



## SELLER AND BUYER ADVISORY REGARDING SELLER-CARRIED TRANSACTIONS

1. **What is a Seller-Carried Transaction?** This is a real estate transaction in which the Buyer does not obtain third-party financing, and instead, some or all of the purchase price is secured by the property and the Seller carries back: (a) A note and trust deed or contract to secure Buyer's obligation of repayment, or (b) Enters into an option or rent-to-own arrangement with the Buyer. In all such cases, the Buyer agrees to pay the Seller some or all of the purchase price over time (hereinafter a "Seller-Carried Transaction").
2. **Do I need expert help if I am considering a Seller-Carried Transaction?** You should consult a professional familiar with these types of transactions and determine how (if at all) the Oregon and Federal laws apply. It is important for Sellers and Buyers to both seek expert assistance.
3. **Why do I need expert assistance?** State and federal laws and regulations provide that under certain circumstances, offering or negotiating the terms of a Seller-Carried Transaction must be performed by a Mortgage Loan Originator ("MLO"), and the terms of such financing may have to comply with certain consumer protection rules. Your real estate licensee is not qualified to provide MLO services or to advise you in this regard. Navigating the state and federal laws, rules, and regulations requires that you seek and obtain guidance from an expert familiar with all of them.
4. **What is a MLO?** Under Oregon law, a MLO is an individual who, for compensation or gain: (a) Takes an application for, or (b) Negotiates the terms of a residential mortgage loan. MLOs must be licensed by the Oregon Division of Finance and Corporate Securities ("DFCS") and must be registered on the National Mortgage Licensing System, a database of all persons and companies holding a MLO license.
5. **Can my real estate licensee assist me with a Seller-Carried Transaction?** Your licensee is fully qualified under Oregon real estate licensing law (ORS 696.010(14)) to advise, discuss, and assist you in the *non-financial aspects* of your Seller-Carried Transaction. While your licensee may continue to engage in "professional real estate activity" as defined by ORS 696.010(14), he or she may not participate in *offering or negotiating* the financial terms of your Seller-Carried Transaction. This may be performed on your behalf by a MLO. Your real estate licensee is skilled in assisting you with completing the OREF statewide Sale Agreement and related OREF forms (*including writing up the financing terms you or your MLO have negotiated with the other party*), arranging and scheduling service providers such as professional inspectors, ordering title insurance, communicating with other licensee(s) in the transaction, setting up escrow, and assisting you throughout the closing process. However, these services cannot include taking an application for a residential loan, or offering or negotiating the financing terms of a Seller-Carried Transaction. A violation of the MLO licensing law could have serious financial and regulatory consequences for you and your licensee. Most importantly, your real estate license is not an expert in all of the applicable laws, rules, and regulations, and is legally prohibited from assisting or advising you in the financing terms of your transaction. **Accordingly, if you are considering engaging in a Seller-Carried Transaction as a seller, before you offer, advertise, or negotiate any of the financing terms with the buyer, it is highly recommended that you engage the professional services of a licensed MLO, an attorney, or a financial expert, who can assist you in understanding your alternatives. If you are a buyer involved in a Seller-Carried Transaction you may similarly wish to secure expert advice on your rights, duties and obligations.** Real estate licensees may provide general financial information to their clients concerning such things as current rates of interest and terminology, but may not offer or negotiate the terms of financing with any party or their representative in the transaction. Additionally, the financing terms agreed upon between you (or your qualified representative) and the other party to the transaction (or their qualified representative) may be inserted by your licensee into the Sale Agreement after you have provided them to

Buyer Initials \_\_\_\_ / \_\_\_\_ Date \_\_\_\_

Seller Initials \_\_\_\_ / \_\_\_\_ Date \_\_\_\_

LINES WITH THIS SYMBOL ◀ REQUIRE A SIGNATURE AND DATE

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him or her. In doing so, your licensee is acting solely as a scribe, and is not serving as your advisor or consultant on those issues.

**6. Are there any exemptions to the MLO law or will I have to use a MLO on my Seller-Carried Transaction?** There are exemptions that if you qualified for would permit you to offer and negotiate the financial terms of your Seller-Carried Transaction without having to hire a MLO. But deciding whether to use a MLO is a decision you should only make with expert advice. Your real estate licensee is not qualified to advise on exemptions to the MLO licensing laws or to recommend specific financing terms.

**7. Is there anything further as a Seller I should know before entering into a Seller-Carried Transaction?** Yes. If your Seller-Carried Transactions contains certain features such as balloon payments, pre-payment penalties, adjustable interest rates, or high interest rates, it may be subject to more rules and regulations. This is especially true of "High-Cost Mortgage." Whether yours is a High-Cost Mortgage is determined by several factors, although the primary one is whether the transaction's annual percentage rate ("APR") exceeds the Average Prime Offer Rate by more than 6.50%. The Average Prime Offer Rate is an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for low-risk mortgage transactions. The Average Prime Offer Rate is published at <http://www.ffiec.gov/ratespread>. Seller-Carried Transactions that qualify as High-Cost Mortgages require that the seller must give additional disclosures, avoid certain loan terms, and ensure that the buyer-borrower receives additional protections, including homeownership counseling. If you believe that your intended Seller-Carried Transaction may be a High-Cost Mortgage, you need to consult expert professional assistance before offering or negotiating those terms. Again, your real estate license is not qualified to advise you on these matters.

**ACKNOWLEDGMENT**

**THE ABOVE IS INFORMATIONAL ONLY AND IS NOT INTENDED TO CONSTITUTE LEGAL ADVICE. THIS ADVISORY SHOULD NOT BE USED AS A SUBSTITUTE FOR OBTAINING COMPETENT PROFESSIONAL ASSISTANCE FROM A MLO, FINANCIAL EXPERT, OR ATTORNEY. BY MY/OUR SIGNATURE(S) BELOW, I/WE ACKNOWLEDGE THAT I/WE HAVE READ THIS ADVISORY AND UNDERSTAND THAT MY/OUR REAL ESTATE LICENSEE IS NOT QUALIFIED TO RENDER ANY ADVICE REGARDING THE STATE AND FEDERAL MLO LAWS, THE EXEMPTIONS, OR THE FINANCING TERMS OF MY/OUR SELLER-CARRIED TRANSACTION. I/WE FURTHER ACKNOWLEDGE THAT I/WE HAVE BEEN ENCOURAGED TO SECURE COMPETENT ADVICE FROM A MLO OR A FINANCIAL OR LEGAL PROFESSIONAL BEFORE OFFERING OR NEGOTIATING ANY FINANCIAL TERMS OF A SELLER-CARRIED TRANSACTION.**

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Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Seller Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

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Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_, \_\_\_\_\_ a.m. \_\_\_p.m. ←

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