THE COMPLETE GUIDE TO BUYING PROPERTIES SUBJECT TO THE EXISTING LOAN

FINAL VERSION

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Subject To and You

'Subject to' deals, like most creative buying strategies, can be awesome.

Done properly, with the right sellers in the right situations, they can provide a way for you to get low down payment, no-qualifying, fixed-rate financing on properties you'd like to own as rentals, re-convey as lease/options, or even fix and sell as retail deals.

Done wrong, they can be money-sucking, hassle-filled, seller-life-ruining messes.

The purpose of this course is to teach you to recognize the difference between the winners and the losers; to calculate the right offers, do the right disclosures, and mitigate the potential problems before they happen; and to help you protect the credit and future buying ability of your sellers while making money and building wealth for yourself.

How to Use This Course

When you learn a new real estate strategy, there's always a tension between enough education and experience.

On the one hand, you need to grasp enough about the strategy to enact it in a way that's as risk-free as possible for both you and your counterparts in the deal: in this case, your seller. On the other hand, a lot of what you learn about 'Subject To' deals will come from DOING them—negotiating with sellers, evaluating actual deals, working your way through closings, all that real-life stuff.

If you're like most people, you wait to implement a new strategy until you "feel" ready, meaning that you don't feel scared about making a fool of yourself, or making a mistake, or that you feel like an expert. And if you're like most people, this means that you'll NEVER actually get around to doing a really awesome strategy that can make you really wealthy, because you'll be stuck in cycle of "I don't feel confident because I've never done it because I don't feel confident".

So let me lay some truth on you: there are a certain set of concepts around any strategy that, if you grasp them well enough to explain them to someone else, are all you need to know to SAFELY do that sort of deal. I didn't say you wouldn't be nervous during the process of doing that deal. I didn't say that you won't have questions that come up in the real world that you won't know how to answer without asking someone who's done it before[1]. I said that EVEN THOUGH you're nervous and have questions, you'll still be ready.

Here's how you use—and I mean actually USE, not just study and then shelve—this course: it covers everything you need to know to do these deals. So study it, and study it again, and then use the checklist I've provided at the end of the chapter to find out if you've actually grasped those important concepts. If not, go back and re-study that section; when you can check all the boxes, you're ready to go

[1] Which is a fantastic reason to be part of my Inner Circle coaching program, which only costs $39.97 a month and gives you the ability to ask ME every beginner question you can come up with any time you want. See TheRealEstateGoddess.com for more information.

make offers even if you don't 'feel' ready.

This course is purely about the acquisition/finance strategy of BUYING subject to the existing loan; it doesn't claim to cover implementation of any exit strategy you might choose to use once you've bought the property. Subject To deals can be rented, lease/optioned, retailed, or even, with the right controls in place, wholesaled—but if we were to cover every detail of how that works, this manual would be 1,000 pages long. If you need recommendations about the best ways to learn about any of these exit strategies, feel free to contact me.

By the way, this course comes with video as well as this written training. Because some of what's in the video class (like examples of real-life deals) isn't in this manual (and vice versa), my suggestion would be that you thoroughly study BOTH to make sure that you get the full benefit of the information.

The Definition of 'Subject To'

'Subject To' is an abbreviation of the phrase "To take a deed (or buy a property) subject to some existing financing or debt [usually the existing mortgage]".

This simply means that the deed is transferred to a new buyer, but some or all of the seller's existing debt is <u>not</u> paid off at closing. Instead, it's "taken over" by the buyer, who agrees to make some or all of the payments going forward. This is typically done without the agreement of the lender or lienholder whose debt is being taken over.

In theory, a property could also be purchased 'subject to' an IRS lien, mechanics lien, assessment, land contract or anything else that creates a debt or a cloud on the title. However, when real estate entrepreneurs use the term, 'Subject To'[2], they generally mean subject to the seller's existing first mortgage.

From Loan Assumption to Subject To

If you are, let's say, 'seasoned' enough to have bought properties in the 1970's and 1980's, you fondly remember the old FHA and VA loan assumptions.

In those days, government-insured loans were 'freely assumable', which meant that, for $75 or so in fees, an investor could formally take over the mortgage of any seller who was willing to fill out a one-page form and hand over the deed.[3]

Those old loan "assumptions" were what are technically called a "novation" of the agreement. In a novation, BOTH of the parties to the original contract (in this case, the lender and the borrower) agree to let one of the original parties step out and be replaced by someone else. FHA and VA loans at this time

[2] Which, in the interest of avoiding a worldwide quotation mark shortage, will appear without such for the remainder of this chapter.

[3] FHA and VA loans are still assumable, but not "freely assumable". Anyone formally trying to take over one of these loans must qualify to do so, and one of the qualifications is that the new borrower must intend to occupy the property. Since you'll basically never intend to occupy the property, they aren't assumable TO YOU.

allowed the original borrower to assign his obligation to pay the debt to another person—the buyer of the property—and, after 2 years, to be totally released by the lender from any responsibility for repayment.

In the late 80s, both organizations phased out this "free assumability", and FHA and VA-insured loans are now assumable only when the buyer can qualify (and part of "qualifying" is that you'll occupy the property, so don't get all excited and try to assume a bunch of these loans).

This was a sad day for real estate investors, because prior to that time, you could literally build an entire real estate portfolio just by finding sellers who had FHA/VA loans who didn't want their houses anymore, and taking over their payments.

But, never an industry to be slowed down by changes in regulations, many investors simply continued to do what they'd always done–get deeds, get payment books, and take over mortgages. Only now, with no 'freely assumable' loans around, they did it WITHOUT telling the bank what was happening.

And this is the defining characteristic of a Subject To sale as opposed to a loan assumption: in a Subject To transaction, the lender is not made aware that a sale has taken place. Only the buyer and seller agree that the buyer will become responsible for the payments, not a crucial "other party"—the lender itself.

At this point, you're yourself a lot of questions: "How can the lender not know that the seller isn't making the payments anymore; doesn't the fact that the checks are coming from someone else tip them off?" And, "Wait, isn't there a due on sale clause that says that it's illegal to sell your house without paying off the loan?"

Patience, young Padawan. Let's finish laying the groundwork of how these deals work, THEN we'll talk technicalities.

Why You Do Sub To

If you're really super-clear on why you want to know and use the strategy of buying properties Subject To the existing loan, feel free to skip this alliteratively-named section and move right along.

But some investors, when I suggest that they may want to learn seller financing strategies of ANY kind, look at me like I have 2 heads.

"Why would I need the seller to finance when [there are banks/I have cash/I know a hard money lender]?", they'll ask.

"For that matter, why do YOU need to buy subject to the existing loan when you're a zillionaire with a million years' experience?", they'll question, usually from a safe distance.

Those questions show a basic misunderstanding of how investment real estate financing works, and how leverage and return on investment work. If you have any question as to why Subject To is a really

good thing to know how to do, let me educate you on some of the benefits.

1. **You will run out of cash and credit to do deals before you run out of deals that you want to do**. Conventional financing from traditional lenders is great. But did you know that in order to buy an investment property, your friendly neighborhood banker requires you to put 20-25% of the purchase price up front, *even if you bought the property at a fraction of its actual value*? Did you know that there's a 10-loan limit on conventional loans, even if you have an 800 credit score and make $10 million a year?

   If you're qualified to get bank financing (in other words, you have good credit, big down payments, a high income, and less than 10 mortgages), good for you. But if you're buying $200,000 rental houses, and you MUST choke up $50,000 in down payment and fees for each one, how many can you realistically buy?

   Knowing how to buy Subject To other people's existing loans does 2 things for you: it allows you to conserve any borrowing ability you DO have (because, guess what? When you take over someone else's loan, it doesn't count as one of those 10 loans YOU originated), and it allows you to get properties without the high upfront payments and qualifications. Most Subject To deals end up being low or even no money down, which saves your cash for other properties, and for repairs and reserves. And NO Subject To deal ever requires you to qualify based on credit or income.

   In other words, you can do as many Subject To deals as you can find and manage. Paying cash or getting financing only allows you to do deals until you run out of cash, or out of qualification.

2. **You can get better terms buying Subject To than with almost any other financing options**. There are lots of sources of money for real estate investors: bank financing, hard money, private lenders, and other types of owner financing.

   With one exception—owner-held mortgages—Subject To deals have the best terms available in the market. Any loan you take over that was originated after 2009 probably has a 30-year terms (meaning the payments will be low relative to a 20-year term on an investor loan); that rate is probably fixed for the life of the loan; and that rate is probably lower than any rate at which you could borrow from a conventional, hard money, or private lender.

   The difference between payments on an 8% private loan and a 4.5% loan that you take over on a $100,000 original balance is $227 a month. That's a LOT of additional profit for you, and what's more, the private loan probably has a 1- to 5- year balloon to deal with, where the loan you took over almost certainly does not.

   And it's these better terms that lead to the #3 reason that you should know Sub To…

3. **You can solve more seller problems when you understand how to take over those seller's payments**. Some sellers simply owe too much on their property to sell it for the low prices that we investors want to pay if we're getting our own financing, putting down big down payments,

and all that jazz.

The typical real estate entrepreneur has dozens of conversations with sellers every year where the seller really DOES need to sell, and would sell for what they owed—but what they owe is too much to attract you.

For example, one of the many Subject To deals I've done over the years was on this house, in a move-up neighborhood in Cincinnati:

The seller was a landlord who simply bit off more than he could chew; he'd financed this property as a rental and was having a tough time dealing with the $1,300 a month PITI payment because the house needed about $10,000 in work to make it really rent ready.

At the time at which I took over the loan, the house was arguably worth $250,000 fixed up. The problem was, the seller owed $225,000, and the property wasn't fixed up.

Short of having the seller bring $75,000 to the closing to pay make up the difference between the $150,000 I'd pay for this house if I had to get a bank loan, there was no way to do this deal other than take over his—get this—2.75% loan.

The seller was thrilled to get rid of the property and the associated problems; this is far and away the nicest investment property I own, so I was pretty thrilled, too.

Why was I willing to pay so much more to take over his loan than I would had I needed to get my own? Because the deal was no money down; because I didn't have to qualify for it; because the rate was so low; and because the resulting payment was low enough that the property could break even as a rental while going up in value like crazy.

This, like many of my Sub To deals, simply could not have happened any other way than the way it did. Had I not known how to effectuate a Sub To deal, the seller would likely have lost the house to foreclosure, and I wouldn't own my very favorite property.

By giving you an option for dealing with sellers who simply owe more than you want to pay for a house, knowing Subject To literally lets you get more deals for the same marketing dollar.

Big Picture: How a Subject To Deal Happens

When you draw a picture of the steps to completing a Subject To deal, it's a pretty simple drawing. Absent all those devilish details, a Subject to deal just looks like this:

1. You locate a motivated seller in an appropriate situation with an appropriate loan (we'll deal with what both of those "appropriates" look like in a few pages) and get a general agreement that the seller is open to a takeover payments deal

2. You evaluate the property and the underlying financing based on your exit strategy for that property

3. You make an offer, in writing, to buy the sellers property subject to the seller's existing mortgage.

4. You complete your usual due-diligence (inspections, title search, etc.).

5. You close, with a real title company or attorney, and get the deed to the property

6. After the closing, you implement whatever exit strategy you've chosen for the property, and make the payments to the seller's lender as agreed until the loan is paid off.

So simple, right? Sure: except for all those pesky "hows". Let's deal with those next, and in the order in which they occur.

Finding the Deals

If you accepted that headline without question, shame on you. Surely, you've been around the real estate business at least long enough to know that we don't look for deals: we look for situations.

Just as a seller has to be motivated—in other words, have a "situation"—in order to sell their house at a low cash price, a seller has to be motivated to agree to let you just take over their payments. I mean, that's a weird thing to do, right? Weird as in, it's unlikely that the seller has ever heard of such a thing, much less participated in a transaction where they sold their house, but the loan didn't get paid off.

Only a seller who has explored and rejected other options, or who has something going on in their lives that makes it more important to unload the problem fast than to get the ideal price and terms is going to sell Subject To their loan.

Finding sellers with situations is what we do in the real estate investing business, right? We're always looking for "lists" of folks with problems and houses—people in foreclosure, people who've inherited a house, and so on.

And the exact same lists that turn up sellers who sell cheaply turn up sellers who will sell Subject To their existing loan. In fact, I personally don't do any special marketing for Sub To deals; they come as a normal part of the marketing I do for my core business of wholesaling.

If I WERE to look exclusively for Subject To deals, though, there would be certain lists that I use to find cheap properties that I wouldn't use to find Subject To deals. There are certain situations that, while they motivate sellers, don't make for ideal Sub To situations. For instance:

Foreclosures: Taking over a loan that is already in foreclosure has a lot of practical issues (the cost to reinstate the loan is usually so high that the upfront cost makes the deal unprofitable or unattractive) and potential future gotchas (a seller who's so destitute that he can't make his house payments is a bankruptcy risk, and bankruptcy creates a lot of problems for you that I'll explain later).

Probate Properties: Probate properties are problematic targets for Subject To deals for a simple reason: an estate typically can't be "closed" until all the debts of the deceased person are paid. So while you can, in theory, take over a dead person's mortgage if the executor agrees, you will also put the heirs in the position of having to keep the estate open (which has costs to the heirs) until you pay off the loan.

Note that probate properties, which are properties that must be sold according to the will or the court, with the resulting money being split between the heirs, are different than inherited properties, which are properties that have already been through the probate process and are owned by the heirs. You have a slightly better chance of buying an inherited property subject to any loan that might still be around, but remember that most people who die with properties are older, and many of them

Tax delinquencies: Most properties on a tax delinquent list are not good targets for Subject To deals. Here's why: most mortgages created after 2007 or so include taxes as part of the monthly payment. If the taxes are behind, the mortgage payment is behind, as well—and that means the deal faces the same hurdles as a foreclosure property. Many older loans did not include the taxes as part of the monthly payment, but in these cases, if there's a mortgage on the property, the bank will pay the delinquency in order to keep the county from foreclosing out the bank's interest. In short, most tax delinquent properties either have no mortgage or also have delinquent payments do.

High Equity Owners: Does it go without saying that the list that you can buy of people who don't owe much on their house is not a great list for finding subject to deals? Then I won't say it.

