Chapter 6:
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're 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[1].

While we categorize them as "seller financing," and while sellers are definitely an important part of subject to deals, they're really in a category of their own in the big scheme of creative deals: they're NOT installment sales, like seller-held loans or land contracts, and they're NOT direct, voluntary investments of money by a third party, like private lender or partnership deals.

Instead, 'Subject To' deals take advantage of EXISTING financing, that was applied for, qualified for, and originated by other people (and institutions) long before you ever entered the picture. The balance, the interest rate, the amount and due date and composition of the payments, whether or not there's a balloon payment—these are all set in stone by the time you become involved in the deal, and your one and only way of 'controlling' them is by your decision to do, or not do, the deal.

Still, they're probably the most common way in which real estate investors actually buy (not lease/option) properties with seller financing. Why? Because 75% of the properties in the country HAVE mortgages, and that means that 3/4ths of your motivated sellers are potentially 'Subject To' sellers.[2]

"How Can the Deed Transfer Without the Mortgage?"

One of the most common questions about Subject To deals is. "How is it possible to transfer the deed without transferring or paying off the mortgage?"

I think that this confusion stems from 2 sources: the due on sale clause (which we deal with here), and a conflation between 2 documents that do 2 different things. A deed transfers title to a property; a mortgage is a security instrument that pledges the property as security for a loan. And yes, when the deed is transferred, the person who owns the property and the person who pledged the property as security become different people.

However, transferring the deed does NOT somehow undo the prior owner's pledge or make the mortgage go away; only paying off the mortgage makes it go away. Your seller's prior agreement with his lender, to make payments and to use the property for security for the payment of that note, remains in force even though the property has a new owner. The property is still subject to that agreement after you buy it. That's why we call these deals that.

What Does 'Subject To' Even Mean?

The reason I keep putting 'Subject To' into single

[1] And done improperly, they can be money-sucking, hassle-filled, seller-life-ruining messes.

[2] And the fact the there are zillions of low-rate, fixed-rate loans in the market that have been originated at sub-5% interest rates in recent yeas makes this strategy all the more attractive.

quotes is that it's not really a term: it's 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 not paid off at closing. Instead, it's contractually "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.

However, an existing mortgage isn't the only debt or title issue that a property could be bought subject to. You could buy real estate that was 'subject to' an IRS lien, mechanics lien, assessment, land contract, imperfect title, or anything else that creates a debt or a cloud on the title.

Generally, though, when real estate entrepreneurs use the term, 'Subject To'[3], they mean subject to the seller's existing first mortgage.

From Loan Assumption to Subject To

It's pretty common to hear real estate folks say, "I assumed the loan on that house" when what they really mean is that they bought it subject to the existing mortgage. Loan assumptions are NOT the same thing, and if you're let's say, 'seasoned' enough to have bought properties in the 1970's and 1980's, you probably 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.[4]

Those old loan "assumptions" were what are technically called "novations" of the mortgage and note agreements. 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 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 institutions phased out this "free assumability," and FHA and VA-insured loans are now assumable only when the buyer goes through a formal qualification process (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).

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

[4] 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.

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 asked for permission nor 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 asking 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. There's a lot to unpack about Subject To deals before we even get to the question of, "what if the bank finds out?"

When Subject To Doesn't Work for Sellers: A Lesson in Loan Rules

Subject To deals are very different from the other types of seller financed deals we're learning in this class in two important ways: first, as I mentioned in the opening paragraphs, the terms of the loan are what they are, and not open to negotiation. By the time you enter the deal, the financing is already in place, and it is what it is. We'll cover the topic of how to deal with (or, rather, figure out whether to do, or pass on, a deal based on the existing financing) in a bit.

The other way in which Subject To deals differ from other kinds of seller financed deals is that **doing them continues to have an effect on your seller, potentially for decades**. Why? Because he continues to be legally responsible for the debt, even though you agreed to make the payments, and even after you've done so for years.

