SUBJECT TO WHAT???

AND OTHER VARIOUS WAYS TO HOME OWNERSHIP

CLOCKHOURSBYANGIE@GMAIL.COM
(509) 216-3220
A WASHINGTON STATE APPROVED REAL ESTATE SCHOOL FOR CLOCK HOUR EDUCATION UNDER R.C.W.18.85.

CORRESPONDENCE CLOCKHOURS

INSTRUCTIONS:

1. Print out the class.
2. Read the class material.
3. At the end of the material there is a quiz (all the answers are in the material that you have read).
4. Answer the questions.
5. Return to me the Quiz, evaluation and a check for the class payable to **CLOCKHOURS BY ANGIE,** or complete your credit/debit card information on the sheet provided
6. Upon receipt, I will email you a certificate.

Or LIVE clock hour class

INSTRUCTIONS:

1. Register for the class on the flyer I sent out
2. On day of class, sign in
3. At end of class turn in evaluation
4. I will give you a certificate

Disclaimer: I try very hard to have the latest known information on a subject in these classes, but, the real estate industry is forever changing with new updates all the time. The class materials are not to be used for legal advice. In our State, some items are handled different in the different regions. If you have any

concerns, please do not hesitate to contact me at 509-216-3220 or at clockhoursbyangie@gmail.com

COURSE OBJECTIVE:

The first thing you normally want to do with a new purchaser is to get them "pre-qualified" with a lender so you know what price range they are qualified for. How will they pay for the home? Do they have enough to pay 100% cash? Do they have some cash and want a VA, FHA, or Conventional Loan? If so, what does their credit look like – can they be approved? How about seller financing, either a note and deed of trust or a real estate contract? And don't forget assumptions of the seller's existing loan if the interest rates are attractive compared to what the going rate is now? This class will go over each of these different purchasing methods.

COURSE OBJECTIVES:

As a result of taking this class, the agent shall have a better understanding of the following:

1. Understand the costs involved in a cash transaction.
2. Have a better knowledge of the costs involved in a VA transaction and the differences.
3. Know what charges and credits are in a FHA transactions and the limits
4. Recognize the different type of conventional transactions and the qualifications required.
5. What does "subject to" mean?
6. What is a "wrap"?
7. Know that FHA and VA loans can be "formally" assumed and that they may be very attractive with interest rates going up.
8. Understand how a seller financed transaction works and the necessary forms to complete to be compliant.

CURRICULUM

Session/Hours	Topics	Method of instruction
15 minutes	Cash	Read material/discussion
30 minutes	FHA, VA, Conventional	Read material/discussion
15 minutes	USDA	Read material/discussion
30 minutes	Formal Assumption	Read material/discussion
30 minutes	Wrap	Read material/discussion
30 minutes	Subject to	Read material/discussion
30 minutes	Seller financing	Read material/discussion

Cash

In English vernacular **cash** refers to money in the physical form of currency, such as banknotes and coins.

In bookkeeping and finance, cash refers to current assets comprising currency or currency equivalents that can be accessed immediately or near-immediately (as in the case of money market accounts). Cash is seen either as a reserve for payments, in case of a structural or incidental negative cash flow, or as a way to avoid a downturn on financial markets. So, when the purchaser tells you, "Oh, I am paying cash" things just got so simple. Cash is a great way to purchase a home as the purchaser does not have to jump through all of the hoops to qualify for a loan.

Cash does not always mean "cash"!

As a real estate closer for almost 50 years, I can give you so many examples of the Purchase and Sale Agreements I have received that state CASH, but they end up not being CASH

1. A couple of days prior to closing the purchaser calls and says my parents are going to loan us $200,000.00 and want to know if you can prepare the note and deed of trust? Really???? I immediately tell them to call their agent and have their agent prepare an addendum that states exactly that. Yes, the seller will need to know that is really is not a CASH transaction.

   Yes, I can prepare the note and deed of trust with proper instructions.

Some other items to address:

- Do the parents require title insurance on their loan?
- Will it be held in escrow collection – who will pay the fees
- Will the deed of trust have a due on sale clause?
- Will there be a late charge?

