

## ADVISORY REGARDING SELLER-CARRIED TRANSACTIONS

1 **1. WHAT IS A SELLER-CARRIED TRANSACTION?**

2 This is a real estate transaction in which some or all of the purchase price is secured by the property and the Seller:

- 3 (a) carries back a note and deed of trust or contract of sale to secure Buyer's repayment obligation; or  
4 (b) enters into a lease-option or rent-to-own arrangement with the Buyer, where the purchase price and terms have already been negotiated.

5 **2. DO STATE AND FEDERAL LAWS APPLY TO SELLER-CARRIED TRANSACTIONS?**

6 Yes. Under certain circumstances, offering or negotiating the terms of a Seller-Carried Transaction must be performed by a Mortgage Loan Originator ("MLO"). An MLO is an individual who, for compensation or gain, takes an application for and/or negotiates the terms of a residential mortgage loan for a one-to-four-family dwelling. MLOs must be licensed in Oregon and registered on the National Mortgage Licensing System, a database of all MLO licensees.

9 **3. CAN A REAL ESTATE LICENSEE ASSIST WITH A SELLER-CARRIED TRANSACTION?**

10 An Agent is fully qualified under Oregon real estate licensing law (ORS 696.010(14)) to advise, discuss, and assist in the non-financial aspects of a Seller-Carried Transaction. While they may engage in "professional real estate activity" as defined by ORS 696.010(14), they may not engage in offering or negotiating the financial terms of a Seller-Carried Transaction - for that they must hold an MLO license. This is not to say that an Agent cannot provide financial information and resources to aid in a Seller-Carried Transaction (for example, providing current interest rate tables/information, amortization schedules, etc.). Acting as your Agent, they may transmit, in verbal, written, or electronic form, the express financial terms that you, as their principal, have instructed. A real estate Agent is qualified to assist in completing the OREF state-wide Sale Agreement, the Seller-Carried Addendum and related forms, and arranging and scheduling service providers (for example, professional inspectors, escrow, and title insurance) to assist throughout the closing process.

17 **4. ARE THERE ANY EXEMPTIONS THAT WOULD PERMIT A BUYER TO NEGOTIATE THE TERMS OF A SELLER-CARRIED TRANSACTION WITHOUT A MLO LICENSE?**

18 Yes. Under federal law, a Buyer must meet the following requirements:

- 20 (I)  
21 (a) During the preceding calendar year, the Buyer did not enter into more than four (4) Seller-Carried Transactions involving the sale of one-to-four family dwellings intended to be occupied by the Buyer for residential purposes;  
22 (b) During the preceding twelve (12) months, the Buyer did not enter into more than one Seller-Carried Transaction that involved terms making it a "high-cost loan" (defined in Section 5, below); and  
23 (c) During the preceding twelve (12) months, the Buyer did not enter into a Seller-Carried Transaction using the services of an MLO.

26 If the Buyer qualifies under Section 4. (I), above, and the transaction falls in one of the categories in Section 4. (II) below, the Buyer *may* qualify to negotiate a Seller-Carried Transaction without using an MLO:

- 28 (II)  
29 (a) It is a dwelling that is or was, at one time, the Buyer's primary residence; or  
30 (b) It is a dwelling for which the Buyer has authorized a third party to offer or negotiate the terms of this transaction with you or on your behalf because you and the authorized third party are related as either spouse, child, sibling, parent, grandparent, grandchild, or a relative in a similar relationship that is created by law, marriage or adoption; or  
31 (c) It is a dwelling that you own as a rental, a second home, or a vacation home; and  
32 (i) This Seller-Carried Transaction is not more than the third (3<sup>rd</sup>) such transaction you have engaged in during the prior twelve (12) months; and  
33 (ii) The Property did not at any time serve as your primary residence; and  
34 (iii) This Seller-Carried Transaction is not more than the eighth (8<sup>th</sup>) such transaction for which you are now carrying the financing as a current receivable.

38 Caveat: Deciding whether to use an MLO and whether the Buyer(s) is exempted is a decision the Buyer should only make with expert, third-party advice. A real estate Agent is not qualified to advise on these matters.

40 **5. WHAT IS A HIGH-COST MORTGAGE?**

41 If a Seller-Carried Transaction contains certain features, it may be subject to more stringent regulations. This is especially true if it is a High-Cost Mortgage. (See definition here: <http://www.consumerfinance.gov/regulations/high-cost-mortgage-and-homeownership-counseling-amendments-to-regulation-z-and-homeownership-counseling-amendments-to-regulation-x/>). Whether a transaction involves a High-Cost Mortgage is determined by several factors, although the primary one is whether the annual percentage rate ("APR") for a first mortgage exceeds the Average Prime Offer Rate ("APOR") by more than 6.50%. The Average Prime Offer Rate is an annual percentage rate derived from average interest rates, points, and other loan pricing terms currently offered to low-risk borrowers. The APOR is published weekly by the Federal Reserve. It can be found online at: <https://www.ffiec.gov/ratespread/aportables.htm>. For example, as of March 9, 2015, the APOR was 3.91%. The online link to a government calculator is here: <https://www.ffiec.gov/ratespread/newcalc.aspx>. By inserting the

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

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

This form has been licensed for use solely by the named user below pursuant to a Forms License Agreement with Oregon Real Estate Forms, LLC.

**LINES WITH THIS SYMBOL ◀ REQUIRE A SIGNATURE AND DATE**

Copyright Oregon Real Estate Forms, LLC 2022 | Released 01/2023

[www.orefonline.com](http://www.orefonline.com)

No portion may be reproduced without the express permission of Oregon Real Estate Forms, LLC

**ADVISORY REGARDING SELLER-CARRIED TRANSACTIONS**

48 APR, the term in years, and the effective date of the loan. The table will calculate the interest rate "spread" between (a) the APR in the transaction and (b) the  
 49 current federal APOR. If the spread exceeds 6.50% for a 30-year, fixed-term loan, for example, it would be deemed a High-Cost Mortgage.  
 50

51 A High Cost-Mortgage requires Buyers to receive housing counseling, and sellers must be licensed as an MLO. If the Buyer believes a Seller-Carried  
 52 Transaction may be a High-Cost Mortgage, the Buyer should: (a) Not use the OREF 033 Seller Carried Addendum and (b) Consult an MLO for assistance with  
 53 the transaction. Real estate agents are not qualified to advise on these matters.

54 **ACKNOWLEDGMENT:** The above information is not intended to constitute legal advice and should not be used as a substitute for obtaining competent  
 55 professional assistance from a MLO, financial expert, or attorney. By my signature below, I acknowledge I have read this advisory and understand my real  
 56 estate Agent is not qualified to render any advice regarding the state and federal MLO laws, the exemptions, or the financing terms of my Seller-Carried  
 57 Transaction, and I should obtain professional assistance if I have questions.

58 Buyer \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

59 Buyer \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

60 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

61 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m. ←

62 Buyer's Agent \_\_\_\_\_ Seller's Agent \_\_\_\_\_

SAMPLE