The effect is this: every single time the seller wants to borrow money, the fact that he still owes the debt against what is now YOUR property will come up. The payments—despite the fact that YOU make them—are considered debt when calculating your seller's "debt to income ratio," and that fact alone might keep your seller, years down the road, from being able to get financing on a car, house, or business.

But there's a second problem, too—and that has to do with rules set (and changed every decade or so) by the insurers (FHA and VA) and secondary buyers (Fannie Mae, Freddie Mac) of conventional mortgages.

In years past, the first issue—the one of debt to income ratio—was fairly easy to solve for most sellers, because the one and only rule was that if a homeowner moved out of, and rented, his home and bought another, he was "credited "with roughly 75% of the incoming rents as income, for the purposes of qualifying for a new loan.

If, for instance, the seller's income allowed him to qualify for a $200,000 loan, but he still owned his old home, which was subject to a $150,000 mortgage note, he'd have a hard time qualifying for the $200,000 home UNLESS he rented out the $150,000 home first.

By renting the property, he could add to the income side of his 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.

For decades, a Subject To deal was a perfect solution for the seller who couldn't sell his current home for one reason or another—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 he started to make payments on house #2. [5][6]

However, some more recent 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), *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**.

[5] 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 bank regulation is rarely based on logic.

[6] This had the secondary advantage of keeping a lot of sellers out of the (potentially pitfall-laced) position of being an amateur landlord; assuming that the Transactioneer doing the deal has experience or at least training in screening, managing, and collecting from tenants, she's generally MUCH better equipped to handle the challenges associated with renting the property than the poor civilian seller.

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. Thus, a seller with plans to "buy FHA" at any time in the future can't sell his current residence subject to an FHA loan he already has, or he won't be able to qualify for a new FHA loan.

The FNMA and FHLMC rule changes of the same year were a bit more complex, and although they have been rescinded, at least for the moment, I expect that they'll return when Fannie and Freddie start experiencing serious losses again.

Those rules said that a borrower—this is your seller, remember—could only be credited with the rent *if he owed less than 85% of what his house was worth*, which is not the case with many of the very folks who'd love to do Subject To deals with us.

In other words, a seller with a $180,000 loan on a $200,000 house couldn't offset ANY of the debt service on that house with rent received from the house, no matter how much the rent was. And since one of the big reasons that sellers are willing to do Subject To deals is that they owe too much on the subject property to sell it in any traditional way without bringing money to the closing, this rule created a huge hurdle to them, and us.

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 off 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.

What has all of this got to do with you? Well, ethically, you just can't put someone in the position of not being able to buy a new house, if that's their goal.

So how are Subject To deals so common, given these potential issues for seller? The answer is simple: there are LOTS of sellers for whom none if this is really a problem.

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**—clearly, their debt-to-income ratio isn't a problem at the moment, or they couldn't have qualified for both loans.

2. **Sellers who CAN qualify for their new residence if they rent the old one for the amount of the mortgage payment**. In this case, we can do the Subject To deal as a 2-step process; first, sign a lease with the seller with a monthly rent (payable beginning

when they move out, of course) equaling the PITI payment on the property, and an option to buy Subject To the existing loan after he's closed and moved into their new home. Then, the seller can show his mortgage broker our lease, be credited for 75% of that income, get, and close on, his new home, and we can proceed with the 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: no need or desire to get financing, and thus no problem.

4. **Sellers selling a home that was never a primary residence**. If the seller bought the property for investment, he definitely doesn't have an FHA or VA loan, and he definitely CAN be credited for rents that are due on the property—because that's the nature of investor loans.

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 and VA-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 instituted by these organizations have no effect on him; the only hurdle will be the particular portfolio lender's debt to income ratio requirements.

When Subject to DOES Work for Sellers: A Lesson in Motivations

While the underlying stories might be different (this one got a divorce, that one got transferred out of town, the other one decided that buying this rental was a really terrible idea), the primary reason that most sellers who do Subject To deals do them is simple: the property has become some kind of burden to them, and they can't do better by selling for cash than they can by selling it subject to the existing loan.