So many items that need to be addressed to protect the parents that are loaning the money, if they should desire protection.

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2. I call the purchasers to tell them the amount of money they need to bring in for their closing on Friday. They tell me that they are refinancing their rental for the purchase of this home and that loan is not approved yet.

   Does their agent know this? Does the listing agent and seller know this? So, it really was not a CASH transaction.
3. Buyers are selling a rental and it won't close until next week……this was not disclosed

   DISCUSSION:

   Do you think the selling agent should be contacting the listing agent and prepare a NWMLS form 34 with the changes for all parties to sign or another form?

The form that should have been used for the above cases would be 22EF that clearly Talks about "Disclosure of Contingent funds.

Under paragraph 3:

Buyer is relying on contingent funds for the purchase price:

____Loan:____
____Sale of the following owned by Buyer:____
____Gift of $________from____
____Funds not readily convertible to liquid United Sales funds (describe________________
____
____other____

Purchaser's costs: Customary costs to purchaser are ½ closing fee, recording fees, and pro-rated taxes. Payment for the first year of insurance is suggested, but not mandatory to be on the closing statement**, but if the closer does not collect the insurance premium at closing**, normally a paragraph will be added to the closing instructions stating the insurance has been suggested but will be handled outside of escrow.

Seller's costs: Customary costs to sellers are real estate commission, ½ closing fee, owner's title policy premium, excise tax, pro-rated taxes, and a holdback for the final utility bill. Any items that show up on title would need to be paid in full as well, such as deeds of trust, contracts, liens, judgments, and assessments.

NOTE ON UTILITY HOLDBACK

At closing, it would be explained to the seller that the holdback of $400.00- $600.00 would be returned to the seller once the final utility bill is received by the closer who pays what is owed and remits the balance to the seller. This usually occurs within 1 to 2 weeks of closing. This holdback amount may be more or less at times. Prior to signing, the closer will call the utility district to see what the amount is of any unpaid balances, AND then ask when the reading date was last done and what do they feel the new estimated balance due could be. If it exceeds the "customary" holdback that that particular closer's company uses, the closer will add enough to be sure they are holding enough to pay any new reading balance in full.

NOTE ON INSURANCE BINDER

When there is a lender involved in a transaction, an insurance binder is mandatory and typically the lender does not send a closer the documents until insurance is in place.

With a cash transaction, an insurance binder can not be demanded from a purchaser if they do not wish to purchase.

Most closers and attorneys will put a memo in their closing instructions that state the purchaser was informed of insurance, but does not want to provide it at this time and will hold the closer free and harmless in the event of a problem, and have them initial or sign a statement.

VA LOAN

A VA Loan is a mortgage loan in the United States guaranteed by the U.S. Department of Veterans Affairs (VA). The loan may be issued by qualified lenders.

The VA loan was designed to offer long-term financing to eligible American veterans or their surviving spouses (provided they do not re-marry). The basic intention of the VA direct home loan program is to supply home financing to eligible veterans in areas where private financing is not generally available and to help veterans purchase properties with no down payment. Eligible areas are designated by the VA as housing credit shortage areas and are generally rural areas and small cities and towns not near metropolitan or commuting areas of large cities.

HISTORY:

The original Servicemen's Readjustment Act, passed by the United States congress in 1944, extended a wide variety of benefits to eligible veterans. The VA loan guarantee program was especially important to veterans. Under the law, as amended, the VA is authorized to guarantee or insure home, farm, and business loans made to veterans by lending institutions. Over the history of the program, 20 million VA home loans have been insured by the government. The VA can make direct loans in certain areas for the purpose of purchasing or constructing a home or farm residence, or for repair, alteration, or improvement of the dwelling.

The Veterans Housing Act of 1970 removed all termination dates for applying for VA-guaranteed housing loans. This 1970 amendment also provided for VA-guaranteed loans on mobile homes.

More recently, the Veterans Housing Benefits Improvement Act of 1978 expanded and increased the benefits for millions of American veterans.