I WOULD do a lot of market to:

Listed properties: Except in a very cold market, where properties are very difficult to sell, you'll mostly find that having a real estate agent between you and the seller means that your Subject To offer will not be welcome.

Having been through all the classes both to become an agent and a broker, I can tell you that creative finance is mostly frowned upon by the real estate agent education world. If it's mentioned at all, it's usually along the lines of, "Lease/ options are okay, but all that other stuff is pretty crazy, maybe illegal, and worst of all, those buyers don't want to put enough money down to pay your commission, so you should just, you know, avoid the whole thing." in the hundreds of properties I bought through real estate agents over the years, only a small handful of them have been creative deals, and none of them have been Subject To deals.

Enough about what I wouldn't do if I were looking exclusively for Subject To deals: Let's talk about what I would do.

Expired listings: Without doing a deep look at the source of every deal I've ever gotten subject to the existing loan, I would guess that expired listings was the number one source of these deals. When you think about it, make sense; why do listings expire without a sale? Typically, it's because the property was listed for too much money. Why would an agent agree to list the property for too much money? Probably because the seller could not afford to sell and pay off his loan and pay the agent for less than the listing price. This is a seller who can't sell for what he owes and also pay the agent and the closing costs. In other words, this is a seller that is going to have to bring cash to the closing, unless his agent is out of the way (as is the case with expired listings) and he lets someone like you take over his mortgage with no money down. For a person in this situation, your Subject To

The Math of "Paying to Sell"

You'll notice that a lot of the discussion around seller motivation has to do with the idea that, without a Subject To offer, a seller might have to "pay to sell his house". And that might well beg the question, "If the seller owes so much that he has to bring money to the closing to transact a cash deal, doesn't he owe too much to interest me?" The answer is: not necessarily.

Let's take the example of a seller who owns a $210,000 house, and owes $195,000.

If he sells traditionally (through a real estate agent to a homeowner buyer getting conventional financing and asking for normal things like seller concessions) his side of the closing statement will look like this:

Sale Price:	$210,000
Loan payoff:	-$195,000
Commissions:	-$ 12,600
Real estate tax proration:	-$ 3,200
Transfer tax:	-$ 630
Deed prep:	-$ 150
Closing costs:	-$ 400
Points paid for buyer:	-$ 4,200
Net proceeds:	-$ 6,180

In other words, this seller would need to come up with $6,180 to sell his house, and THIS assumes that he doesn't live in a community with high transfer taxes.

This seller would be smart to simply stay put until the value of his house rose (and balance on his loan dropped) to the point where he could sell his house without paying to do it. But if he's divorcing, moving out of town, or otherwise under the gun to sell, accepting a $195,000 Subject To offer from you is his better option.

offer is probably the best of his options.

Frustrated Landlords: Many of the Subject To deals I've done over the years have been with landlords who are just burned out on the whole tenant/management/drama thing. These sellers have a couple of advantages over homeowner sellers: they almost always have investor loans, which means that you taking over their loan won't affect their ability to buy a new residence (see "Is it a deal" for more explanation). They also tend to be more pragmatic and less afraid to try something that isn't familiar—that is, letting you take over their loan—than a less-sophisticated homeowner seller. Find frustrated landlords in the eviction filings and in housing court, if there is such a thing where you live.

Divorces: It's extremely common in divorce cases that neither spouse can afford the marital home without the income of the other. When it's also the case that the couple bought the property relatively recently and owe a high percentage of the home's value, it's double trouble. In these situations, the property often ends up in foreclosure because SOMEONE has to put up some cash to make up the difference between what the house will sell for and what they owe, and neither ex can—or perhaps will.

Vacant houses: When I buy Subject To deals from homeowners, the 3 most common reasons are that they're divorcing, they need to move (often for job or family reasons) and just can't get enough money for the property in a cash deal to sell without paying to sell, or they've already moved and haven't been able to sell their old house.

In the latter case, they end up carrying 2 house payments, a situation that's painful no matter what the relative income of the debtor. So "Driving for Dollars"—looking for vacant houses and simply contacting the owners about buying them—is a pretty effective way to dredge up subject to deals.

4 to 5-Year-Old Subdivisions: Although I'm not generally a fan of doing mass mailings into whole neighborhoods, I'll tell you a little trick that I was taught by Charlie and Randy France, the original Subject To gurus.

Basically, it involves "Farming" (a concept well known to real estate agents, where you make yourself known in a particular area through a constant drip of marketing, in the hopes that when someone in that area decides to sell their property, the agent be the first person they think to call) in areas where people who need to sell are likely to have a hard time selling.

Specifically, these are new-ish subdivisions in areas where building is still going on. A seller who bought his house 4 or 5 years ago, borrowed 95% of the value of that house, and is competing for buyers in a market where there are brand new houses nearby, can be a seller in trouble. Often, the brand-new houses are selling for not too much more, and the builder might be offering extras like upgraded finishes, rate buydowns, and other perks that make the brand-new house a LOT more attractive than the slightly new house.

The Frances' were big fans of using bandit signs in these areas; I find that where there are newer houses, the enforcement of bandit sign regulations is extremely aggressive, so I would use direct mail and targeted internet advertising letting owners in that area know that you can buy their house even if they owe too much.

The First Hurdle: Is it a Deal?

Once you've got seller calls coming in, your next job is to interview the seller. I've provided the seller interview form you should use to do this at the end of the chapter. There are other, super-simplified seller interview forms out in the world, and I recommend that you use mine instead. Here's why: when one of my coaching students sends me an interview form that only asks basic questions like, "What's the address? Are you willing to sell for what you owe? Are you willing to consider take over payments?" and asks me if there's a deal there, I usually have to tell them that I don't know.

Without specific information about the condition of the property, the reason the seller is selling, and the nature of the underlying financing, it's really tough to tell whether it's a deal worth pursuing as a subject to deal, a cheap cash deal, something else, or not at all.

There's a set of facts around a property that determine whether or not it's a potential Subject To deal. Here's what you need to find out to know:

- **About the property itself**: is it even the type of property, or in a location or price range, that fits your goals? If it's 200 miles away, or a 2 family when you only like single families, or a $40,000 house when you're determined to only buy houses worth more than $140,000, there's no advantage in pursuing it AT ALL, much less as a Subject To deal.

- **About the condition:** Even in a no-qualifying, no money down deal, the condition of the property plays a significant role in whether you'll even be willing to tackle it, and at what price. If a seller conveys to you on the phone that the property really needs a new kitchen, bath, roof, furnace, air, paint, and carpet *and you're looking for a true no money-down deal*, you'd better have a way to borrow the money to do the $20,000 or so in work that will have to happen to rent or re-sell the property. Or, if you're only looking for houses that don't need much work to buy Subject To, you might just turn down one that does.

- **About the seller's situation and motivation**: No matter how good or how targeted your marketing is, most sellers—and I mean 85% or more—aren't good prospects for ANY investor deal. Why? Because the don't really need to sell that badly, or because getting top price AND all cash is all they'll accept.

  Thus, it's important to get to the question of WHY the seller is selling, and how fast he needs to sell, no matter what kind of deal you're trying to make. A seller who isn't really motivated isn't a seller who's going to agree to any non-retail price or terms.

  Of course, it's important to know things like whether the seller has a lot of equity in the property, and if so, whether he's willing to sell for what he owes or take payments for his equity and all those sorts of things that you'd want to know for any deal.

  But in the case of Subject To deals, there's an additional hurdle that a lot of people don't seem to know about, and that has to do with what the seller's future plans are, and whether

selling his house subject to the existing loan is going to ruin those plans.

Here's the basic problem: one reason that sellers sometimes agree to sell Subject To their existing loan is that they want to buy (or build) another house, but they already know that they can't sell their existing house for enough to cover commissions, the mortgage, and all the other expenses. At the same time, they don't want to close on another home—and take on another mortgage payment—until they're sure that the old house is dealt with.

In years past, a Subject To deal was a perfect solution to this situation. We'd agree to take over such a seller's loan, the seller would go out and find a new house to buy, and we'd start making payments on house #1 just as they started to make payments on house #2.

However, some more recent (and very quiet) changes in the policies of FNMA, FHLMC, and FHA have made it nearly impossible for some consumers to sell Subject To their existing loan (or on lease/option or land contract, for that matter), *at least if they intend to buy another home*.

The FHA change was simple**: as of 2014, no borrower is allowed to have more than one FHA loan in their name**. In other words, a seller trying to sell a house with an FHA-insured loan, and buy with another FHA-insured loan, must sell house #1 AND PAY OFF THE LOAN before the loan on house #2 closes.

The FNMA/FHLMC change was a little more complex, but still devastating to the creative buying world. To understand the difference, you have to understand that prior to this change, if a homeowner moved out of and rented their home and bought another, they were credited with roughly 75% of the incoming rents as income on their former residence.

This was important, because a big part of qualifying for a convention loan has to do with the borrower's "debt to income ratio".

If, for instance, the seller's income allowed him to qualify for a $200,000 loan, but he already has a $150,000 loan on his old house, he'd have a hard time qualifying for the $200,000 home UNLESS he rented out the $150,000 home first. This let him ADD to his income, thus helping his all-important debt-to-income ratio. If his house payment was $1,000/mo. and he rented the house for $1,500 a month, he'd be credited with 75% of that, or $1,125/mo. His $1,000 debt would be offset by $1,125 in income, allowing him to qualify for his new loan without the drag of the old debt weighing him down. [4]

In spring of 2014, this rule was quietly amended to say that a borrower—this is your seller,

[4] If you're wondering what the seller renting his house out has to do with you buying that house Subject To, the answer is that most banks and mortgage brokers would accept the lease between you and your tenant as evidence that the SELLER had the income to cover his old mortgage payment. The new lender wouldn't accept your word, or even documentation, that showed that you were responsible for his payments, but they would accept a lease between you and your tenant on his former house as evidence. When we sent the leases that we had with OUR tenants, the seller was credited with that income. Yeah, I know. Not logical. But banks and logic don't often go together.

remember—can only be credited with the rent *if he owes less than 85% of what your house is worth*, which is not the case with many of the very folks who'd love to do Subject To deals with us.

So, to be clear: if you buy a house Subject To the existing loan from someone who wants to buy, but has not bought, a new primary residence, it's pretty likely that by taking over his loan, you'll create a situation where he can't get the new house he wants.

Ethically, we just can't put someone in the position of not being able to buy a new house, if that's their goal. So how is Subject To even a thing anymore? Here's how: there are enough sellers out there who still qualify, if you will, to do business with us that we'll never run out of deals, despite these new restrictions.

What About VA Loans?

VA loans are fairly rare, but you'll occasionally run across a seller who has one. VA has always had the rule that any given borrower has a VA loan 'allowance', meaning a total amount of money he or she can owe at a particular time. For most sellers, the practical effect of this is that, if they are selling a house with a VA loan and plan to get a new VA loan on their new house, they have to pay of the loan on house #1. Every so often I meet a seller whose VA allowance is so high that he can have 2 VA loans simultaneously, but it's rare. If a seller wants me to take over a VA loan, I tell him to close on his new house first, just to make absolutely sure that he gets what he wants from the deal.

Sellers who are GOOD prospects for Subject To deals are:

1. Sellers who have already qualified for and closed their new residence before selling their old one to us

2. Sellers who clearly owe less than 85% of the value of the property we'll be buying subject to. In this case, they'll be allowed to count rent that we're getting from our leases with tenants as income. However, the stars have to align here; the old house actually has to appraise at, effectively, 117% of the loan balance, AND we somehow have to get a lease with a new tenant before the seller closes on his new house, which might be tough if the seller is still living in the old house. I've never closed on a deal in this situation, but if I were to find one, the way I'd handle it is by leasing the seller's property with an option to buy effective right away. My option wouldn't be to buy for cash, but rather to buy Subject To the seller's mortgage. Then, the seller could show his mortgage broker our lease, and as soon as he closed on his new house, I could exercise my option and get the deal Subject To.

3. Sellers who don't intend to buy another residence. This is the case with most of my homeowner sellers; they simply don't plan to do anything that would require them to get a new loan anytime soon. In one recent case, the seller was a 70-year-old woman who just wanted to live in an apartment that someone else would take care of. In another, the sellers had inherited a farm that was free and clear, and were moving there. In another, the sellers were moving from Ohio to Florida to start an entirely new career, and had no desire to buy until they were well established, which they

thought would be in 4-5 years, at which point their loan would be under 85% of the value of the property and they'd have no problem.

4. Sellers for whom the property we're buying was never a primary residence. Investment loans don't count against the seller's ability to buy a personal residence in and of themselves; they don't seem to be subject to the "must owe less than 85% to count the rents" rule.

5. Sellers who are buying their next property with a portfolio loan or cash. Remember, the rules I recited above are for FNMA, FHLMC, and FHA-backed loans. If the seller's new loan is coming from a portfolio lender, private lender, or any other non-Freddie, non-Fannie, non-FHA source, the rules don't affect them.

- There's one more thing about the facts of a given deal that decide whether it's a good subject to deal, and that's the **nature of the underlying financing itself**.

Unlike other types of seller financing, there is no real negotiation of the terms of the financing in Subject To deals. The interest rate, amortization schedule, and other mortgage terms were set back when the seller got the loan; you're just taking over the responsibility to pay what's already there.

That makes it super-important that you understand and are happy with what's already there. And you shouldn't take the risk of taking over someone else's payments unless that underlying loan has these characteristics:

1. **The underlying loan must be a fixed-rate loan**. Do NOT take over a loan wherein the interest rate (and therefore payments) could change, unless your exit strategy is such you'll likely pay off the loan before any interest rate hikes can drastically increase the payment. It's somewhat rare to see adjustable rate loans post 2008 or so, but extremely common to see them from prior to that time.

2. **The loan shouldn't have a balloon**. Balloons are almost unheard of in homeowner loans (with the exception of HELOCs, addressed below), but pretty common in commercial, apartment, and investor loans. If the loan has a balloon in a few years, its value to you is limited. Unless you are extremely confident that you can sell or refinance the property before the balloon date, don't take over a loan with a balloon.