Practically every seller I've ever bought a property from subject to his existing loan has already tried to sell it conventionally, and run across exactly the same problem: he can't sell to a normal buyer without PAYING to sell his house. He just doesn't have enough equity to cover all the costs of selling AND pay off his loan.

That statement 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 for me to be interested in the property at that price?" The answer is: not necessarily.

It's expensive to sell a property in the conventional way traditionally (through a real estate agent to a homeowner buyer getting conventional financing and asking for normal things like seller concessions).

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

If he sells, 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 the buyer's inspector doesn't show up with $4,000 worth of 'problems' that the buyer then expects the seller to take care of, or that the property isn't in an area with excessive transfer taxes.

This seller's very best move would be to KEEP the property until the value 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, can't afford the next payment, or is otherwise under the gun to sell, accepting a $195,000 Subject To offer from you is his best option, right?

Many of these sellers have already done the math, or had it done for them by a real estate agent, and they're very aware that they'll need to bring money to the closing to sell conventionally. When you suggest an option that allows them to get rid of the property and the payment WITHOUT paying to do that, it's actually a huge relief to them to agree to it.

When Subject To Doesn't Work for YOU: A Lesson in Long-Term Thinking

I'll say it again: the terms of a loan in a Subject To deal are non-negotiable, which makes it super-important that you understand, and are happy with, what those terms are.

And I'll add that it's pretty important to think about whether there's anything about the loan that can change later, turning your good-for-now deal into a bad one in the future.

It's easy to get focused on current, and best-case-scenario, numbers when you're considering a deal that's low money down, no qualifying, and has a low interest rate. "This is great, I'll take over this guy's payments, and the property will cash flow $500 a month, and I'll lease/option it, and sell it in 2 years and make $45,000 on the back end" is a great plan; but what it the tenant/buyer doesn't buy it 2 years from now, and the payment goes up by $600 a month in the meantime?

Any loan you take over should be just as good a year, or 5 years, or 10 years from now as it is the day you buy it. And that means that:

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 that 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. The seller's note will state whether the loan is fixed rate or adjustable; sellers often don't know, and believe that it's one or the other when it's not.

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—and that if you try to mitigate this obvious risk by having the seller "close" the HELOC, the bank will almost certainly require that it be paid off at that time. HELOCs are just bad, bad, bad.

4. **The loan must not be a "reverse mortgage".** These loan products, available only to homeowners over the age of 62, are becoming more and more common. They may seem like really attractive Subject To deals, because they usually don't require payments to be made, at all. Instead, the opposite is sometimes true: the borrower GETS monthly payments from the lender, or has a HELOC-like ability to draw from the equity in the property.

Unfortunately, once you hear the term "reverse mortgage" when talking to a seller, your discussion about buying the property subject to is over: **reverse mortgages MUST be paid off when the borrower dies, or when the property ceases to be the borrower's primary residence**. Even the borrower's heirs can't take over a reverse mortgage; if you try to, you can expect the lender to foreclose immediately.

5. **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 00's. 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[7]. 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.

6. **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 9 years ago, 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 have gone through this process since 2007, 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

[7] 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.

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.*

Perhaps I don't need to add that I didn't take over that loan[8]; but the important lesson is that loan modifications are often reversible by the lenders. Many say that a single missed payment can cause the terms to revert to their pre-modification levels, and most have clauses like the one in this example.

Modified mortgages sometime have super-low payments that don't actually cover the principal and interest due every month; the balance on the mortgage actually INCREASES year over year, and ends in a balloon at what would have been the 30th year of the mortgage.

Another common characteristic of modified mortgages is a longer-than-30-year term; the lowered payments were achieved by extending the term to 40 or 50 years.

Many modified mortgages contain an interest rate escalation clause: the original low rate is applicable only for the first few years of the modification, and then goes up on a set schedule after that. Unlike adjustable rate mortgages, these interest rate hikes aren't dependent upon an 'index', and happen even if overall rates in the market are decreasing.

