

## ADVISORY REGARDING SELLER-CARRIED TRANSACTIONS

**1. DEFINITION OF A SELLER-CARRIED TRANSACTION:** A "Seller-Carried Transaction" is a transaction for the sale of property where the seller, at closing:

- (a) takes back a promissory note and trust deed or land sale contract for some or all of the purchase price;
- (b) enters into an option or rent-to-own transaction in which the financial terms have been negotiated between the seller and the buyer; or
- (c) enters into any similar arrangement, however designated, in which the buyer will pay the seller some, or all, of the purchase price over time.

**2. UNDERSTANDING THE RISKS ASSOCIATED WITH A SELLER-CARRIED TRANSACTION:** When the lender is a bank or other financial institution, the lender performs a number of tasks that may be unfamiliar to sellers who become lenders. For example, financial institutions:

- (a) investigate the creditworthiness of a borrower;
- (b) require the buyer to purchase a lender's policy of title insurance;
- (c) send notices when payments are not received on time;
- (d) revise loan amortization schedules to reflect late payments and prepayments;
- (e) enforce loan covenants such as the requirement to maintain property and liability insurance and pay property taxes; and
- (f) remove their liens from the county's real estate title records when the loan is paid off.

Sellers may be unwilling or unable to perform one or more of these tasks. If a seller does not remove a lien from title, a buyer may be unable to sell their property without filing a lawsuit to remove the lien.

**3. ENSURING BUYER CREDITWORTHINESS:** Sellers can contact employers, credit references, and credit reporting agencies (such as Equifax, Experian, and TransUnion), and review the buyer's balance sheet, income statement, and tax and other financial information to determine whether a buyer is creditworthy.

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**4. INVESTIGATING TITLE ISSUES AND TRACKING PAYMENTS:** The title company can provide a lender's title insurance policy as instructed by the parties. A "collection escrow" or "payment escrow" can receive and disburse loan payments, keep track of loan balances, and hold signed documents that will release a lien when the final payment is received. Sellers can require borrowers to provide proof of insurance, insurance renewals, and property tax payments. Although most of these tasks protect sellers, a collection escrow is vital to both parties.

**5. USING A MORTGAGE LOAN ORIGINATOR:** 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.

**6. REAL ESTATE AGENT INVOLVEMENT:** A real estate 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 a real estate 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.). Real estate agents may, on behalf of their clients, transmit, in verbal, written, or electronic form, the express financial terms that their clients direct them to transmit. A real estate agent is qualified to assist in completing the Oregon Real Estate Forms, LLC ("OREF") Sale Agreement, the OREF 033 – Seller-Carried Transaction Addendum, and related forms, and arranging and scheduling service providers (for example, professional inspectors, escrow, and title insurance) to assist throughout the closing process.

**7. EXEMPTIONS PERMITTING A BUYER TO NEGOTIATE THE TERMS OF A SELLER-CARRIED TRANSACTION WITHOUT AN MLO LICENSE:** Under federal law, a buyer must meet the following requirements:

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### 7.1.

(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;

(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" as defined in Section 8 (Understanding a High Cost Mortgage); and

(c) During the preceding twelve (12) months, the buyer did not enter into a Seller-Carried Transaction using the services of an MLO.

If the buyer qualifies under Section 7.1., and the transaction falls in one of the categories in Section 7.2. the buyer may qualify to negotiate a Seller-Carried Transaction without using an MLO.

### 7.2.

(a) It is a dwelling that is or was, at one time, the buyer's primary residence; or

(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

(c) It is a dwelling that you own as a rental, a second home, or a vacation home; and

(i) this Seller-Carried Transaction is not more than the third (3rd) such transaction you have engaged in during the prior twelve (12) months; and

(ii) the Property did not at any time serve as your primary residence; and

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(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.

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.

**8. UNDERSTANDING A HIGH-COST MORTGAGE:** 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: <https://www.consumerfinance.gov/rules-policy/regulations/1026/32/>).

Whether a transaction involves a High-Cost Mortgage is determined by several factors, but the primary one is whether the annual percentage rate ("APR") for the loan exceeds the Average Prime Offer Rate ("APOR") by more than 6.50%. The Consumer Financial Protection Bureau has a page for calculating that difference (<https://ffiec.cfbp.gov/tools/rate-spread>) by inserting the APR, the term in years, whether the loan has a fixed or variable interest rate, and the effective date of the loan. (For example, if the spread between the APR and the APOR exceeds 6.50% for a thirty [30] year, fixed-term loan, the loan would be deemed a High-Cost Mortgage.)

If the loan is a High Cost-Mortgage, the law requires buyers receive housing counseling, and sellers be licensed as MLOs. If the buyer believes a Seller-Carried Transaction may be a High-Cost Mortgage, the buyer should:

- (a) not use the OREF 033 – Seller-Carried Transactions Addendum; and
- (b) consult an MLO for assistance with the transaction.

Real estate agents are not qualified to advise on these matters.

**9. ACKNOWLEDGMENT:** The above information is not legal advice and should not be used as a substitute for obtaining competent professional assistance from an MLO, financial expert, or attorney. The undersigned parties acknowledge:

- (a) they have read and understand this advisory;
- (b) they have been provided with a copy for their own files;

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- (c) they are aware that creditworthiness of buyers should be checked;
- (d) that their respective real estate agents are not qualified to render any advice regarding the state and federal MLO laws, exemptions to those laws, or the financing terms of a Seller-Carried Transaction; and
- (e) they should obtain professional assistance if they have questions.

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Buyer \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

Buyer \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

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Seller \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

Seller \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

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Buyer's Agent(s) \_\_\_\_\_ Seller's Agent(s) \_\_\_\_\_