3. **The loan must not be an equity line of credit (HELOC)**. Sometimes, you'll find a seller who has, as their only mortgage, an equity line. Don't buy properties subject to these—they are almost never fixed rate, the ones that adjust can often adjust MONTHLY, they almost always have five or ten-year balloons, and they almost always have language in the loan that allows the bank to call part of the loan due at any time, if they believe the value of the property has decreased. And that doesn't even address the problem that your seller has a checkbook that he can use to write checks against the equity in YOUR house! HELOCs are just bad, bad, bad.

4. **Generally, you'll find that if there's a 2nd mortgage involved, you won't be able to buy the property subject to both loans.** Most seconds remaining in the market today are remnants of the old 80/20 "no money down" loans of the late 90's and early '00s. These were purchase money mortgages that were "bifurcated"—in other words, split into a 1st and 2nd mortgage—to make both the first and second mortgages more attractive to the secondary market[5]. The WAY that the seconds were made more attractive was by writing them at a higher rate of interest and a shorter term.

   The net result is that, even when there's equity in these properties—which there often is, given the amount of time that's passed since these were common—the combination of the two PAYMENTS is much more than you could typically command for rent.

5. **If the loan has been "modified", check the details of the modification before you consider taking over the payments**. When you see an incredibly low interest rate—like in the 1-2% range—or a loan balance that doesn't seem to make sense based on when the seller bought the house and what he paid (for instance, the seller paid $150,000 for the house in 2006, and the current loan balance is $63,000), there's a very good chance that the loan was, at some point, in default and 'modified'. Millions of mortgages went through this process in the 2007-2012 time frame, and the modifications often have very strange terms that make taking over the mortgage unappealing.

   In 2017, I agreed to take over a seller's $88,000 mortgage on a house with an ARV around $150,000. She was a widow who felt like everything in the house just made her sad, and she wanted to move in with her daughter. The loan had a 3% interest rate, but I got confused when I looked at her original note; the loan was for $170,000 and had been created only 9 years earlier. When I pointed this out, she said, "Oh, that's because the bank forgave a lot of my loan when I got behind".

   Forgave is a really strong word for what happened; the loan modification stated that if she sold the property for more than the loan balance, she owed the difference to the bank to make up the $80,000 'gift' she got when they lowered her loan balance. But that wasn't the problem from my perspective; it also said that if she sold the house without paying off the mortgage, the balance and payments would retroactively revert back to the higher amount.

   I didn't take over that loan.[6]

[5] If you're interested in the note buying business, here's the explanation of why a bank would make 2 loans on a house at the time rather than one: a loan of 100% of the purchase price of a property is less attractive to a note buyer because there's no "equity" in the note—and thus the note sells at a deeper discount than one where the buyer has actually put money down. By creating an 80% first mortgage, the lender created a note that was very attractive to the Wall Street note buyers of the time, and would often sell "at par", meaning that it would sell at the face value of the note. The 20% second mortgage would be considered a more high-risk, specialty note, so by raising the interest rate and shortening the term on the second, they could make the higher-risk portion of the note higher-profit, too.

[6] But I did buy the house, in a short sale, for $27,000. The bank would have been MUCH better off letting me assume her $88,000 mortgage. But banks and logic? They don't go together.

6. **The payment and/or amortization on the loan must create enough profit to allow you to make a reasonable profit on the property.** Say, "Well, DUH!", if you must, but this is the biggest mistake Subject To investors make, and the biggest way in which they get themselves into situations where they can't make payments that they've promised to make. So settle in, 'cause I'm going to spend some time on this.

   My philosophy about when the buy a property Subject To and when to pass hinges on this idea: there are 3 basic financial benefits that I can get when I take over someone else's loan. Those benefits are:

   - Cash flow
   - Equity
   - Amortization

   Cash flow is *real* difference between what I pay to own a property every month and what I can get from a tenant or tenant/buyer[7]. I say *real* difference, because owning an income property carries more expenses than just the Principal, Interest, Taxes, and Insurance (PITI) payment. There are also expenses in maintenance (the little ongoing things that have to be fixed to keep your tenant happy), vacancy, and reserves (the money you put aside to pay for the capital improvements that you'll eventually have to do if you own the property long enough—the roof, furnace, concrete surfaces, and so on).

   IF you have a stabilized property to start with—that's one where all of the major structural and mechanical items have at least 10 years of life left in them—AND you're an aggressive manager who doesn't let tenants get months behind in rent or vacancies sit vacant for months on end, the typical vacancy/maintenance/reserves cost is around 20% of the gross rent. And note that this 20% doesn't include any professional management, so if you plan to have a property manager, better put that into your cash flow equation, along with any other landlord-paid expenses (trash removal, utilities etc.) before you decide what you'll actually be making.

   A calculation of cash flow would look something like this:

   Rent
   - Principal, interest, taxes, and insurance
   - 20% of gross for maintenance, vacancy, and reserves
   - Any landlord-paid utilities etc.
   - Any management fees[8]
   = Cash flow

[7] Yes, I said tenant/buyer, because even though I'm sure you have a clause in your option that says he's responsible for the maintenance and repairs, the reality is that tenant/buyers typically CAN'T spring for a new roof when the house needs one, and it's YOUR legal obligation to keep him and his stuff dry and mold-free. I've done over 300 lease/options in my time, and you'd be wise to believe me when I say, don't spend your reserves until that tenant buyer actually buys.

[8] Don't forget that if you're going to need to borrow money to do any needed repairs, that loan will ALSO have a payment, and you'd need to subtract that payment from the rent, as well.

So let's imagine that you found a house with a $150,000, 4.5% loan and a $1,523/mo. PITI payment. Let's further imagine that the house will rent for $1,700 per month. What's your cash flow?

Answer:

$1,700	rent
-$1,523	PITI
-$ 340	vacancy maintenance etc.
-$163/month	

So you shouldn't buy this house, right?

Well, that depends.

There are only 4 reasons that a house with a $150,000 loan would have a $1,523 loan payment. Those reasons are:

- It's an FHA loan with a high monthly fee for mortgage insurance
- It's in a high-tax area, and the real estate taxes are about $500 a month
- The loan balance was originally MUCH higher, implying that the house is worth quite a bit more than the loan balance
- The loan has a shorter amortization than a typical 30-year loan.

If the reason for the high payment is that the original loan balance was $250,000, and what you're really buying here is a quarter of a million-dollar house for $150,000, do you really care if you lose $163 a month? Or are you willing to take that much out of your pocket every month to control $100,000 in equity?

If the reason is that the loan is a 15-year loan, then the reality is that of your $1,523 monthly payment, AT LEAST $215 a month is actually principal—and that's just the first year. The amount of your payment doesn't change, but the amount of it that goes toward paying off the loan goes up and up every year, until you own a free and clear house at the end of the term, whenever that is.

So in a sense, you're NOT actually losing $163 a month—you're GAINING $52 a month by addition $215 a month in equity to your balance sheet.

Back to my philosophy about deciding whether to buy a house Subject To or not; here it is.

The deal must have ONE of the three benefits (cash flow, equity, or quick amortization) in abundance, or a goodly amount of any 2 of them, or a bit of all 3.

For example:

- I'd pay full price for a Subject To deal that cash flowed $500 a month after all expenses, even if the loan had 29 years left.
- I'd pay full price for a Subject To that had $0 cash flow but would be completely paid off in 4 years.
- I'd accept $0 cash flow on a Subject To that had $60,000 in equity and was going to pay off in 11 years.
- I'd accept $100 cash flow on a Subject To with $30,000 equity that paid off in 14 years.

See? Lots of one, or a decent amount of two, or a little of all 3.

What I will NOT do is buy a property Subject To the existing loan that puts me at risk of BOTH losing money AND not being able to sell the property quickly if necessary—and I see this ALL THE TIME.

Years back, I had a student who informed me that she'd closed on a property in a so-so area that had a mortgage balance that was probably 15% more than the value of the property, AND the mortgage had 29 years left to run, AND the payment was $790 on a property that would typically rent for about $775. When I asked why in the world she'd done this, she said, "My plan is to rent it Section 8 for a few years, because they'll pay $825 a month, which will cover my payment until the property values go up and the balance goes down; then I'll sell it on a lease/option which will mean that I can get 10% more than the value, and in 7-10 years I'll make $15,000!"

There are more holes in that plan than cheesecloth; it assumed that her section 8 tenant would never make a maintenance request, move out leaving the property in pristine enough condition to lease/option it for top dollar, and that the values in that neighborhood actually would rise (which they did, but 20 years later). She ended up defaulting on the seller's loan and sending the seller into foreclosure when her tenant moved out and she could cover neither the payments nor the repairs needed to put another tenant into the property.

7. **If your intention is to 'retail' the property, forget everything I just said.** For when it comes to quick turns, these 3 things abide: cash flow, paydown, and equity, but the greatest of these is equity. Really and truly, if you're buying a property Subject To with the intention of fixing it and quickly selling it, the amount of the monthly payment and the speed of the amortization Just. Don't. Matter. You won't own the property long enough for either to have a significant impact on the deal; your entire profit will be in the spread between what you have in the deal and what you can sell it for.

How To Find Out the Loan Details You Need to Know to Decide if it's a Deal

If you look back at the original outline of how these deals proceed, you'll realize that after all this, *we're still in the stage where we're deciding whether the deal is even worth pursuing*. At this point, you're literally just fact-gathering, usually on the phone, to see if going out to look at the property is a waste of time or not.

So don't get too involved in trying to research the nature of the seller's loan just yet. It's fun, but time consuming, to stalk properties on the internet. For now, you'll just ASK the seller about the details of his loan to see if it's one you want to consider taking over, and ASK if he's open to considering such an offer.[9]

Later on, after the property is under contract, you'll do further due diligence, including reviewing the original mortgage and note and getting a title search to assure that there are no additional liens you haven't been told about, or arrearages on the payments that haven't been mentioned. But don't go all gung-ho on getting this information before you've even struck a deal with the seller.

What to Say to Sellers About Subject To

The art of "negotiating" a Subject To deal really consists of 4 key skills:

1. Don't think for your seller
2. Don't jargon the seller to death
3. Be prepared to deal with his objections
4. Be brave enough to ask for what you really need

Don't think for your seller. One of the things that every successful real estate entrepreneur figures out early on is that motivated sellers do what they do, which is to say sell at low prices or with terms, for their own reasons. They have things going on in their lives that make selling cheap, or selling Subject To their loan, a more appealing option than continuing to hold on to/deal with/worry about the property. And here's the thing: you might believe that YOU wouldn't do the same if you were in the same position, and that might lead to you thinking that THEY won't agree to what you want, and that will lead to you never getting a deal.

I've seen this happen over and over in my life and in the lives of students: You believe that no one will want to loan you private money because you're a newbie and if it were you loaning the money, you'd only loan it to experienced people, and so, guess what? No one wants to loan you private money. Never mind that all your newbie colleagues are getting it; you don't think it exists for you, and somehow you give off that vibe and it turns out to be true.

The same is true with Subject To deal. If you believe that selling a house Subject To is fundamentally a bad thing, or that it's risky for the seller, or that you'd never ever do it yourself, you'll find yourself with no Subject To deals, ever.

Sellers for whom Subject To is not the best option will turn down your offer to help them in that

[9] At first, you'll be shocked by how often sellers don't have the vaguest idea what their loan balance is, whether their mortgage is fixed rate or adjustable, or even whether they payments include taxes or insurance. After a while, you get used to asking them to get at their latest statement from the banks and read it to you.

particular way. Sellers for whom Subject To is their best option—even when it's the best of a lot of bad options presented by their particular situation—will say yes, when you give them the chance.

If the way you can help a seller get rid of an unwanted house is by buying it Subject To, always say so even when you're 100% sure that they'll say no. Because some of the time, you'll be wrong about that.

P.S. Stop worrying about your "lack of experience". If I had a dime for every time a new investor told me that no sellers would want to let them buy a property Subject To because the new investor had no references, experience, or credibility, I'd be unable to type this, because I'd be drowning in dimes.

In 25 years of doing Subject To deals (and their predecessor, the loan assumption), I've had exactly ONE seller ask me how many times I'd done this, and for references (luckily, this was in 2016, so I was able to give her tones of them, and yes, she sold me her condo). That means that all the nearly 100 other times, the seller was much more concerned about whether the deal would solve HIS big hairy problem than he was about MY experience.

So stop worrying about it, because no one will ever ask, and your anxiety is making you sound nervous, which is making your seller nervous, which is going to make him ask.

Don't jargon the seller to death. Subject To is not a word that's in common usage outside of our industry. When you say it to a seller, he doesn't know what you're talking about, and it confuses him, and he says no, not because he doesn't want you to take over his payments, but because he doesn't know that Subject To means you'll take over his payments.

Wanna know the line that's bought me dozens of properties Subject To the existing loan? Here it is:

"Mr. Seller, I think the only way that I'm going to be able to give you what you want for your house is if you'd consider a take over payments deal. That means that I'll be responsible for everything—your mortgage payment, the taxes, insurance, maintenance, repairs, all that. Are you willing to consider an offer like that? I'm not asking you to COMMIT to it, just to say you're willing to talk about it."

There's a simplicity to "take over payments" that most sellers get immediately. Use that term, not Subject To.

Be Prepared to Answer the Seller's Objections. You'll probably be surprised at how FEW objections motivated sellers have to the suggestion that you take over their payments. You'd think that they'd ask a lot more questions than they do, but that's just not the case.

Unmotivated sellers, of course, have endless objections, and you can't overcome them, because, well, the seller's just not interested in selling Subject To. But from otherwise motivated sellers:

The most common objection you'll hear is, "How do I know you'll make my payments?" And this

is a good objection, because it means that the seller IS credit conscious and is probably NOT in financial trouble that could lead to a bankruptcy.

The answer is simple:

"Mr. Seller, I'm glad you asked that, because it shows that you care about your credit. There are two huge reasons that I'm going to make your payment: First, I'm going to be putting a bunch of energy and $X dollars into rehabbing [or, into advertising and leasing] this property in the next few months, and if I don't make the payments and you take it back, I'd lose all that, so it would be super-stupid of me to not make the payments.

And second, we're going to have an attorney write up a document that I use with all my sellers. It says that if I miss even one payment and don't make it right, you can get the house back, with all the repairs I've done and all the pay down on your mortgage that I've paid, and all you have to do is send one letter. Would you like to know more about that?"

"That", of course, is the lender protection trust we'll discuss later.