On the whole, modified loans are a problem for Transactioneers looking to take them over—and sellers often forget that their loans were modified at some point, so always make sure you've seen ALL of the documentation around the note and mortgage before closing on a Subject To deal.

7. **The seller shouldn't be in financial trouble.** Investors HATE IT when I say this, because a seller who's behind in his mortgage note payment is a seller who's almost certainly going to say "yes" to a Subject To deal.

   But there are several problems with buying Subject To from sellers with financial issues; the first is the practical problem that, in order to "bring the loan current," it might cost you thousands, to tens of thousands, of dollars in back payments, late fees, and legal costs. Many times, the large upfront investment required to get the loan back to performing status makes the deal make no sense; a seller may have a very attractive $270,000 loan on a $300,000 house, but if you have to pay $21,000 in "arrearages" in order to reinstate the $270,000 loan, you're actually in the deal for $291,000. And if the net cash flow is only $100 a month, you've just created a less-than-6% return on the money you invested—a number that's fairly pathetic in real estate circles.

[8] 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.

The bigger problem, though, is the wrench that will be thrown into the gears of your deal if the in-trouble seller later declares bankruptcy, a potential problem we'll address all by itself, later.

8. **Properties in probate may present a problem**. 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.

   There's an exception to this rule: some wills say that that the property is to be sold from the estate, and any money that results split between the heirs; others say that the property is to be passed on TO the heirs to do with as they please. In the latter case, the property will be deeded to the heirs, becoming an inherited property with the mortgage and note still intact. At that point, the heirs can absolutely sell to you subject to the deceased borrower's loan without affecting the ability of the estate itself to be closed.

What Can I Pay for a Sub To Deal?

Like other forms of seller financing, it's often the case that you can pay more for a deal with Subject To financing than you could for the same deal, if you had to qualify/make a large down payment/pay market interest rates/pay junk fees/etc.

And like other forms of seller financing, they're best used on properties on which you have a medium-to-long term strategy; a lot of the value in taking over a good loan is that the balance goes down over time while the value of the property (one hopes) increases.

Because these things are, in some ways, just as important as the price, the main rule is that t**he payment and/or amortization on the loan must create enough profit to allow you to make a reasonable profit on the property[9].**

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

- Cash flow
- Equity
- Amortization

[9] Say, "Well, DUH!", if you must, but failing to know this up front is the biggest mistake Transactioneers make in Subject To deals, and the biggest way in which they get themselves into situations where they can't make payments that they've promised to make.

Cash flow is the *real* difference between what I pay to own a property every month and what I can get from a tenant or tenant/buyer[10]. 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[11]

= Cash flow

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	

[10] 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.

[11] 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 you shouldn't buy this house, right?

Well, that depends.

There are only 4 reasons that a house with a $150,000, 4.5% 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 this scenario, you're NOT actually losing $163 a month—you're GAINING $52 a month. How? By adding $215 a month (and rising) in equity to your balance sheet, and getting a paid off house

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.

<u>For example:</u>

- I'd pay full price for a Subject To deal that cash flowed $250 a month after all expenses, even if the loan had 29 years left, if I didn't have to put a lot of cash down or into repairs.

- I'd pay full price for a Subject To that had $0 cash flow but would be completely paid off in 7 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.

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.

Let's look at a couple of real-life examples of deals where this balance comes into play.

Here's a 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, even though the property would theoretically rent for about $1,900 a month, because the house needed about $10,000 in work to make it really rent ready. And he was about $10,000 shy of having enough to do that work.

At the time at which I took over the loan, the house was arguably worth $250,000 fixed up. As a cash deal, I'd be willing to pay maybe 80% of that (due to the relatively small amount of work needed, and the high appreciation rate of the area), which would be $190,000. The problem was, the seller owed $225,000, and the property wasn't fixed up.