Despite a great deal of confusion and misunderstanding, the federal government generally does not make direct loans under the act. The government simply guarantees loans made by ordinary mortgage lenders after veterans make their own arrangements for the loans through normal financial circles. The Veterans Administration then appraises the property in question and, if satisfied with the risk involved, guarantees the lender against loss of principal if the buyer defaults.

On October 26, 2012, the Department of Veterans Affairs announced it has guaranteed 20 million home loans since its home loan program was established in 1944 as part of the original GI Bill of

Rights for returning World War II Veterans. The 20 millionth loan was guaranteed for a home in Woodbridge, VA. purchased by the surviving spouse of an Iraq War Veteran who died in 2010.

VA Loan Application:

The VA loan application is a standardized loan application form 1003 issued by Fannie Mae also known as Freddie Mac Form 65. It is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements on a VA loan application under the provisions of Title 18, United States Code, Section 1001, et seq.

Purchasers will need the following paperwork to apply:

- Copies of their W-2 statements for the past two years
- Copies of their previous two pay stubs
- Documentation of other assets (checking accounts, savings accounts, financial investments, trust funds, etc.).
- If self-employed, two years of consecutive tax returns
- The veteran also will need to supply their DD 214 or Certificate of Guarantee

VA non-allowable fees:

The following are the types of fees that cannot be charged to the veteran:

- Loan Closing Lender Fees
- Lender Document Preparation Fees
- Conveyance Fees
- Attorney's services other than for title work
- Photographs
- Interest rate lock in fees
- Postage and other mailing charges, stationery, telephone calls and other overhead
- Amortization schedules, pass books, and membership or entrance fees
- Commitment fees or marketing fees of any secondary purchaser of the mortgage and preparation and recording of assignment of mortgage to such purchase
- Trustee's fees or charges
- Loan application or processing fees
- Fees for preparation of truth in lending disclosure statement
- Fees charged by loan brokers, finders, or other third parties whether affiliated with the lender or not
- Tax service fee

IMPORTANT FORM TO USE WHEN YOU WANT YOUR VA PURCHASER TO PAY THE ½ CLOSING FEE AND NOT THE SELLER – YOU MUST CHECK THE BOX.

NWMLS FORM 22A 3:

Loan cost provisions. Seller shall pay up to $________________or ______% of the purchase price which shall be applied to Buyer's loan and settlement costs, including prepaids, loan discount loan fee, interest buy down, financing, closing or other costs allowed by lender. That amount shall include the following costs that lender is prohibited from collecting from Buyer: (a) up to $300 for Buyer's loan and settlement costs for FHA/USDA/VA loans and (b) unless agreed otherwise below, Buyer's share of the escrow fee for a VA loan. Seller to pay the cots for (a) and (b), even if the amount agreed upon in this Paragraph 3 is insufficient to pa for those costs. If checked ___ Buyer shall pay Buyer's share of the escrow fee for the VA loan (note that VA regulations prohibit Buyer from paying loan and settlement costs exceeding one percent of the amount of the loan.

Effective October 3, 2015, The Consumer Financial Protection Bureau became the regulator in the settlement industry for any loan (FHA, VA, and Conventional) applied for on that date and after.

The new settlement statement is called **a CLOSING DISCLOSURE.** It is a statement of the purchaser's and seller's closing costs. The purchaser is provided the 5-page document at least 3 days prior to executing the loan documents at the closing office. The seller will sign the closing disclosure at the time of the signing appointment.

There is a purchaser's closing disclosure, a seller's closing disclosure, and a combined closing disclosure.

FHA LOANS

What is an FHA Loan? An FHA loan is a mortgage loan that is insured by the Federal Housing Administration (FHA). Essentially, the federal government insures loans for FHA-approved lenders in order to reduce their risk of loss if a borrower defaults on their mortgage payments.

The FHA program was created in response to the rash of foreclosures and defaults that happened in the 1930's; to provide mortgage lenders with adequate insurance; and to help stimulate the housing market by making loans accessible and affordable. Nowadays, FHA loans are very popular, especially with first-time buyers. Since 1968, the FHA is part of the Department of Housing and Urban Development (HUD).