And when you get past that hurdle, the very next objection will be, "But I don't WANT to get the house back!" Yep, the second biggest fear of most of your sellers will be that they end up owning the property again months or years down the road. You can usually alleviate this by saying something like,

"And I have no intention of ever giving it back to you. I make my money by owning properties, not by giving them back to people. But if something happened to me, like I got hit by a bus, I think you WOULD want your property back, especially after I've been paying down the mortgage for you!"

Another question you'll hear will be, "when will you pay the mortgage off?". What the seller wants to know is for how long the debt will be in his name. You'll be tempted to say something like, "Oh, I expect I'll sell the property in the next two to three years", but don't. If you do, the seller will call you in three years angry that you haven't paid off his mortgage like you "promised". Ask me how I know that.

The only fair answer to this question is, "I really don't know, but as long as I'm making all the payments and taking all the responsibility for the property, does it matter?"

There's yet another very common question that will confuse you if you're not ready for it: the seller might say something like, "No, I just want to sell the property" or "No, I don't want to be responsible for anything". This is PROBABLY because the seller is familiar with something like a lease/option or land contract, and he thinks that what you're suggesting is a deal where the deed stays in his name, and where he continues to be responsible for taxes, insurance, and so on.

This misunderstanding by sellers is so frequent that I just address it when I ask if they'd be willing to consider a takeover payments deal: I include the whole wording about how he won't be responsible for anything once we close.

Way down the line is the objection I bet you THOUGHT would be #1: "I don't think my loan is

assumable". Most sellers don't really understand that the bank has any thought one way or another about a Subject To deal, but some remember loan assumptions and that some loans were assumable, and some weren't.

This objection can be a touchy one, because you should under no circumstances lie to a seller about the due on sale provision in his mortgage; in fact, you're going to make him sign a document later saying that he understands and accepts that he's violating these provisions.

Instead, what I say is something like this:

"Mr. Seller, your loan is almost certainly NOT assumable, but here's the deal with that. There's a clause in your mortgage that says that the bank CAN call the loan due, meaning that they can make the whole thing payable immediately, if you transfer the deed to me. The thing is, I've done this dozens of times, and what I find is that as long as they're getting their payments, they WON'T call it due. I never call up the bank and tell them I'm taking over a mortgage; I just start making the payments. If the bank happens to care (and they usually don't), we have ways of working through that that won't affect you or your credit at all. If you're not comfortable with transferring the deed without paying off the mortgage, I get it, but I can tell you it's the only way I can buy your house, and I haven't found the fact that a loan isn't assumable to be a problem."

Don't be Afraid to Tell a Seller What You Can Do For Them, Even When You're Pretty Sure They'll Say No.

There are tons of situations you'll encounter where the seller just flat out owes too much money for you to buy their house, even subject to a loan with good terms. Or they have a payment that's too high to take over, even if the deal is otherwise attractive.

Most investors, when they run into problems like this move on to the next deal.

But you're a problem solver, right? So offer a solution to the problem.

I've asked sellers to refinance their adjustable rate loans into fixed rate loans so that I could take over the new loan—and one did.

I've asked sellers who had 2 mortgages on a property to pay one off so that I could take over just the first mortgage—and one did.

I ask sellers to bring cash to closing to make up the equity that's missing from their property at least once a month. So far, at least 6 have, and one brought over $20,000[10]

The easiest way to suggest these things is to couch your request as a takeaway close ("I'm sure this

[10] What I have NOT done, because I think it's too risky, is asked to seller to pay part of the MONTHLY payment over a long period of time. I know that this is advocated by some gurus, and I know that sellers will agree to it. But in the experience of my coaching students who've done this against my advice, it only continues to happen for one to twenty-four months. Sellers who, at the beginning, think it's a GREAT idea to pay $200 a month instead of the whole payment of $1,700 a month quickly start to wonder why they're making payments month after month on a house they no longer own, and they stop. If that $200/mo. is important to making the deal work, have the seller bring you money to cover that part of the next five years of payments at closing.

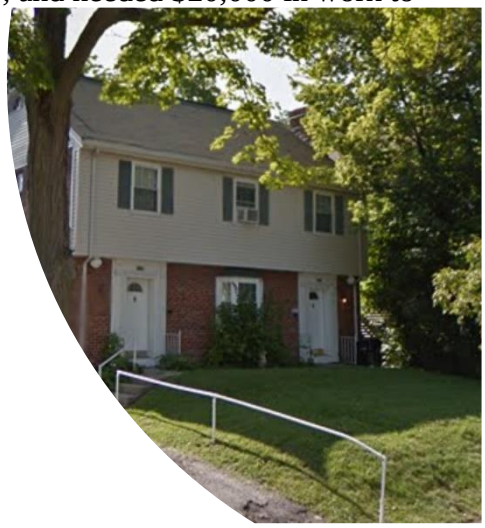
wouldn't work for you, but I could still buy the property if you'd . . ."). This way, it sounds like you don't EXPECT them to agree to your crazy terms, but still gives them the opportunity to say, "Well, maybe it would…" Most of the time, I get turned down flat. But every once in a while . . .
My Craziest Seller-Bringing-Money-to-Closing Story.

This is a deal that just shouldn't have happened, but it did.

The seller of this 2 family was a social worker who bought the rental after taking a real estate class. She was totally unprepared for the extent to which tenants will lie on applications, lie about why they can't pay their rent, manipulate, damage…and as a result, she got terrible tenants who took total advantage of her.

I almost can't describe the level to which she hated this property. She'd thrown out the last tenant months earlier and made no attempt to re-rent it. She loathed the very idea of trying to find new tenants. She. Wanted. Out.

The problem was, it was worth perhaps $65,000-$70,000 fixed up, and needed $20,000 in work to fix it…and the seller owed $44,000.



I'm not a fan of 2 families as rentals, and my normal strategy with a property like this would be to wholesale it. Under my usual formula, I'd need to pay no more than $16,000 or so, so that I could sell it for $25,000 to a landlord.

And she owed $44,000. What's more, it was a 5.5% 15-year loan with 11 years remaining, making her PITI payment around $650 a month—pretty high for a property with a net operating income around $700 a month.

I told her that her best option was to get a property manager, put tenants in the house, and wait for the market to improve and for her loan balance to drop to the point where she could sell it without paying to sell it. She literally begged me to take the property. I told her that the only way I could take it was if she paid off $21,000 of the loan at the closing, and let me take over the rest. She said she could have the money in 2 weeks.

Now to be clear, I did everything I could to convince her NOT to do this, because I saw the option of holding the property a few more years as being much better than the option of paying a 5-figure sum of money to sell it. She didn't.

When she paid off that huge chunk of principal, it didn't change the cash flow—the payment stays the same throughout a fully amortized loan. What it did was cut the loan term down to 4.8 years. I sold the deal on a land contract to an investor who wanted to do the work and manage the tenants. He gave me $6,900 down and payments of $650 a month—but for 6 years, not just 4.8.

Ya have to ask.

More Negotiation Advice

Make sure the seller will consider subject to before you spend a lot of time on the evaluation. It's so easy to drop the idea of a Sub To deal into your very first conversation with a seller, and so easy to get him to say "yes" to CONSIDERING it that I can't imagine why you'd spend a lot of time seeing the property or staring at spreadsheets unless you've already heard that "yes".

You'll occasionally find a seller who's familiar with some other type of creative deal, and you'll need to explain why the Subject To is better for them. When you say, "take over payments" and the seller responds with "You mean like a [lease-option, contract for deed]?" you should be ready to respond with "No, this is better. You actually SELL the house to me, so you won't be responsible for any payments, bills or management, and since the deed won't be in your name, you won't be liable if a tenant gets hurt or the city slaps orders on the house."

If the seller is married or owns the property with a partner, have the big Sub To talk with both of them at once. I have, many times, had a seller agree that a Subject To arrangement would be an awesome solution to his problem, only to have the deal quashed when he tried to explain it to his wife, and wasn't able to adequately answer her questions about it. You can get just one to agree to consider it, but when really explaining it, talk to both owners at the same time and preferably in person.

As you get closer to signing a contract with the seller, determine whether or not he's financially stable. You don't want to ask, "Hey, are you gonna declare bankruptcy on me?" in your first conversation, but it's an important thing to know. After you've built rapport and determined that the deal is worth going forward with (and assuming the seller hasn't already spilled the beans on this), casually ask whether everything's OK in the money department. Explain that you need to know because if he thinks he might declare bankruptcy in the next few years, that would change your exit strategy. There's a detailed explanation later.

Be prepared to bring some money to the closing, even if it's a "no money down" deal. Unless a seller has already told me that he has zero money to bring to a closing, I sort of assume that he'll be paying the usual seller closing costs—deed prep, title search, and so on. Most sellers, when they see that the contract has them getting nothing and paying costs, object. If the deal is a good one, I simply tell the seller that I'm happy to move his costs to my side of the closing statement just to make things easy on him. In reality, I already figured those costs into my calculations.

Don't hesitate to ask for a delay in making the first payment, particularly if you'll have a longer holding time (i.e., you're buying the property the week before Thanksgiving, and know you probably won't find a tenant until the spring thaw), or if the property needs work to put it in service. Your best sellers have been maintaining these payments for months or years already, and won't refuse to make three or four more payments if it means never having to make another one after that.

Putting the Property Under Contract

One of the most common questions I get from coaching students is, "Ok, I have a seller who wants to do a Subject To deal. How do I close this?"

Whoa, Nelly. Even though this deal might be low money down, no qualifying deal, you still need to put it under contract, so you can do your due diligence.

Any purchase and sale agreement you like will probably work just fine—I've included my favorite in this manual—as long as you know how to word the financing clause.

Because sellers can be very wrong in their estimate of the balance of his loan, the rate, and other important facts, use any purchase contract you like to tie up a subject to deal, but make sure that the wording in this clause after "payable as follows" is present.

Price and Terms. Price shall be _____ payable as follows: **buyer to take over payments on seller's first mortgage loan to _____(Lender)_____ with a total balance not to exceed $_____ at a fixed interest rate not to exceed ____% with _____ months remaining.**

This way, you will NOT be obligated to close when it turns out that the loan the seller told you was 5% fixed rate with 12 years remaining is actually 7.5% adjustable rate with 28 years remaining.[11]

If your seller has agreed to pay down part of the mortgage to create the equity you need, add this wording:

Seller agrees to bring to closing funds in the amount of $_____ to be used to pay down the principal balance of the first mortgage note down to the balance agreed upon as the "purchase price".

If the seller owes LESS than what you've agreed to pay, and you're bringing the difference to the closing in cash, add this to the end of the price and terms clause:

Buyer shall pay the balance of the purchase price in cash at closing.

If the seller owes less than what you've agreed to pay and has agreed to accept payments for that amount, add this:

Balance of purchase price shall be payable to the Seller under the terms of a mortgage note to be executed at the closing, with payments of $xxx per month until paid.

Due Diligence

Once the contract with the seller is signed, you'll complete any due diligence needed to assure

[11] Yeah, that exact thing really happened to me.

yourself of the condition of the property, the title, and the financing. Remember that if the results of your due diligence might affect your willingness to purchase the property, you need contingencies in your contract allowing you to 'get out' if the results are not what you thought.

Your minimum due diligence will include a title search and a review of all the note and mortgage documents, including any modification paperwork.

You may also want to have professional inspections done.

If the property has tenants, you'll want to review the leases.

You'll check for code violations, zoning issues, and other legal or regulatory problems with the property.

Get the seller to fill out and sign the federally-required lead disclosure (downloadable from EPA.gov) and your state-mandated seller disclosure of property condition (downloadable from your state's website, required by law unless the seller is a bank or an heir to an estate).

If everything looks hunky dory, you'll close.

How to Take Title to a Subject To Deal: The "Seller Protection Land Trust"

A land trust is a very cool, very useful way of holding and transferring title to real estate. Land trusts have an enormous range of benefits as a method of holding title, and you should put it on your to-do list to really get to know them someday.

But, despite what you may have heard from some well-meaning but completely incorrect guru, putting a property in a land trust does not "defeat" the due on sale clause, making it impossible for a bank to call a loan due.

That mistake comes from a misreading, or incomplete reading, of the Garn-St. Germain act, which creates a couple of exceptions to the bank's ability to enforce the due on sale clause. One of those exceptions is for a borrower who moves his property into a living trust for estate planning purposes, and then REMAINS THE BENEFICIARY OF THAT TRUST.

When you have the seller transfer the property into a trust and then assign you the beneficial interest in the trust, you've HIDDEN the nature of the transaction, but you haven't created a situation in which you're protected from the due-on-sale clause. And I've read at least one theoretical legal argument that says that you may have actually set up a situation where the bank COULD accuse you of something criminal: conspiring with the seller to deprive the bank of it's contractual rights, or some such nonsense.

Nonetheless, I, too am going to recommend that you buy Subject To properties into land trusts (but directly, not in that sneaky "Have the seller transfer it, then transfer the beneficial interest" way) and here's why: it's literally the only way that you can protect your seller from YOUR default.

Let's think through the logic of this for a minute:

When you take over a seller's mortgage, his credit is in your hands. Of COURSE you don't intend to not make his payments, but what if you get sick? Die? Get put into the witness protection program? There are a dozen scenarios in which, through no fault of your own, you become unable to make the payments you promised to make.

What's the seller's legal remedy for this?

If you said, "He can foreclose on me", you're in the majority—but you're also wrong. The seller isn't a lien holder; he has no standing to foreclose on you. Only his lender does, and when that happens, the seller's credit goes to the Bad Place.

The seller's only real option, if he cares about his credit, is to make payments on a property that, let me remind you, he doesn't own anymore, and sue you to try to get you to do what you said you'd do. But you're dead and in the witness protection program, so that's not going anywhere.

A "seller protection land trust" neatly solves this problem by automatically returning the property to seller if you default on the payments. Here's how.

A land trust is an agreement between 2 people: a trustee (who's the legal owner of the property and is therefore the only person who can sign documents, pledge the property as security for payment for a note, and so on), and the beneficiary, who directs the actions of the trustee and gets the benefits of ownership of the property.

This agreement is governed by a trust document (there's one included in this manual) that details what the rights and responsibilities of each party are. The trustee is restricted by the terms of the trust agreement to <u>only do those things which the beneficiary has told him to do</u>. So, although the trustee can sell the property, he can only do so legally at the behest of the beneficiary. He is also required to do <u>everything that the beneficiary requests in regard to the property owned by the trust</u> (as long as it's legal, of course).