Short of having the seller bring $35,000 to the closing to make up the difference, 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.

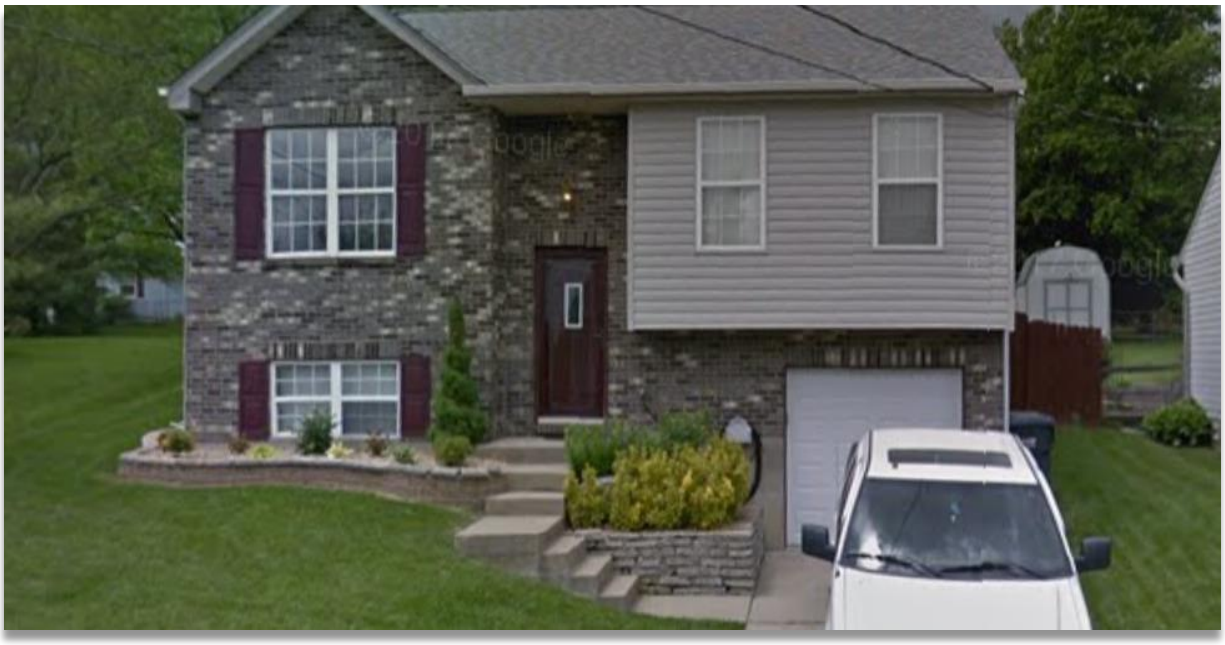
Why was I willing to pay so much more to take over his loan than I would had I needed to get my own? Because the deal was no money down; because I didn't have to qualify for it; because the rate was so low; and because the resulting payment was low enough that the property could break even as a rental while going up in value like crazy, creating equity in the property due to the high quality of the neighborhood[12].

This, like many of my Sub To deals, simply could not have happened any other way than the

[12] I bought this property in 2011; it recently appraised for $340,000.

way it did. Had I not known how to do a Sub To deal, the seller would likely have lost the house to foreclosure, and I wouldn't own my very favorite property.

Here's another deal with the opposite issue:



This is a single family in a bread and butter area. The sellers were an older couple in their late 70s who had refinanced it to pull cash out less than 6 months earlier, and then decided to move 5 states away to be closer to their children.

The house was worth about $145,000 in after-repaired condition, and needed $15,000 in work to put it in that condition; the cost to stabilize it for rental was about $5,000, and the rent about $1,400 a month.

The loan balance was almost $128,000, meaning that the property, effectively, had no equity at all, and still had 29½ years left to run, meaning that there was very little benefit coming from amortization at the beginning; however, the entire PITI payment was only $867 and the loan at a sub-4.5% rate.

