences are shown in the following table:

ISSUE	RESIDENTIAL	COMMERCIAL
CREDIT	Very Important	Less Important
DOWN	As Low as 0	20% to 30%
BORROWER INCOME	Very Important—Rigid Ratios	Not an Issue
DEBT SERVICE COVERAGE RATIO	N/A	Very Important
MANAGEMENT	N/A	Very Important
RESERVES	Taxes & Insurance	Taxes, Insurance & Replacements

Other Differences: Other ways in which commercial loans differ from residential loans are as follows:

- With commercial loans the evaluation of the property is more important than the evaluation of the borrower (*many larger commercial loans are non-recourse*)

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- An appraisal (*usually done by an MAI*) and the property's operating history and forecast of operations are extremely important
- Larger loans (*over $10 million*) are easier to get than smaller loans (*under $1 million*)
- On larger loans, terms are quite negotiable and terms are often custom tailored to the needs of the borrower and the characteristics of the property
- Except for apartment loans, amortization periods are typically 15 to 25 years (l*ow income apartment loans can be up to 40 years*)
- It is common to have final balloons due before the end of the amortization period (*10 years is quite common*)
- Interest rates on conforming commercial loans are typically 1% to 2% higher than for conforming residential loans
- Adjustable or variable interest rates are far more common
- It is quite common to require annual financial reports on property operations and, in some cases, an audited financial statement is required
- Annual property inspection by the lender's representative are often required

CHAPTER 2
INTRODUCTION TO COMMERCIAL FINANCING
(Part 2)

The underwriting of commercial loans is similar to underwriting residential loans in that loan to value ratios (*LTV*) are quite important. In residential loans a 90% LTV is quite common and it is also possible to get 100% LTV loans and in some cases even 125% LTV loans. In the case of commercial loans LTV's are much lower and typically in the range of 65% to 85% of value.

An important underwriting formula in commercial loans is the Debt Service Coverage Ratio (*DSCR*). This is a formula that can often create disappointment for the first time investor or the real estate licensee not familiar with commercial lending. Most first time investors or inexperienced licensees will usually be aware of the lenders loan to value ratio and will therefore structure a purchase transaction based upon the assumption that they can get a loan for the maximum LTV. Unfortunately, the policy of lenders is to underwrite the loan based upon the lower of the loan amount indicated by LTV or the DSCR.

Definition of Debt Service Coverage Ratio (DSCR): The DSCR is defined as:

> "A ratio between the net operating income (*NOI*) produced by the property and the annual payments required by the debt securing the property."

To demonstrate how the DSCR works lets assume the following facts:

Property Value	$1,000,000
Proposed Loan Amout	$750,000
Interest Rate	6.5%
Amortization Period	20 Years
Monthly Payment	$5,591.80
ANNUAL DEBT SERVICE (Rounded)	$67,102

Now let's assume that the above property had the following income:

Gross Income	$190,000
Less: Vacancy & Collection Loss	-9,500
Less: Operating Expenses	-80,500
NET OPERATING INCOME	$100,000

As the above definition explains, the DSCR is the net operating income divided by the annual debt service. Therefore in this case the DSCR is 1.49 ($100,000/$67,102=1.49).

Another Example: Now let's assume that for the property in the above example that the loan terms have been changed increasing the interest rate from 6% to 9% and decreasing the amortization from 20 years to 15 years. This calculation would result in Annual Debt Service of $91,283. Now using the calculation of dividing the net income by the annual debt service, the new DSCR is calculated at 1.10 ($100,000/$91,283=1.10). Do you see what impact rising interest rates could have on loan amounts, even if all other factors remain the same?

Now let's see how large a loan is available to purchase the property in this example: If the lender requires a DSCR of 1.25, the maximum Annual Debt Service is calculated as $80,000 ($100,000/1.25=$80,000). In the first example with a 6%, 20 year loan the annual debt service was only $67,102 on a 75% LTV loan. Therefore in that case, the maximum loan available would be $750,000.

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However, in the second part of the example, with a 9% loan and 15 year amortization, the calculated annual debt service was $91,283 which is more than the maximum of $80,000 allowed by the lender's 1.25 DSCR. In this case, since $80,000 is the maximum annual debt service the maximum loan that could be paid with that amount of debt service, assuming 9% interest and 15 years amortization, is a loan of $657,290. Therefore in this case, the maximum LTV would be only 65.73%.

As the above examples demonstrate it is important to know all of the lenders underwriting criteria because changes in the interest rate or amortization period can reduce the maximum loan to less than is indicated by the lender's quoted and maximum LTV.