So how does this help protect your seller? Easy—you make it a term of the land trust that, should you become delinquent in your payments, the trustee is to create a new deed and sign it over to the seller/lender. [12]

Land trusts are dense legal documents, and you should never ever try to use one without the advice of a competent attorney[13]. But the effect we're trying to get is pretty simple: we want the seller to be able to get his property back if we default, but NOT be able to get it back just because he wants to.

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[12] If you're thinking, "Why not just do a deed in escrow and be done with it?" you're not familiar with the practical problems of trying to record a "stale" deed. The theory behind a deed in escrow is a good one: you sign a deed back to the seller at closing. That deed is held by an attorney who has instructions to give it to the seller if you get behind in payments. Viola, seller is made whole, right? Wrong. When the seller goes to the courthouse to RECORD his 2- or 5- or 10-year old deed, the court will likely reject it as a "stale deed". My method is better, trust me.

[13] If your attorney tells you that land trusts aren't used in your state, he's not competent. They're used in every state; they're just not statutory in every state. Find a new attorney.

Thus, you'll want to make sure the language of the trust protects you against the seller/lender simply appearing before the trustee and insisting that you're behind in payments when you're not, with language like this:

The Trustee is instructed, and agrees to:

Upon written notice to the Trustee, from the Lender, that the Beneficiaries have fallen thirty (30) days in arrears in their payments, the Trustee shall notify the Beneficiary that they have fifteen (15) days to cure such arrearage or prove that it does not exist.

In the event that Beneficiary shall not cure the arrearage within that fifteen (15) days, nor prove that such arrearage does not exist, the Trustee shall prepare and deliver a deed transferring the subject Property to Lender within 5 days of the expiration of the 15 day period. All time periods referenced herein shall be computed in ordinary calendar days.

Can you imagine how cleanly this settles the seller's worry that you're going to let his house go into foreclosure? Yeah, that's because he hasn't yet thought of the easy way that you can get around the road block you just set up: by ordering the trustee to transfer the property out of the trust and into your LLC's name prior to your default. No trust, no trustee, no way for you to lose the property.

So let's set up a second roadblock, just in case you discover crystal meth and decide to mess up your seller's lives: a clause that keeps you from removing the property from the trust until the mortgage is paid off:

Termination. This trust may be terminated by the Beneficiaries only after the mortgage note assumed and described in Addendum A has been paid in full, and with thirty (30) days written notice of termination delivered to the Trustee, the Trustee shall execute any and all documents necessary to vest fee simple marketable title to any and all Trust Property in Beneficiaries.

NOW the seller is pretty safe. Sure, there are still ways that you can mess up the title to the property (by getting additional financing or other liens) or the property (by not maintaining it), but assuming that you did your job up until the time you weren't able to make payments, the seller is unlikely to be harmed by your default.

At the Closing

The most confusing thing about Subject To deals to both buyers and sellers is that, at the closing, the deed transfers, but the mortgage and note do not.

Once you wrap your head around the fact that having the same name on the title and the mortgage is NORMAL, but it's not NECESSARY, you'll have an easier time understanding what has to happen at the closing.

Rule #1 in closing Sub To deals is: always close these deals with an attorney or title company. Don't

try to save money by closing at your kitchen table. Why? Because going to a formal closing makes the deal seem more 'official' to the seller[14], and raises his comfort level with the whole deal. And, because there will be no slip-ups (and therefore less liability for you) if a professional prepares the deed and the closing statement.

However, be aware that not every title company will close a Subject To deal. In fact, I have been told by more than one closing agent that he could not do a Subject To closing because they are "illegal" (which they aren't) or because he "had" to call the bank and tell them what's happening (which he doesn't). So the moral is, find a trainable closing agent and make sure that you know *in advance* that he will close the deal as you requested.

Once at the closing, there will be a LOT of documentation to sign. Remember, you may never see your seller again, but in a sense, you're tied together by the fact that you're paying his debt. The goal of getting all these docs at closing is think about what COULD happen in the future and get it taken care of while everyone is in the same room.

You'll need all of these documents, and because many of them are unique to Subject To deals, you'll have to provide some of them to the attorney or title company.

Here's a complete list of docs you'll need at closing:

- A deed conveying the property from the seller to you (or your trustee or entity). This will be created by the title company or attorney closing the deal.
- A change of address form from the seller to the lender, notifying the lender that all further correspondence should be forwarded to you. This can be obtained from the post office
- **An undated payoff request from the seller to an unnamed lender** (because the loan could be sold between the time you buy the property and the time you're ready to pay it off).
- **A disclosure signed by the seller indicating that he knows what's happening and what the risks are,** that the loan will not be paid off, and that this could affect his ability to buy a home in the future.
- **A limited power of attorney** allowing you to deal with the seller's insurance and lender, should the need arise
- **If you're using it, the "Seller protection land trust"**

Note: I recommend that you PRESENT the last 4 documents to the seller at least a few days before the closing, so that if he has any questions, objections, or things he needs to reveal, you'll know ahead of time. They can be SIGNED at closing, but that shouldn't be the first time the seller sees them.

As with any purchase, you should always have the title searched and purchase an OWNER'S policy title insurance when purchasing a property Subject To. A lender's policy isn't necessary, unless you're getting a second loan to make up a down payment or pay for repairs—the lender already has a title

[14] You'll occasionally hear stories about sellers who sell their houses subject to their loan, then later decide that they still own it because the loan hasn't been paid off. The fact that they've "decided" they still own it doesn't make it so, but makes it inconvenient for you when they move back into it, or rent it to a friend. This normally happens when there's been a "kitchen table closing", though, not when they've had to go to an attorney's office and sign a bunch of paperwork.

policy, paid for by your seller when he borrowed the money, that stays in place even though the ownership of the property changes.[15]

How to Insure Subject To Deals

This topic has been the subject of much debate in the Sub To community. The reason is simple: the #1 reason that banks notice a change in ownership is that they receive a new insurance policy with a name on it that's not their borrowers.

For that reason, in years past, I and others have recommended that you simply leave the insurance policy in the seller's name and have a power of attorney to deal with the insurance company should a claim occur, or to add yourself or your company as co-insured, or to have a second policy in your name that the bank does not know about.

Then one day I bothered to ask an insurance agent about this, and boy, did I get thoroughly re-educated on this point. It turns out that this idea all fine and dandy as long as you never have a claim—which is, of course, exactly what insurance is for. Leaving the seller's old homeowner's policy in place means that his insurer won't pay when it becomes clear he's not living there anymore. You're left with a smoking hole in the ground that has an unpaid mortgage of $xxxxx on it, and no insurance payout to rebuild it or pay off the bank.

And guess what happens if you have two insurance policies, one in the seller's name and one in yours? The both claim that the other owes the money, and both refuse to pay.

So the best strategy, as it turns out, is to get a new, non-owner occupied policy in the name of the new owner, which will probably be your trustee for reason's I'll go into later, and have an insurance agent who's smart enough to say the right thing to the bank should they question the change in policy—which has happened to me at least a half-dozen times in the last 6 years.[16]

FINALLY! About the "Due on Sale" Clause

I bet you scanned ahead to find this section, because your #1 fear is that you'll be breaking the law, or thrown in jail, or get all your properties taken away because of the scary, scary due on sale clause.

In order to have a full understanding of the Subject To strategy, it's important to realize that nearly all conventional mortgages created after 1982[17] include a "due on sale" clause. The due on sale clause

[15] Occasionally, a title or escrow company will refuse to issue an owner's policy of title insurance on a property that you buy subject to existing financing. Whether they say so or not, the reason is that the title insurance won't cover the amount of the existing mortgage. If this happens to you, tell the title agent that they can include the existing mortgage under the "exclusions" clause. If they still refuse, find another title company.

[16] My favorite insurance agent, Tim Norris (NREIG.com), is probably the most knowledgeable insurance guy in the country where it comes to creative real estate deals. He's the one who's successfully dealt with these calls, and I highly recommend him.

[17] Thanks to the Garn-St. Germain Depository Institutions Act, a federal law that, amongst other things, made due on sale clauses legally enforceable. Prior to 1982, there were a number of court cases by lenders attempting to enforce such clauses,

basically says that if the borrower transfers the property without paying the loan off, the lender can, except in certain very specific instances, accelerate the loan and call the entire balance due immediately. If the loan is not paid off, the lender can foreclose on the mortgage, even if the payments are being made regularly.

That sounds pretty scary, but there are some practical realities to understand about the due on sale clause and its enforcement.

1. **It's unlikely that anyone who actually cares will ever discover that the property has changed hands**. In today's world, most mortgage note payments are collected by loan servicers who are under contract with the loan holder to receive and deposit payments from borrowers. The fact that you make your payment to Bank of America doesn't mean BOA actually owns the mortgage—in fact, the mortgage is probably part of a giant pool of mortgages that were purchased from the bank that originated your mortgage by Fannie Mae, then securitized and sold off in chunks to insurance companies, retirement portfolios, small cities in Sweden, and so on.

   The servicer really, really doesn't care if the check they get for loan number 24601 this month comes from the original borrower, you, or Santa Claus. It's not their mortgage, and the due on sale clause is certainly not their problem. Except in the few rare instances addressed below, I've never received a communication from the servicer wondering who I am, much less had payment rejected or a loan called due as a result.

   The exception to this rule is when the bank is a very small one. Local banks, savings and loans, and credit unions that don't sell their loans on the secondary market—and don't have very many loans to begin with—are quick to notice when Mrs. Smith's mortgage payment suddenly starts coming from Irv Investor.

   When the bank is relatively small, originated the loan and then DID sell it to one of the secondary market buyers, but retains the servicing, you may find yourself on the receiving end of a frantic phone call from the lending department, fearing that they'll lose the (very profitable) servicing business if FNMA or FHLMC finds out you've purchased the property. In these cases, it might be advantageous to either choose an alternative method of control (like a lease/option) if the property doesn't need too much additional investment in rehab, or to open an account in the borrower's name, at the same bank, and make a monthly deposit into it to be automatically withdrawn for the monthly payment.

2. **The due on sale clause says that the lender CAN call the loan due, not that they will or they must**. Even if the servicer or lender 'finds out', it's unlikely that they'll call the loan due as long as you keep it current, and here's why: they'd be crazy to! Since the real estate 'bubble' burst, over seven million mortgages in this country have gone through foreclosure. By the time the dust settles, that number will be closer to ten million. And the lender wants to turn a paying mortgage into a defaulted mortgage . . . why?

but they were mostly unsuccessful—in other words, the borrower was not made to pay off the loan following a transfer. Banks didn't like this, and they have a big, well-funded lobby. Thus, the due on sale provisions of the Garn-St. Germain Act.

3. **Selling a property subject to the existing loan is not a crime, and buying it subject to certainly isn't.** When he signed the mortgage, the borrower—your seller—agreed that he would pay off the mortgage when he sold the property, and if he didn't, the bank could call the loan due. Period. There's no 'due on sale jail' for the seller, and there's certainly not for you, as you never even agreed to ANYTHING with that lender.[18]

4. **Even if the lender does find out that the property has transferred, and they care, and they elect to exercise their due on sale clause, you have options other than to panic.** You could, for instance:

    a. Get new financing from another lender and pay off the loan
    b. Try to negotiate a formal assumption (or at least a novation) of the loan with the lender
    c. Try to quickly sell the property (and thus pay off the loan) before the lender can foreclose
    d. Let the lender foreclose
    e. Give the lender a deed in lieu of foreclosure
    f. Give a deed back to the seller

Needless to say, none of these choices are particularly good ones. In fact, depending on your financial situation and what you've done with the property, some of them could be out of reach, or could have major negative financial repercussions.

For instance, if you've leased-optioned your Subject To property, then find yourself in foreclosure because the bank called the loan due and you, for some reason, can't get other financing, your lease-option buyer will lose both his investment and his right to buy when the bank forecloses. He will, not to

[18] In the interest of a complete discussion, you should know that certain states— North Carolina, Florida, and Colorado that I know of—have created state-level legislation regarding buying properties subject to the existing loan. These regulations, which you can find online, generally do not OUTLAW these transactions, but do place rules around them which. , if you violate them, do put you in actual conflict with the law.

Second, there has been some discussion over the years about whether lenders, if they so desired, could find a way to bring a criminal case against the buyer or seller in a subject to deal.

In order to understand the logic of this argument, you have to know that for many years, real estate gurus have been teaching, *incorrectly*, that having the seller place the property in a land trust prior to selling it to you (by selling you the beneficial interest in the trust) defeats the due on sale clause. This is entirely incorrect, and is a misrepresentation of language in the Garn-St. Germain Act, which gives as an exception to the enforceability of the due on sale clause deed transfers made to "inter-vivos trusts". However, the exception goes on to say, "In which the borrower is and remains a beneficiary and that does not relate to a transfer of occupancy of the property"—two things that are clearly NOT happening in a due on sale purchase. The use of the land trust obscures the fact that ownership has changed hands, but does not "avoid" due on sale.

So, back to the crime thing . . . It's been theorized that a lender COULD claim that the transfer of a property into a trust actually represents an attempt by the borrower and buyer to defraud the lender, and thus be criminally actionable, although no case of this nature has ever been filed or tried, it's for this reason that several attorneys I know recommend sending a letter to the address to which the payments are made notifying them that you have bought the property and will be continuing to pay the loan. In this way, the theory goes, you've created a paper trail showing that you are NOT trying to fool the lender and have, in fact, notified them of the transaction. The servicers and lenders almost never respond, but you're not looking for permission—you're looking to CYA.

I know. Longest. Footnote. Ever.

put too fine a point on it, not be a happy camper, and unhappy campers tend to be litigious campers. So there are some fairly compelling reasons to avoid letting the bank know that you've taken over one of their loans. Luckily, it's a simple thing to do. Here's how:

How to Keep a Lender from Knowing You've Taken Over a Loan

Investors expend an awful lot of energy on hiding from lenders the fact that they have taken over a seller's loan, which is funny, in a way, because all these bad things that can happen practically never do. Nonetheless, we've gotten pretty good at staying under the radar with lenders, like this:

Don't tell the lender what you've done. This may seem obvious, but when a lender finds out that a loan has been taken over, it's because someone–most often the SELLER–tells them about it. See the lengthy footnote on the previous page for a counter-argument to this, but most investors prefer that the bank not be told what has happened.