In other words, right from the beginning, this nice house in a nice area cash flowed over $250 a month after all expenses—and the combination of no money down, low investment in repairs, and a great school system where properties are easy to rent and should continue to appreciate nicely made the deal attractive enough to do.

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 with an appropriate loan (see "When Subject To Deals Don't Work for You") and get a general agreement that the seller is open to a take over 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 property subject to the seller's existing mortgage (see "The purchase contract" for wording)

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, along with some other documents (included here) that allow you to deal with the seller's lender going forward, and that assure you that the seller actually understands the deal he's just made. The mortgage and note are not paid off, released, or in any way officially transferred to you, but you become the owner of 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.

What Happens to the "Escrow Account"?

Most post-2008 owner-occupied loans include 1/12th of the annual taxes and insurance as part of each monthly payment. These are collected in advance (in other words, by the time the taxes are due, there's enough in the account to pay them in full) and kept in an "escrow account" with the bank or servicer.

When you buy a property Subject To, you "take over" the escrow account, too. This means that, as in a typical deal, the seller will have effectively paid the taxes to the date of closing—the money will be in the account, and you'll add to it each month as you make payment.

Your new insurance policy will probably cost a different amount than the seller's, and the lender will adjust the monthly payment to cover it.

Negotiating Subject to Deals

The art of "negotiating" a Subject To really comes down to these four things:

1. **Believing that selling to you subject to his existing loan is a good thing 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 so it turns out to be true.

The same is true with Subject To deals. 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.

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 tons 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 about it is probably making you sound nervous, which is making your seller nervous, which is going to make him ask.

Sellers for whom Subject To is not the best option will let you know that by turning down your offer to help them in that 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.

2. **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 those words 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 takeover 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.

3. **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 seller protection trust we've already talked about several times.

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 go ahead and address at the same time that I ask if they'd be willing to consider a takeover payments deal: that's why I include the 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."

4. **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[13]

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

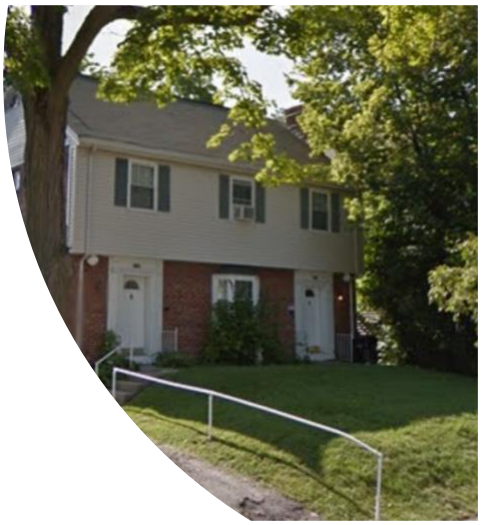
My Craziest Seller-Bringing-Money-to-Closing Story.

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

[13] 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.

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 agree, and she brought a bunch of money to the closing.

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, 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.[14]

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.

[14] Yeah, that exact thing really happened to me. He apparently completely forgot that he'd refinanced the property, which he'd owned for 18 years, 2 years earlier.

Documents You'll Need at 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.

Yeah, I know: you don't want to spend the money on a deal when the only money you have "at risk" is the closing costs themselves. Why spend $800 to close a deal, when you can just draw up a deed yourself, and close it at the seller's kitchen table?

I can't say strongly enough that this is a really bad idea on a number of levels. Here's one: going to a formal closing makes the deal seem more 'official' to the seller[15], and raises his comfort level with the whole deal.

Here's another reason: an incorrectly prepared deed—one with necessary wording missing from the form, or with a mis-typed legal description, for instance—creates big title problems for you later on. There's much less of a chance of this 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 additional 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

[15] 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.

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. Do NOT neglect this, because you'll need to know when the monthly payments change due to changes in the taxes and insurance, and you'll need to know if the bank thinks the insurance has been dropped, and you'll need to get the annual tax statements about the interest you've paid. It's a good idea to make copies, and to send the lender the COPIES, because for whatever reason, they tend to ignore the first couple you send.