CHAPTER 3
INTRODUCTION TO COMMERCIAL FINANCING
(Part 3)

There are many different types of commercial properties and each property has different income characteristics. As a result, the underwriting criteria used by Lenders will vary according to property. However, broadly speaking there are two basic types of commercial loans:

- Conforming - Credit and Income Based Loans
- Asset Based Loans

Conforming – Credit and Income Based Loans: Such loans are secured by conventional properties, involve Borrowers with good credit, and properties with debt service coverage ratios (*DSCR*) meeting the lenders standards. Typical loans in this category would include loans secured by good quality apartment buildings, office buildings, strip retail centers, good quality warehouses, shopping malls, and generally any type of good quality commercial property that has an acceptable DSCR.

Such loans are usually made by institutional lenders (*banks, insurance companies, etc.*) and government agencies (*such as the Alaska Housing Finance Corporation and/or the Alaska Industrial Development and Export Authority*) which may actually make the loan or participate with a bank in making the loan. In other cases, particularly those involving owner occupied businesses, the loan may be made by an institutional lender but may be insured by the Small Business Administration.

Conforming Loans are very desirable to the Borrower in that they usually have the highest loan to value ratio, which is typically 75% for most commercial properties but can be as high as 85% for apartment properties. Because the loans are secured by good quality conforming properties with good debt service coverage ratios, such loans will have the most favorable interest rates. For long term real estate investments to be profitable it is almost always necessary to finance the property with a conforming loan and, even when Asset Based Loans are used, the Borrower's goal should be to eventually get a Conforming Loan.

The only draw back of Conforming Loans is that the loan will be subject to rigorous underwriting which will require the Borrower to supply a lot of documentation on the property and personal information. Such loans will usually require annual financial reporting and may be subject to very extensive regulatory agreements governing the property operations. It is not uncommon for such loans to require an annual inspection by a representative of the Lender and to require annual financial reports on both the Borrower and the property. In certain cases, such as some of the AHFC loans and some of the FHA loans, annual audited financial statements will be required. Quite often such loans will require a monthly contribution to a replacement reserve for short lived items.

Assets Based Loans: Such loans are also known as "*bridge loans, hard money loans, un-bankable loans, or non-bankable loans*." Typically, such loans are not made by institutional lenders although there are some exceptions. Primarily, these types of loans are made by private investors not subject to any form of government regulations.

Asset Based Loans will, typically, have lower LTV's than Conforming Loans. Most LTV's range from 55% to 70%, but many Assets Based Lenders will allow Seller Seconds up to a 95% combined loan to value ratio.

A typical use of an Asset Based Loan would be on a non-conforming property or property which does not have sufficient income to support a Conforming Lender's required DSCR. For this reason, Asset Based

Loans will usually have interest rates substantially greater than the interest rates for Conforming Loans. On the other hand, they usually have easier underwriting, with Borrower credit and DSCR not being major issues in the Lender making the decision as to whether or not to make the loan.

Asset Based Loans are usually underwritten on an individual basis and often have very flexible terms that are negotiated to fit the situation. Therefore, they are good for situations that are unique and/or involve unique properties that don't qualify for Conforming Loans. Some of the best uses of Asset Based Loans are when time is critical or the need for financing is only for a short period of time such as 1 to 5 years. Asset Based Loans are excellent for the purchase of properties requiring rehabilitation, where the property will be suitable for Conforming Financing after the rehabilitation has been completed.

Due to high interest rates, Asset Based Loans are usually not suitable financing for long term holding of an investment property.

Summary: Commercial Financing is usually more flexible than residential financing. Usually some negotiation is possible and therefore a good understanding of Creative Financing is a good background for Commercial Financing.

FOR MORE INFORMATION CONSIDER ENROLLING IN OUR NEW COURSE "*NUTS AND BOLTS OF COMMERCIAL FINANCING*".

APPENDIX B

EARNEST MONEY ADDENDUM FOR SALE OF PURCHASE MONEY NOTE

This Addendum is made to that Earnest Money Receipt and Agreement to Purchase dated ________________for____
____

This Earnest Money Receipt and Agreement to Purchase is contingent upon Seller getting an acceptable cash offer for sale of the Note and Deed of Trust being accepted from Buyer as part of the purchase price. Seller shall have 15 days from the date hereof to secure an acceptable Purchase Commitment for sale of the Note and Deed of Trust. In the event Seller fails to secure an acceptable Purchase Commitment, Seller shall notify Buyer of this fact and this Earnest Money Agreement shall terminate and become null and void.

If Seller secures an acceptable Purchase Commitment, Seller shall notify Buyer of this fact and Buyer will cooperate in facilitating the sale of the Note and Deed of Trust, by accurately executing and supplying Cash Now Financial Corporation with the following:

Application for Seller Financing (Form OF-3)

The Promissory Note created shall provide for a 5% penalty (subject to a $25 minimum) for any payment made more than 15 days past the due date. The Buyer shall pay the annual escrow collection fee on the collection escrow collection fee on the collection escrow that must be established at Wells Fargo Bank of Alaska or First National Bank of Alaska.