Don't let the insurance lapse. While a large servicer will never, ever notice that the monthly payment is coming from someone other than the seller, it will absolutely notice when if the seller cancels his insurance and there's not already a new policy in place to replace it.

Above all, please don't panic. I used to live in mortal fear that some bank would find out that I'd taken over payments on a loan, and make my life and my seller's life a living hell.

Live and learn: I am absolutely certain that at least 5 of the lenders/servicers of loans I've taken over are 100% aware of what's happened. 3 of those have called me when they thought the insurance lapsed, they called the seller, and the seller TOLD THEM what happened. The other 2 figured it out for themselves, called and demanded immediate payment of the loan, and when I refused, stopped calling.

Let me summarize: most banks won't find out that the seller has violated the due on sale clause. If they do, they probably won't care. If they care, you have lots of options other than paying off the loan.

You'll be fine.

What Else Can Go Wrong with a Subject To Deal?

You WORRY about the due on sale clause, but the things that most commonly go wrong with Subject To deals have little to do with the loan randomly being called due. Problems aren't frequent, but they do happen. Here are the big ones:

Your seller declares bankruptcy. You might think that, once the deed is in your name, a seller bankruptcy would not affect the loan, but you'd be wrong. Check out your own mortgage: it says that, if you declare bankruptcy, your bank can institute foreclosure proceedings against you <u>even if your note payments are current</u>. The reasons that they do this are complicated; suffice it to say that they're protecting their investment.

The fact that you have the deed does not mean that the bank can't and won't foreclose if the seller declares bankruptcy. When this happens to you—and it eventually will, if you do enough of these

deals—you have a number of options ranging from selling the property to refinancing to letting the bank take the property (after all, it's not your credit that's being ruined—and in this case, the seller brought it on himself!). You'll panic, you'll curse, you'll sweat, but you'll probably be OK—especially if you remembered to have the seller sign that disclosure I gave you that said you didn't have to make payments if he declared bankruptcy!

Your biggest concern in this case will be if you've agreed to sell the property to someone else, whether via a lease-option, contract for deed, or wrap-around mortgage. You'll need to find a way to make your buyer whole, whether by giving him a discount for paying off early or by refunding his down payment and paying him for any equity he's built up. And always disclose to YOUR buyer, in writing, in the lease or other contract, that this is a possibility and insist that he hold you harmless if it occurs.

In fact, all of your biggest problems with these deals will come from the seller himself. Invariably, every single time I've taken over a loan, the seller has been as pleased as punch to get rid of the property, get the back payments made up, and so on. Occasionally, from a few months to a few years later, I get a call from the seller (or from a mortgage broker) demanding that I pay off the mortgage because he wants to buy a house/get a car/qualify for government assistance. And no amount of reminding them that you never said you'd pay the loan off will do you a bit of good. In fact, at least two sellers have threatened me with legal action after I saved their credit! And you know what settles them down right away? Showing them that disclosure they signed that specified that you were not agreeing to pay off the property at any particular time.

Incomplete due diligence on your part. Make sure you've read the mortgage and note before you close. Double check the balance, the payments, and that the payments are current. I recently agreed to take over a property in a divorce case Subject To the existing mortgage with the understanding that the loan was completely current. Upon calling the bank, I discovered that the ex-wife was three months in arrears, much to my surprise AND the ex-husband's.

If you get money from the seller at closing, don't treat it as profit. Many courses on Subject To would have you treat the cash that you get from sellers as spendable money. The problem is, treating it as such is taking your profit from the deal up front, and unless you're going to sell the property very quickly, that's a mistake from several perspectives. Money that the seller gives you at closing is to 'make up for' equity that the property doesn't have; it should be either paid directly to the lender to actually put that equity into the deal or put in reserve to be used for payments, maintenance, turnovers, and so on.

Ethics in Subject To Deals

We've spent a lot of time in this program talking about how to make deals work—contractually, in terms of the negotiation, and in the evaluation.

There's one more issue that it's worth putting a lot of thought and effort into, and that's making sure that you don't lose sight of the very important fact that what you do as a creative buyer has the potential to positively or negatively impact the lives of the people with whom you do it. And unlike a traditional investor, who buys a property and has no further interaction with the seller, your behavior in a Subject To deal continues to affect your seller for years.

Sellers are not banks. They don't make the decision to do deals with us because they've carefully qualified us and assured themselves that we're able to do what we've said we would, or that we've successfully done things like it in the past, or that we have the experience to make the deal work.

They make the decision to do these deals for two reasons: number one, they're in pain, and our solution resolves some or all of that pain. As you're probably aware, people in pain do things that aren't strictly speaking rational or logical, and often do things without thinking them all the way through.

The second reason they do them is because they trust us—and that means that we have to strive to be worthy of that trust.

It's crucial that you realize that:

1. **The people we do financial Subject To transactions are generally NOT very knowledgeable about finance in general or creative finance in particular.**

2. **They are not at all experienced or even educated in the techniques that we use. As a result—rightly or wrongly—they look to us to treat them fairly, do as we say we will do, explain the benefits of our strategies to them, disclose the possible downsides, AND TO DO EVERYTHING IN OUR POWER TO MAKE SURE THOSE DOWNSIDES NEVER OCCUR.**

The line that we always walk as creative buyer that, while we recognize that we didn't create the seller's problems, we also can't make a deal that's bad for US out of empathy or sympathy for what has happened to them before we came into the picture. We can't "make the seller's problem our problem", but we can take on the *parts* of the problem as long as we're adequately compensated for doing so.

And while it's not our "job" to give every seller everything they want or even think they "need", it's absolutely our job to make sure that once we HAVE agreed to do something, we have the knowledge, experience, and will to actually DO that[19].

While each individual situation may require a separate evaluation of where the "ethical" line is, there are certain rules you can follow that will help you NOT mess up.

1. **Only do Subject To that actually make you money**. Yes, this is as much for the seller's protection as it is for yours. When you do marginal deals that might not cash flow, or might not be worth what you need them to be, or whatever, you are putting your profits in danger…but more importantly, you're risking the financial health of your seller. If you don't get paid, there's a much higher chance their bank won't get paid. Do not be seduced by marginal deals based on the, "*Well, I have no money in it, so how can I lose*?" theory.

[19] Every so often, you'll be faced with responding to someone who's not in or familiar with our industry who accuses you of "bottom fishing" or being a "shark" or "getting rich by taking advantage of other people's misery". If you think that this is, in fact, what you do, I'd remind you to always think in terms of what would have happened to the seller if you, or someone like you, had not come along. Sellers often choose us as the best of a lot of bad choices that that their situation has left them with, which isn't what we'd prefer in an ideal world, but which you can point out to the haters when they start hating.

2. **Make paying the debts you create in the course of buying creatively your #1 priority**. Every small business, and that includes real estate businesses, suffer occasional (or regular, depending on the business planning skill of the owner!) cash flow issues. There will be months where you've got more money that you know what to do with, and other months when you're figuring out whether you'd rather keep the lights on or the phone on.

   During the lean times, you'll be very tempted to ignore the payments on the you took over. Instead, you might want to pay the creditors who are going to ding your credit score if the payment is late that month.

   In my humble-but-entirely-correct opinion, this is good business but bad ethics. The fact that your creative seller or private lender trusted you to do what you said you'd do, rather than checking out your credentials to the ends of the earth as did your other creditors, means you have a higher moral obligation to the creative seller than to the institutional lenders. You wanted them to trust you, they did, and now you have a big-time duty to make sure that that trust was not misplaced.

3. **Stay in the middle.** Yes, you can wholesale Subject To deals. But if you do, don't directly assign the deal to your buyer; stay in the middle so that your buyer pays you and you pay the bank. You were the one who promised the seller his loan would be paid, NOT your buyer. The only way to assure that your promise is kept is if YOU keep it.

4. **Disclose every possible hitch in the deal in writing**. It's not the only thing, but it's certainly an important thing.

The reason sellers, in particular, do creative deals with us is that they have a serious personal problem of some sort that they're trying to solve, in part, through the sale of their property. On the positive side, we're able to help them do this. On the negative side, their own problems tend to make them not pay very close attention to, or to later forget, any warnings we've given them about the deal. That's why disclosing the risks IN WRITING is so important.

An Exercise for You: Running the Numbers

Figuring out whether you can do a Subject To deal on a particular property is actually much simpler than doing the math for a seller-held finance deal, because the rate, terms, and balance of the loan are already set. You just have to figure out if you can work with what's already there.

As always, you'll need some information to begin with, including:

- The after-repair value of the property
- The repair costs
- The estimated holding costs
- If the property is to be a 'keeper', the estimated monthly income you can expect to receive
- The monthly taxes and insurance once the property is occupied
- The percentage of gross rents you'll set aside for vacancy, maintenance, and replacement reserves
- Any management fees

- Any other operating expenses you'll pay monthly once the property is in service—HOA fees, utilities, etc.
- The details of the loan you're proposing to take over, including:
    - The balance
    - The rate of interest (I assume you already know it's a fixed rate loan, or you wouldn't be at this stage of the evaluation)
    - The monthly payment
    - What the monthly payment includes: Principal? Taxes? Insurance? Mortgage insurance?
    - The number of months remaining in the loan[20]

Once you've gathered these numbers, you'll need to ask yourself some questions about your exit strategy, including:

- What is my primary exit strategy?
- What is my secondary strategy if the primary strategy doesn't work out?
- Looking at the two (or more) exit strategies, what is the longest period of time for which I will need to be making payments on this loan?
- What is my equity goal, as a hard dollar figure?
- What is my minimum monthly cash flow goal, if applicable?
- Will I need additional financing for repair costs, and if so, how will I get it and at what rate and terms?

The answers to these questions will allow you to calculate all the terms of the seller-held loan, like this:

After Repair Value of the Property
- Repair costs
- Closing costs to be paid by you
- Financing costs (this will typically only come into play if you have additional financing)
- Holding costs until property is 'in service' (or sold, if you're retailing it)
- Balance of the loan you're assuming
- <u>Sales costs (if retailing)</u>

Equity in the Property

[20] You will only run across this rarely, so I'll stick it in a footnote rather than discuss it in the text of the manual. Occasionally, you'll find a seller with a loan that, because he's had it a long time or because it was a 15-year amortization to start with, is well into the 'principal payoff' stage of the amortization. If you've ever looked at an amortization graph, you know that at the beginning of a fully amortized loan, almost all the payment is interest and at the end it's nearly all principal, *even though the size of the payment is exactly the same*.

So what? Well, if you encounter a loan that is more than about 9 years old (assuming a 30-year mortgage at a rate under 7%), you may want to take a look at an amortization chart and see if it's worth taking over EVEN IF IT RESULTS IN LOWER CASH FLOW THAN YOU'D USUALLY ACCEPT. Why? Because such a significant part of your monthly payment is buying you equity—in other words, adding to your bottom line despite not adding to your spendable cash—that you might very well decide it's worth it to take the lower cash flow but higher monthly wealth-building.

Equity you'll be buying-your equity goal, if a negative number, is the amount of money the seller would have to bring to the table for you buy his property.

Gross Expected Monthly Income
- Monthly taxes (remember not to subtract this twice—it may be included in the payment)
- Monthly insurance
- Monthly reserve
- Other expenses
- Monthly payment on any secondary financing
- Monthly payment on the loan you're on which you're taking over the payments

Your Cash Flow

If this cash flow is lower than your goal, you'll have to decide whether to accept it or ask the seller to refinance, if possible, to get a better loan for you to take over.

Once you and the seller have agreed to the terms of the purchase, it's time to put them on paper to tie the deal up.

Phone Interview Questionnaire for Sellers
Date:

My name is _____. What's yours?_____ Are you the owner?

(If not, who is? Why are you calling for them?)

In case we get cut off, what's your number?

What is the address of the property you'd like to sell?

What neighborhood is that in?_____ What's the school district? _____

How did you hear about me?

Please tell me about your property:

What type is it (1 fam, 2 fam etc)?
Is it a rental, or do you live there?_____
How many rms, bdrms, and baths does it have?
Do you know how old the house is?_____
What's the construction?
Does it have a basement?____ What kind?_____
A garage?_____ What kind?_____ Does it have public water, sewer, and electric?_____
What kind of heating system?_____Cooling?
What's the condition of the: Roof_____ Approx. Age_____Plumbing_____ Approx. Age_____
Electric_____Approx. Age_____Furnace/Air_____Approx. Age_____ Foundation
Kitchen _____ Approx. Age_____ Bath_____ Approx. Age_____
If you were going to continue to live there, what work would you do?

If rental:
Unit 1 Brs/Ba ___/___ Rent$_____ Occupied?___
Unit 2 Brs/Ba ___/___ Rent$_____ Occupied?___
Unit 3 Brs/Ba ___/___ Rent$_____ Occupied?___
Unit 4 Brs/Ba ___/___ Rent$_____ Occupied?___
Who pays: Heat?_____ Water?_____
Cooking gas? _____ Electric?_____

Please tell me about yourself.

How long have you owned this property?
Why are you selling?
How long has your home been on the market?
Is it listed w/ a real estate agent?_____Which one?_____For how much?
When do you need to sell?
What will you do if it doesn't sell by then?_____
How much are you asking?_____How did you decide on that figure?
What's the least you could take for all cash and a quick closing?
How much do you owe on the property? _____Are your payments current?
How much are they? _____ Does that include taxes and insurance?____ What's the interest rate?_____
Is that fixed rate, or adjustable?_____
Is there anything else you think I should know?

Contract to Purchase Real Estate

I/we offer to purchase from _____ the real estate located at _____ (Hereinafter called "Real Estate")

This real estate will include all the land and all rights to the land and the property, and all buildings, fixtures, heating, electrical, and plumbing fixtures and facilities, window shades, curtain rods, screens, storm windows and doors, wall-to-wall carpeting, ceiling fans, landscaping, garage door openers, and any oven/ranges, refrigerators, washers/dryers, and window A/C units currently on the premises.

Purchase price will be: **$**_____ , payable as follows: buyer to take over payments on seller's first mortgage loan to _____(Lender)_____ with a total balance not to exceed $ _____ at a fixed interest rate not to exceed ____% with _____ months remaining.