- **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 copy is included in this section.

- **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 copy is included in this section.

- **A limited power of attorney** allowing you to deal with the seller's insurance and lender, should the need arise. A sample is included in this section.

- **If you're using it, and you should, 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 of 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 policy, paid for by your seller when he borrowed the money, that stays in place even though the ownership of the property changes.[16]

[16] 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.

How to Insure Subject To Deals

This isn't a topic we've had to address so far, because in other kinds of creative deals, the hazard insurance policy is pretty cut and dried. The owner buys the policy; the lender is named as a loss payee. Simple.

However, in the case of a Subject To deal, things get a bit more complicated, and here's why: the #1 reason that banks notice a change in ownership (and, or so the fear goes, then enforce the due on sale clause in the mortgage) 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 is 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 doesn't own the property anymore. For one thing, the seller has no insurable interest in that property; for another, he's got the wrong kind of policy for a property that isn't owner occupied.

The net result when the house burns down? You're left with a smoking hole in the ground that has an unpaid mortgage of $xxx,xxx on it, and no insurance payout to rebuild it or pay off the bank.

Who Gets the Mortgage Interest Deduction?

One of the more common post-closing calls you'll get from sellers is one asking for the tax form that the lender sends at the end of the year detailing the mortgage interest paid. Why? Because they want to deduct the taxes from their income.

The problem, of course, is that YOU paid that interest, and even though it's reported to the IRS under their EIN or social security number, they don't have the right to deduct it. The exception is the first year; they can deduct the interest for the payments they did make that year, and you deduct the rest.

The completely proper way to handle this is for YOU to send the seller a 1098 interest-paid form at the end of the year, showing that they RECEIVED the amount of interest that you paid on the bank's loan; since it's the same amount as the 1098 they got saying that they PAID interest, it's a wash to them and a deduction for you.

Most investors don't do this; they simply report to the IRS that they paid $x in interest on their schedule E or entity return.

Another solution that many investors try that's equally doomed is to leave the seller's insurance in place, but carry a second, non-owner occupied policy for yourself. The "two policies" method won't work if there's a claim, because both insurance companies will try to

'subordinate' to the other, and both will refuse to pay the claim.

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 name the seller as "additional insured as their interests appear", and, importantly, 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 decade.[17]

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[18] include a "due on sale" clause. The due on sale clause 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 'investor', which is usually a whole pool of people who bought a part of a securitized loan package, 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.

[17] 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.

[18] 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, 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.

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 cases where your seller makes his loan payments to a small local bank, 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: calling the loan due risks turning a performing mortgage into a non-performing mortgage. If their borrower can't pay off the loan to comply with the bank's demand (and why would he—it's not his house anymore), and you refuse to, the lender's next step is to foreclose on the property.

   A foreclosure isn't a good thing for a lender. It's expensive, time consuming, and creates questions from the powers that be that oversee lending institutions, not to mention the fact that it turns a perfectly good, paying loan into a lawsuit.

   Most lenders won't go forward with such a thing, even if they threaten to.

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.[19]

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.**

   In fact, the very first thing you should do is Not. Panic.

   In recent years[20], I've gotten several contacts from banks about properties I've bought Subject To loans they were servicing; in every case the conversation has started with the bank rep saying, "We noticed that this property has transferred to you, and we've never gotten the payoff. When can we expect that?"

[19] 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.

[20] And this IS a new-ish thing; prior to around 2015, I never, ever got such a call from a lender. In talking to various bankers, it appears that these calls are being generated when bank examiners from FNMA/FHLMC and their cousins go poking through servicers' loan records, and find discrepancies in the loan documents vs. the insurance documents. The examiners then put pressure on the servicers to find the cause of, and fix, those discrepancies. This is undoubtedly another outcome of the financial crisis; banks have been the subject of increasing regulation and scrutiny since the mess they made in 2007. It almost makes you feel sorry for them.