If for any reason the sale of the Note and Deed of Trust from Seller to Cash Now Financial Corporation cannot be closed within 45 days of receipt of the above information from Buyer, then this Earnest Money Agreement shall terminate and become null and void.

AGREED TO THIS ____ day of _________________,_____.

SELLER(S) **BUYER(S)**

_____________________________________ _____________________________________

_____________________________________ _____________________________________

APPENDIX C
APPLICATION FOR SELLER FINANCING AND AUTHORIZATION TO OBTAIN CREDIT REPORT

Buyer			
Name			Age
Home Address	No. Years	( ) Own	( ) Rent
City State Zip			Birth Date
Marital Status ( ) Married ( ) Single ( ) Separated ( ) Divorced	Dependents Other Than Listed By Co-Borrower No. ______ Ages ________		
Name & Address of Employer	Yrs. In Line of Work or Profession? _______ Yrs. on Job ______ Self Employed ______		
Position Title	Type of Business		
Social Security No.	Home Phone	Work Phone	

Co-Buyer			
Name			Age
Home Address	No. Years	( ) Own	( ) Rent
City State Zip			Birth Date
Marital Status ( ) Married ( ) Single ( ) Separated ( ) Divorced	Dependents Other Than Listed By Co-Borrower No. ______ Ages ___________		
Name & Address of Employer	Yrs. In Line of Work or Profession? _________ Yrs. on Job ________ Self Employed _________		
Position Title	Type of Business		
Social Security No.	Home Phone	Work Phone	

GROSS MONTHLY INCOME	
Monthly Salary - Applicant	$
Monthly Salary - Co-Applicant	$
Other Monthly Income - Applicant	$
Other Monthly Income - Co-Applicant	$
	$
	$
	$
	$
Total Monthly Income	$
Income From Alimony, Child Support, or separate maintenance need not be declared if applicant does not desire such income considered in determining credit worthiness.	

ASSETS	
Real Estate Owned	$
Automobiles	$
Cash On Hand	$
Life Insurance (Cash Value)	$
Personal Property Owned	$
Stocks & Bonds	$
Other Assets	$
	$
	$
Total Assets	$

CURRENT MONTHLY HOUSING EXPENSES	
Rent	$
1st Trust Deed	$
2nd Trust Deed	$
Fire Insurance	$
Real Estate Tax	$
Homeowner Assn. Dues	$
Other	$
Total	$

If a "yes" is given to a question in this column, explain on an attached sheet	Buyer Yes/No	Co-Buyer Yes/No
In the last 7 yrs., have you been declared bankrupt?		
If yes, discharged or dismissed?		
Have you had property foreclosed upon or have you given title by deed in lieu thereof?		
Are you a co-maker or endorser on a note?		
Are you a party to a law suit?		
Are you obligated to pay alimony, child support or separate maintenance?		

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APPLICATION FOR SELLER FINANCING

MONTHLY OBLIGATIONS

	Balance Owed	Monthly payment
Spousal/Child Support	$	$
Charge Account Payments	$	$
Credit Account Payments	$	$
Automobile Loans	$	$
Life Insurance	$	$
Loans on Other Real Estate	$	$
Other	$	$
Other	$	$
Other	$	$
(use additional page if necessary) **Totals**	$	$

SUBJECT TRANSACTION

Address or Legal of Property Being Purchased:					
Source of Proposed Down Payment:					
Rent From New Property	$	-Op. Exp	$ =	Net Income	$
Total Mortgage Payments:		+Tax and Ins.	$ =	Total New Payment -	________
				NEW R. E. COST	$

SUMMARY OF INFORMATION

NET WORTH CALCULATION		**CASH FLOW CALCULATIONS**	
Total Assets (from Page1)	$	Total Monthly Income (From Page 1)	$
Less: Total Obligations (from above)	- ___________	Less: Monthly Payments (from above)	
NET WORTH	$	Less: New R. E. Cost (from above)	___________
		CASH AVAILABLE FOR LIVING EXPENSES	$

AGREEMENT AND ACKNOWLEDGMENT

The undersigned applies for Seller Financing to be secured by a Deed of Trust on the property being purchased and represents that the property will not be used for any illegal or restricted purpose, and that all statements made in this application are true and are made for the purpose of obtaining the financing.. Verification may be obtained from any source named in the application. The original or copy of this application will be retained by the seller even if the financing is not granted. The undersigned intends ( ) does not intend ( ) to occupy the property as their primary residence. I/We fully understand that failure to list all obligations owed or to accurately answer all questions is a fraudulent act subject to penalties of law. **You are hereby authorized to obtain a credit report(s) on the undersigned.**

_______________________________________ _______________________________________

BUYER'S SIGNATURE DATE CO-BUYER'S SIGNATURE DATE

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