At the closing, the Seller will give the Buyer a General Warranty Deed with release of dower. The closing will be no later than _____. The title will be free and clear, and will not have any building or health department orders against it. The title does not have any easements or restrictions except: _____

Seller will give buyer possession of the property on _____. Taxes and assessments will be prorated to the day of closing. Seller will pay for deed preparation, transfer taxes or conveyance fees, title search, and title insurance. Buyer agrees to pay for closing and recording fees. If the property is currently rented, the damage deposits will be transferred to the Buyer at closing, and the balance of any rents already paid for that month will be transferred to the Buyer at closing. In the event that the title search discloses defects which make Buyer unwilling to close, Seller agrees to pay for such title search directly.

Seller certifies that the Real Estate is zoned_____ and is not in a historic district, not in a flood plain, and not in an Environmental Quality District. Seller agrees that at the time of closing, the Real Estate will be in the same condition as it is on the date of this offer.

Seller will allow Buyer and/or his inspectors complete access to the property for a whole-house inspection, a wood-destroying pest inspection, and any other inspections the Buyer deems necessary, **all at the Buyer's expense**. If the results of these inspections are not satisfactory to the Buyer, the Buyer will not be obligated to close. Seller will provide Buyer with a key to the property for the purpose of completing these inspections, as well as a day and evening phone number for all occupants in order to schedule the inspections.

This accepted offer is the entire agreement between the Buyer and the Seller, and no other agreements have been made that are not part of this contract or its addendum, if there is one. Buyer and Seller agree that, upon any default by the Buyer, Seller will keep any earnest money as full liquidated damages.

Federally mandated lead disclosure clause: Every Buyer of any interest in residential real property on which a residential dwelling unit was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. If the dwelling unit was built prior to 1978, Buyer has the right to inspect for lead, at Buyer's

cost, for a minimum of ten (10) days following contract acceptance. BUYER WAIVES THE RIGHT TO THIS INSPECTION.

OTHER TERMS:
This offer shall remain open for acceptance until _____ .

_____
Buyer Date
I/We as Sellers accept the above offer.

_____ _____
Seller Date Witness

_____
Seller Date

TRUSTEE AUTHORIZATION &
LIMITED POWER OF ATTORNEY
(WITH DURABLE PROVISION)

NOTICE: THIS IS AN IMPORTANT DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS. THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON WHOM YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO PLEDGE, SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. YOU MAY SPECIFY THAT THESE POWERS WILL EXIST EVEN AFTER YOU BECOME DISABLED, INCAPACITATED OR INCOMPETENT. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS FOR YOU. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

TO ALL PERSONS, be it known, that we, **_____**, as Grantor/s, do hereby make and grant this Trustee Authorization and limited and specific Power of Attorney to **_____**, Trustee of "_____" and appoint and constitute said individual as my attorney-in-fact.

My named attorney-in-fact shall have full power and authority to undertake, commit and perform only the following acts on my behalf to the same extent as if I had done so personally; all with full power of substitution and revocation:

Settling insurance claims, endorsing refund or settlement checks made payable to the undersigned, requesting payoffs of any kind, dealing with representatives of insurance and mortgage companies and any and all other actions necessary to manage, maintain, refinance, sell or otherwise encumber or convey the property commonly known as **_____**

The authority granted shall include such incidental acts as are reasonably required or necessary to carry out and perform the specific authorities and duties stated or contemplated herein.

Special Durable Provisions:

This Power of Attorney shall not be affected by subsequent disability or incapacity of the Grantor.

Other Terms:

This Trustee Authorization and Limited Power of Attorney shall take effect on the date signed and shall remain in effect until the final disposition of the property from the Trust by the Trustee.

Signed under seal this **_____** day of **_____, 20____**
Signed in the presence of:

GRANTED BY:

_____
, Grantor

_____
, Grantor

STATE OF Ohio }
}ss:
COUNTY OF **Hamilton** }

On this _____ day of _____ **20__**, before me a Notary Public, in and for the State and County aforesaid, personally appeared _____, Grantor/s and acknowledged to me that they executed the above instrument for the purposes therein mentioned. That, they did examine and read same and did sign the foregoing instrument and the same is of their free act and deed.

_____
Notary Public

I accept this Power of Attorney,

_____
(name of the trustee, *** land trust, attorney-in-fact)**

DISCLOSURE AND ACKNOWLEDGEMENT
OF PROPERTY SALE SUBJECT TO AN EXISTING MORTGAGE LOAN

Seller(s) please initial after each clause to indicate that you've read and understood this disclosure.

The undersigned Sellers of the Property located at _____, hereby acknowledge that they fully understand the following:

1. We are selling our property, and will have no ownership of it or rights to it after to closing.
_____ _____

2. Our existing mortgage will remain in place. The buyer will make the monthly payments, but has made us no promise or guarantee of any sort that the mortgage will be paid off before its due date. _____ _____

3. The mortgage will continue to appear on our credit report. Depending on our income and other factors, this may or may not make it difficult for us to get a new mortgage in the future. If such an issue arises, we will contact the buyers immediately to explore the options for resolving the situation.
_____ _____

4. Because we will no longer be making the payments, we will no longer be entitled to the tax deductions that the IRS gives to mortgage holders for interest payments on this loan _____ _____

5. Because we will no longer own the property, we will not be entitled to any portion of any insurance settlement, rents, future profits, or any other proceeds from the future sale, rental, or destruction of the property. _____ _____

6. Our Mortgage Loan probably contains a "Due on Sale" provision that would allow the lender, if it chose, to call the loan due as a result of this sale. If this happens, a foreclosure action may be initiated against us even if the payments have all been made on time and in full. If this happens, the buyer will make every effort to resolve the situation with the lender, but will be under no obligation to pay the amount demanded. _____ _____

7. We will continue to fully cooperate with the buyer to provide any information or assistance necessary for the continued success of this arrangement. _____ _____

8. We do not plan to file bankruptcy. We understand that if we file bankruptcy, our lender will probably foreclose on the property, even if the payments have been made on time and in full. We understand that this would represent a major hardship for the buyer, and agree that we will not include this mortgage as a debt in any future bankruptcy that we may file. We agree that if we do include this debt in any bankruptcy, that the buyer will no longer be obligated to make payments on the mortgage note. _____ _____

Seller Signatures:

_____date:_____ _____date:_____

Change of Address

To: Date:

_____
_____
_____

To whom it may concern:

Please send all future correspondence, including payment books, tax forms, and other communications regarding our loan number _____ to

[Seller name]
P.O. Box 58279
Cincinnati, Ohio 45258

Sincerely,

_____ _____
[Seller name 1] Social Security #

_____ _____
[Seller name 2] Social Security #

Lender: Date: _____

_____

_____

_____

Payoff Request

Please send a written payoff on our loan #_____ to
, Fax number_____, phone #_____.

_____ _____
[BORROWER NAME] Social Security or EIN #

_____ _____
[BORROWER NAME] Social Security or EIN #

_____
Witness

1. DO NOT, I repeat DO NOT use this agreement until you've had it reviewed by a knowledgeable local attorney!

AGREEMENT AND DECLARATION OF TRUST
«TRUSTNAME» LAND TRUST

THIS AGREEMENT AND DECLARATION OF TRUST Is made and entered into this «creationday» day of «Creationmonth», «creationyear», by and between «settlor» as Settlor, (herein referred to as "Settlor",) whose address is «Settloraddress», and «Trustee», whose address is «Trusteeaddress», (referred to herein as the "Trustee", which designation shall include all successor trustees,) for the benefit of «Beneficiary» as Beneficiaries, (referred to herein as the "Beneficiaries", whether one or more, which designation shall include all successors in interest of any Beneficiary),. and «Lender», as Lender,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. **Trust Property.** The Settlor is about to convey or cause to be conveyed to the Trustee by deed, absolute in form, the property described in the attached Exhibit "A", which said property, herein referred to as "Trust Property", shall be held by the Trustee, in trust, for the following uses and purposes, under the terms of this Agreement, subject to the provisions set forth in paragraph 20.

2. **Consideration.** No consideration was paid by Trustee for such conveyance. The conveyance will be accepted and will be held by Trustee subject to all existing encumbrances, easements, restrictions or other clouds or claims against the title thereto, whether the same are of record or otherwise. The property will be held on the trusts, terms and conditions and for the purposes hereinafter set forth, until the whole of the trust estate is conveyed, free of this trust, as provided herein.

3. **Beneficiaries.** The persons named in the attached Exhibit "B" are the Beneficiaries of this Trust, and as such, shall be entitled to all of the earnings, avails and proceeds of the Trust Property according to their interests set opposite their respective names.

4. **Interests.** The interests of the Beneficiaries shall consist solely of the following rights respecting the Trust Property:

a. The right to direct the Trustee to convey or otherwise deal with the title to the Trust Property as set out herein, so long as such conveyance complies with paragraph 20.

b. The right to manage and control the Trust Property.

c. The right to receive the proceeds and avails from the rental, sale, mortgage, or other disposition of the Trust Property, subject to the Lender's claims under paragraph 20.

The foregoing rights shall be deemed to be personal property and may be assigned and otherwise transferred as such. No Beneficiary shall have any right, title or interest, as realty, in or to any real estate held in trust under his Agreement, or the right to require partition of such real estate, but shall have only the rights set out above, and the death of a Beneficiary shall not terminate this Trust or in any manner affect the powers of the Trustee.

5. **Powers of Trustee.**

a. With the consent of the Beneficiary and Lender, the Trustee shall have authority to issue notes or bonds and to secure the payment of the same by mortgaging the whole or any part of the Trust Property; to borrow money by creating notes signed by him in his capacity as Trustee; to invest such part of the capital and the profits earned by the capital and the proceeds of the sale of bonds and notes in such real estate, equities in real estate, and mortgages in real estate in the United States of America, as he may deem advisable.

b. With the consent of the Beneficiary, the Trustee shall have the authority to hold the legal title to all of the Trust Property, and shall have the exclusive management and control of the property as if he were the absolute owner thereof, and the Trustee is hereby given full power to do all things and perform all acts which in his judgment are necessary and proper for the protection of the Trust Property and for the interest of the Beneficiaries in the property of the Trust, subject to the restrictions, terms, and conditions herein set forth.

c. Without prejudice to the general powers conferred on the Trustee hereunder, it is hereby declared that the Trustee shall have the following powers, with the consent of the Beneficiaries:

(1) To purchase any real property for the Trust at such times and on such terms as may seem advisable; to assume mortgages upon such property.

(2) To sell at public auction or private sale, to barter, to exchange, or otherwise dispose of, the whole of the Trust Property or any part thereof, subject to such restrictions, for such consideration of whatever kind, and upon such terms and conditions as may seem judicious; to secure payment upon any loan or loans of the Trust, by mortgage with or without power of sale, and to include such provisions, terms, and conditions as may seem desirable.

(3) To rent or lease the whole or any part of the Trust Property for long or short terms, but not for terms exceeding the term of the Trust then remaining.

(4) To repair, alter, tear down, add to, or erect any building or buildings upon land belonging to the Trust; to fill, grade, drain, improve, and otherwise develop any land belonging to the Trust; to carry on, operate, or manage any building, apartment house, or hotel belonging to the Trust.

(5) To make, execute, acknowledge, and deliver all deeds, releases, mortgages, leases, contracts, agreements, instruments, and other obligations of whatsoever nature relating to the Trust Property, and generally to have full power to do all things and perform all acts necessary to make the instruments proper and legal.

(6) To collect notes, obligations, dividends, and all other payments that may be due and payable to the Trust; to deposit the proceeds thereof, as well as any other moneys from whatsoever source they may be derived, in any suitable bank or depository, and to draw the same from time to time for the purposes herein provided.

(7) To pay all lawful taxes and assessments and the necessary expenses of the Trust; to employ such officers, brokers, engineers, architects, carpenters, contractors, agents, counsel, and such other persons as may seem expedient, to designate their duties and fix their compensation; to fix a reasonable compensation for their own services to the Trust, as organizers thereof.

(8) To represent the Trust and the Beneficiaries in all suits and legal proceedings relating to the Trust Property in any court of law of equity, or before any other bodies or tribunals; to begin suits and to prosecute them to final judgment or decree; to compromise claims or suits, and to submit the same to arbitration when, in their judgment, such course is necessary or proper.

(9) To arrange, pay for and keep in force, in the name and for the benefit of the Trustee, such insurance as the Trustee may deem advisable, in such amounts, and against such risks as deemed necessary by the Trustee.

6. **Duties of Trustee.** It shall be the duty of the Trustee in addition to the other duties herein imposed upon them:

a. To keep a careful and complete record of all the beneficial interests in the Trust Property with the name and residence of the person or persons owning such beneficial interest, and such other items as they may deem of importance or as may be required by the Beneficiaries.

b. To keep careful and accurate books showing the receipts and disbursements of the Trust and also of the Trust Property, and such other items as they may deem of importance or as the Beneficiaries hereunder may require.

c. To keep books of the Trust open to the inspection of the Beneficiaries at such reasonable times at the main office of the Trust as they may appoint.

d. To furnish the Beneficiaries at special meetings at which the same shall be requested a careful, accurate, written report of their transactions as Trustees hereunder, of the financial standing of the Trust, and of such other information concerning the affairs of the Trust as they shall request.

e. To sell the Trust Property and distribute the proceeds arising from such a sale:

(1) If any property shall remain in trust under this Agreement for a term which exceeds that allowed under applicable state law, the Trustee forthwith shall sell same at public sale after a reasonable public advertisement and reasonable notice to the Beneficiaries and, after

deducting its reasonable fees and expenses, it shall divide the proceeds of the sale among the Beneficiaries as their interests may then appear, without any direction or consent whatsoever, or

(2) To transfer, set over, convey and deliver to all the then Beneficiaries of this Trust their respective undivided interests in any non-divisible assets, or

(3) To transfer, set over and deliver all of the assets of the Trust to its Beneficiaries, in their respective proportionate shares, at any time when the assets of the Trust consist solely of cash.

f. To execute deeds required under the terms of paragraph 20, should such be required.

7. **Compensation of Trustee.** The Beneficiaries jointly and severally agree that the Trustee shall receive the sum of $**«**trusteemonthlyfee**»** per month for his services as Trustee hereunder.