When I say, "I have no intention of paying that loan off, but I have every intention of making the payments", the bank reps get really confused. They literally can't understand HOW I did it, or WHY I won't agree to pay it off right away like everyone else.

So far, knock wood, all of those conversations have ended with the bank rep saying something like, "Well, I'm going to have to refer this to the legal department" and me saying something like, "Ok, let me know if they decide to send this perfectly good loan into foreclosure," and then…crickets. I have yet to hear back from any of them.

Still, it's not impossible that a bank might actually find out about your Subject To, AND care that you did it, AND make the bad business decision to actually enforce the due on sale clause and foreclose on the loan.

But guess what—you're STILL not out of options. Other than letting the lender foreclose (which you'd only do if your seller were dead, or had already declared bankruptcy and could no longer be held personally liable for the payment of the note), you could, for instance:

a. Get new financing from another lender and pay off the loan
b. With the permission of and cooperation of your seller, who's credit would be negatively affected and who might be the subject of a deficiency judgement, try to negotiate a short sale with the bank, and buy the property at a lower price than the loan balance
c. Try to negotiate a formal assumption (or at least a novation) of the loan with the lender
d. Try to quickly sell the property (and thus pay off the loan) before the lender can foreclose
e. With the knowledge and permission of your seller (who would be held liable for any deficiency judgement) give the lender a deed in lieu of foreclosure
f. Say, "Mea Culpa, I had no idea I wasn't supposed to do that!" and deed the property back to the seller. With the seller's permission, of course.

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 lease-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 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 advertising to the bank 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 6 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 (it didn't, they just couldn't match the policy with the loan), and they called the seller, and the seller TOLD THEM what happened.

In one case, the seller got the monthly invoice from the bank, called them, and told them in no uncertain terms that he was no longer responsible for the loan, and where they could shove their bills.

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.

The Myth of the Land Trust-- and Why You Definitely Need to Take Title in a Land Trust Anyway

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 its 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 a witness protection program, so that's not going anywhere.

You know that "seller protection land trust" we've already talked about several times? It was FOR this otherwise-impossible situation that it was developed. It neatly solves this problem by automatically returning the property to seller if you default on the payments.

Use it.

Things that Can Go Wrong in Subject To Deals

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 even if your note payments are current.

The reason that lenders leave this option open has to do with the nature of a borrower bankruptcy; if the borrower declares a Chapter 7 (that's the one where he gets a complete discharge of all of his debts, excepting debts that he might 'reaffirm', and trust me, that won't be the debt on a property he no longer owns), the effect on the lender is that there is no longer anyone who's legally responsible for making payments on the loan.

The mortgage survives the bankruptcy, but the note doesn't. In other words, the lender still has the ability to get the money its owed by auctioning the PROPERTY, but can no longer 'go after' the borrower for any deficiency.

And because the bank's agreement with its borrower pre-dates your ownership of the property, the fact that you have the deed does not mean that the bank can't foreclose if the seller declares bankruptcy.

When this happens to you—and it eventually will, if you do enough of these deals—you'll get a big white envelope from the Federal Bankruptcy Court notifying you that your seller has declared bankruptcy, and that you're named in it, typically as an interested party.

If you still like the property, sit tight—there's a good chance that the lender will take no further action, as long as you continue to make the payments.

If you don't like the property anymore, or if the bank DOES choose to foreclosure, 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 disclose this option in the disclosure you give to the seller at closing).

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 the seller 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 because they couldn't get a loan to buy another house due to the continued presence of the old loan on their credit report—when the only reason they were able to qualify for a new loan at all was because I'd been making payments on a mortgage they couldn't afford for years and years.

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.

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[21]

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

[21] 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.

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
- Sales costs (if retailing)

Equity in the Property

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 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.

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]
Address
City, State Zip code

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

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)

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 I, **_____**, as Grantor, 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

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-ifact)**