8. **Liability of Trustee.** The Trustee and his successor as Trustee shall not be required to give a bond, and each Trustee shall be liable only for his own acts and then only as a result of his own gross negligence or bad faith.

9. **Removal of Trustee.** The Beneficiaries shall have their power to remove a Trustee from his office or appoint a successor to succeed him.

10. **Resignation and Successor.**

a. Any Trustee may resign his office with thirty (30) days written notice to Beneficiaries and Beneficiaries shall proceed to elect a new Trustee to take the place of the Trustee who had resigned, but the resignation shall not take effect until a certificate thereof, signed, sealed, and acknowledged by, the Trustee, and a certificate of the election of the new Trustee, signed and sworn to by the Beneficiaries and containing an acceptance of the office, signed and acknowledged by the new Trustee, shall have been procured in a form which is acceptable for recording in the registries of deeds of all the counties in which properties held under this instrument are situated. If the Beneficiaries shall fail to elect a new Trustee within thirty (30) days after the resignation, then the Trustee may petition any appropriate court in this state to accept his resignation and appoint a new Trustee.

b. Any vacancy in the office of Trustee, whether arising from death or from any other cause not herein provided for, shall be filled within thirty (30) days from the date of the vacancy and the Beneficiaries shall proceed, to elect a new Trustee to fill the vacancy, and immediately thereafter shall cause to be prepared a certificate of the election containing and acceptance of the office, signed, sealed, and acknowledged by the new Trustee, which shall be in a form acceptable for recording in the registries of deeds of all the counties in which properties held under this instrument are situated.

c. Whenever a new Trustee shall have been elected or appointed to the office of Trustee and shall have assumed the duties of office, he shall succeed to the title of all the properties of the Trust and shall have all the powers and be subject to all the restrictions granted to or imposed upon the Trustee by this agreement, and every Trustee shall have the same powers, rights, and interests regarding the Trust Property, and shall be subject to the same restrictions and duties as the original Trustee, except as the same shall have been modified by amendment, as herein provided for.

d. Notwithstanding any such resignation, the Trustee shall continue to have a lien on the Trust Property for all costs, expenses and attorney's fees incurred and for said Trustee's reasonable compensation.

11. **Objects and Purposes of Trust.** The objects and purposes of this Trust shall be to hold title to the Trust Property and to protect and conserve it until its sale or other disposition or liquidation. The Trustee shall not undertake any activity not strictly necessary to the attainment of the foregoing objects and purposes, nor shall the Trustee transact business within the meaning of applicable state law, or any other law, nor shall this Agreement be deemed to be, or create or evidence the existence of a corporation, de facto or de jure, or a Massachusetts Trust, or any other type of business trust, or an association in the nature of a corporation, or a co-partnership or joint venture by or between the Trustee and the Beneficiaries, or by or between the Beneficiaries.

12. **Exculpation.** The Trustee shall have no power to bind the Beneficiaries personally and, in every written contract he may enter into, reference shall be made to this declaration; and any person or corporation contracting with the Trustee, as well as any beneficiary, shall look to the funds and the Trust Property for payment under such contract, or for the payment of any debt, mortgage, judgment, or decree, or for any money that may otherwise become due or payable, whether by reason of failure of the

Trustee to perform the contract, or for any other reason, and neither the Trustee nor the Beneficiaries shall be liable personally therefor.

13. **Dealings with Trustee** No party dealing with the Trustee in relation to the Trust Property in any manner whatsoever shall have any obligation or privilege: to see that the terms of this Trust Agreement have been complied with; to inquire into the authority of the Trustee, to inquire into the necessity or expediency of any act of the Trustee; or the terms of this Trust Agreement. Every deed, mortgage, lease or other instrument executed by the Trustee in relation to the Trust Property shall be conclusive evidence, in favor of any person claiming any right, title, or interest under the Trust, that at the time of its delivery the Trust created under this Agreement was in full force and effect; that instrument was executed in accordance with the terms and conditions of this Agreement, and, all its amendments, if any; and is binding upon all Beneficiaries under it; that the Trustee was duly authorized and empowered to execute and deliver every such instrument; if a conveyance has been made to a successor or successors in trust, that the successor or successors have been appointed properly and are vested fully with all the title, estate, rights, powers, duties and obligations of its, his or their predecessor in Trust.

14. **Recording of Agreement.** This Agreement shall not be placed on record in the county in which the Trust Property is situated, or elsewhere, but if it is so recorded, that recording shall not be considered as notice of the rights of any person under this Agreement derogatory to the title or powers of the Trustee.

15. **Name of Trustee.** The name of the Trustee shall not be used by the Beneficiaries in connection with any in advertising or other publicity whatsoever without the written consent of the Trustee.

16. **Income Tax Returns.** The Trustee shall be obligated to file any income tax returns with respect to the Trust, as required by law, and the Beneficiaries individually shall report and pay their share of income taxes on the earnings and avails of the Trust Property or growing out of their interest under this Trust.

17. **Assignment.** The interest of a Beneficiary, or any part of that interest, may be transferred only by a written assignment, executed in duplicate and delivered to the Trustee. The Trustee shall note its acceptance on the original and duplicate original of the assignment, retaining the original and delivering the duplicate original to the assignee as and for his or her evidence of ownership of a beneficial interest under this Agreement. No assignment of any interest under this Agreement, other than by operation of law, that is not so executed, delivered and accepted shall be valid without the written approval of all of the other Beneficiaries who possess the power of direction. No person who is vested with the power of direction, but who is not a Beneficiary under

this Agreement, shall assign that power without the written consent of all the Beneficiaries.

18. **Individual Liability of Trustee.** The Trustee shall not be required, in dealing with the Trust Property or in otherwise acting under this Agreement, to enter into any individual contract or other individual obligation whatsoever; nor to make itself individually liable to pay or incur the payment of any damages, attorney's fees, fines, and penalties, forfeitures, costs, charges or other sums of money whatsoever. The Trustee shall have no individual liability or obligation whatsoever arising from its ownership, as Trustee, of legal title to the Trust Property, or with respect to any act done or contract entered into or indebtedness incurred by it in dealing with the Trust Property or in otherwise acting under this Agreement, except only as far as the Trust Property and any trust funds in the actual possession of the Trustee shall be applicable to the payment and discharge of that liability or obligation.

19. **Reimbursement and Indemnification of Trustee.** If the Trustee shall pay or incur any liability to pay any money on account of this Trust, or incur any liability to pay any money on account of being made a party to any litigation as a result of holding title to Trust Property or otherwise in connection with this Trust, whether because of breach of contract, injury to person or property, fines or penalties under any law, or otherwise, the Beneficiaries, jointly and severally agree that on demand they will pay to the Trustee, with interest at the rate of **«**interestrate**»** per annum, all such payments made or liabilities incurred by the Trustee, together with its expenses, including reasonable attorney's fees, and that they will indemnify and hold the Trustee harmless of and from any and all payments made or liabilities incurred by it for any reason whatsoever as a result of this Agreement; and all amounts so paid by the Trustee, as well as its compensation under this Agreement, shall constitute a lien on the Trust Property. The Trustee shall not be required to convey or otherwise deal with the Trust property as long as any money is due to the Trustee under this Agreement; nor shall the Trustee be required to advance or pay out any money on account of this Trust or to prosecute or defend any legal proceedings involving this Trust or any property or interest under this Agreement unless it shall be furnished with sufficient funds or be indemnified to its satisfaction.

20. **Lender's Protection.** As a direct and material inducement to sell this property subject to an existing loan described in Addendum A, The Beneficiaries of this Trust offered as their own suggestion, with no request by the Seller, to forego the delays associated with foreclosure by law in the event of the Beneficiaries' failure to make payments due under the said note.

Accordingly the Trustee is instructed, and agrees to:

Upon written notice to the Trustee, from the Seller, that the Beneficiaries have fallen 30 days in arrears in their payments to Seller's Lender, the Trustee shall notify the Beneficiary that they have 15 days to cure such arrearage or prove that it does not exist.

In the event that Beneficiary shall not cure the arrearage within that 15 days, nor prove that such arrearage does not exist, the Trustee shall prepare and deliver a deed transferring the subject Property to Seller within 5 days of the expiration of the 15-day period. All time periods referenced herein shall be computed in ordinary calendar days.

In the event that the Property shall be sold the Trustee shall receive proof that all sums due under Addendum A have been paid before releasing proceeds to the Beneficiary.

_____
For the Beneficiary

_____
For the Seller

21. **Entire Agreement.** This Agreement contains the entire understanding between the parties and may be amended, revoked, or terminated only by written agreement signed by the Trustee and all of the Beneficiaries, and with the consent of the Lender if a balance is due under Addendum A. This Agreement may be signed in counterparts, at different times and places.

22. **Governing Law.** This agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of **«**State**»**. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in the County of **«**County**»** and in the State of **«**State**»**. In the event that litigation results from or arises out of this Agreement performance thereof, the parties agree to reimburse the prevailing party's reasonable attorney's fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing party may be entitled. In such event, no action shall be entertained by said court or any court of competent jurisdiction if filed more than one year subsequent to the date the cause(s) of action actually accrued regardless of whether damages were otherwise as of said time calculable.

23. **Binding Effect**. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon any successor trustee under It, as well as upon the executors, administrators, heirs, assigns and all other successors in interest of the Beneficiaries.

24. **Trustee's Liability to Beneficiaries.** The Trustee shall be liable to the Beneficiaries for the value of their respective beneficial interests only to the extent of the property held in Trust by him hereunder and the Beneficiaries shall enforce such liability only against the Trust Property and not against the Trustee personally.

25. **Annual Statements.** There shall be no annual meeting of the Beneficiaries, but the Trustee shall prepare an annual report of their receipts and disbursements for the fiscal year preceding, which fiscal year shall coincide with the calendar year, and a copy of the report shall be sent by mail to the Beneficiaries not later than February 28 of each year.

26. **Termination.** This trust may be terminated by the Beneficiaries only after the mortgage note assumed and described in Addendum A has been paid in full, and with thirty (30) days written notice of termination delivered to the Trustee, the Trustee shall execute any and all documents necessary to vest fee simple marketable title to any and all Trust Property in Beneficiaries.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

BENEFICIARIES

_____

_____
«Beneficiary»

ACKNOWLEDGMENT

STATE OF OHIO)
ss:
COUNTY OF _____)

Before me personally appeared _____ to me well known and known to me to be the person described in and who executed the foregoing

instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the State and County aforesaid, this day of _____, 20 _____.

_____
NOTARY

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

TRUSTEE

_____ _____
«Trustee»

ACKNOWLEDGMENT

STATE OF OHIO)
ss:
COUNTY OF _____)

Before me personally appeared _____ to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the State and County aforesaid, this day of _____, 20 _____.

_____
NOTARY

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

SETTLOR

_____ _____
«Settlor»

ACKNOWLEDGMENT

STATE OF OHIO)
ss:
COUNTY OF _____)

Before me personally appeared _____ to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the State and County aforesaid, this day of _____, 20 _____.

_____
NOTARY

Subject To Purchase Worksheet

Property Address	
After repaired value	
Repair costs	
Monthly taxes	
Monthly insurance	
Other monthly holding costs	
Estimated gross monthly rent	

Loan Details

Lender name					
Loan balance					
Interest rate		Fixed rate?		Interest only?	
Payment					
Does Payment include taxes?		Insurance?		Mortgage ins?	
Original loan term		Years remaining			
Estimated gross monthly rent					

What is the exit strategy or strategies?

Exit	**Income goal**
Wholesale	$
Retail	$
Rent	$ /mo. + $ equity
Lease/option	$ down + /mo. + $ at cash out
Sell with owner financing	$ down + /mo. + $ at cash out

If you will need to secure **additional financing** for down payment or repairs:

Amount of additional financing	$
Financing costs (points)	$
Interest rate	%
Amortization period	months
Monthly payment	$
Term	months
Balloon payment at end of term	$

Purchase price calculation:

After repaired value		
Repair costs	-	
Monthly holding costs until in service/sold		
Months of expected holding costs		X
Total holding costs	-	
Finance costs	-	For any secondary financing
Closing costs	-	
Sales costs	-	
Minimum equity goal	-	
Maximum purchase price	=	
Loan balance	-	If this number is negative, it's what the seller will need to bring to closing to make up for lack of equity
Overage/underage		

Monthly payment calculation

Gross expected monthly income	$
Monthly taxes	-$
Monthly insurance	-$
Monthly reserve amount	-$
Management expense	-$
Minimum acceptable cash flow	-$
Monthly payment on secondary financing	-$
= Maximum monthly payment	= $

Is the maximum monthly payment above less than the payment on the seller's loan? (if the answer is no, you'll have to pass on the deal or lower your cash flow expectations)

Are You Ready to Make Subject To Offers?

[ ] Do you fully understand your exit strategy (wholesale, retail, lease/option, land contract, rent) for any deal you do, and how to correct calculate the profits from such a deal?

[ ] Do you understand WHY a seller would allow you to take over payments—what's in if for him?

[ ] Can you answer these objections;

- [ ] How do I know you'll make my payments?
- [ ] How long will it be until the mortgage is paid off?
- [ ] How can we do this when my loan isn't assumable?
- [ ] I don't want to do this because I just want the property gone

[ ] Can you list the 6 steps to doing a Subject to deal?

[ ] Can you explain why you should never do a Subject To with a seller who plans to buy a new house with a conventional or FHA loan, but hasn't yet?

[ ] Can you list the 3 kinds of loans you should never take over?

[ ] Have you decided what the minimum cash flow, equity, and loan paydown spreads you'll accept?

[ ] Do you really believe that for the right seller in the right position, selling Subject To can be a big positive?

[ ] Do you understand the 6 documents you and the seller will sign at closing?

[ ] Do you have a purchase agreement you're happy with?

[ ] Can you explain the basics of the seller protection land trust to another investor, and do you have an attorney who understands it?

[ ] Have you found an attorney or title company who will close a Subject To deals?

[ ] Do you know where you're getting your insurance, and how to insure?

[ ] Can you explain why the lender probably won't invoke to due-on-sale clause?

[ ] Do you understand what your options are it the lender does invoke the due-on-sale clause?

[ ] Do you understand what to do if your seller declares bankruptcy?

When you can check all of these boxes, you're ready to do Subject to!