What are the advantages of FHA loans? Typically, an FHA loan is one of the easiest types of mortgage loans to qualify for because it requires a low-down payment and you can have less than perfect credit. An FHA down payment of 3.5 percent is required. Borrowers who cannot afford a traditional down payment of 20 percent or can't get approved for private mortgage insurance should look into whether an FHA loan is the best option for their personal scenario.

What are the disadvantages of an FHA mortgage? You knew there had to be a catch, and here it is. Because an FHA loan does not have the strict standards of a conventional loan, it requires two kinds of mortgage insurance premiums: one is paid in full upfront-or, it can be financed into the mortgage – and the other is a monthly payment. Also, FHA loans require that the house meets certain conditions and must be appraised by an FHA approved appraiser.

- Upfront mortgage insurance premium (MIP): This is an upfront monthly premium payment, which means the borrowers will pay a premium of 1.75% of the home loan, regardless of their credit score. This sum can be paid upfront at closing as part of the settlement charges or can be rolled into the mortgage.

Annual MIP (charged monthly): This is actually a monthly charge that will be figured into your mortgage payment. It is based on a borrower's loan-to-value ratio, loan size, and length of loan. There are different Annual MIP values for loans with a term greater than 15 years and loans with a term of less than or equal to 15 years.

FHA Loan Requirements

- Must have a steady employment history or worked for the same employer for the past two years.
- Must have a valid Social Security number, lawful residency in the U.S. and be of legal age to sign a mortgage in your state.
- Must make a minimum down payment of 3.5 percent. The money can be gifted by a family member.
- New FHA loans are only available for primary residence occupancy.
- Must have a property appraisal from a FHA-approved appraiser.
- Your front-end ratio needs to be less than 31% of your gross income
- Your back-end ratio needs to be less than 43% of your gross income.
- Property needs to meet certain standards.

CONVENTIONAL LOAN

A conventional mortgage refers to a loan that is not insured or guaranteed by the federal government. A conventional, or conforming mortgage, adheres to the guidelines set by Fannie Mae and Freddie Mac. It may have either a fixed or adjustable rate. The maximum limit for a conforming loan depends on the county and state you live in.

When you apply for a home loan, you can apply for a government-backed loan (such as an FHA or VA loan) or a conventional loan, which is not insured or guaranteed by the federal government. This means that, unlike federally insured loans, conventional loans carry no guarantees for the lender if you fail to repay the loan.

For this reason, if you make less than a 20% down payment on the property, you'll have to pay for private mortgage insurance (PMI) when you get a conventional loan. (If you default on the loan, the mortgage insurance company makes sure the lender is paid in full. Since there is no government insurance, conventional loans pose a higher risk for lenders so credit and income requirements are stricter than for FHA or VA mortgages.)

Generally, you can get a conventional loan if you:

- Have good credit
- Have a steady income
- Can afford the down payment

FORMAL ASSUMPTIONS

Assuming a home seller's existing mortgage can be attractive when the rate on that mortgage is well below the current market. Such assumptions have a value that can be shared by the buyer and seller. However, with a few exceptions, conventional loans today must be repaid on sale of the property, and lenders will allow an assumption only at the current market price. FHA and VA loans remain assumable, but the buyer must be approved by the lender.

When a homebuyer assumes responsibility for a home seller's existing mortgage, it is called an "assumption". The buyer assumes all the obligations under the mortgage, just as if the loan had been given to them.

The major driving force behind assumptions is the lower interest rate on the assumed mortgage relative to current market rates. If the home seller has a 2.5% mortgage, for example, and the best the buyer can get in the current market is 5%, both parties can be better off if the buyer assumes the 2.5% loan.

When the market rates are low, we hear little about assumptions. When market rates are well above previous lows, assumptions receive increasing attention.

The benefit to buyer and seller from assuming an old loan comes at the expense of the lender. Instead of having the 2.5% loan repaid, which would allow the lender to convert it into a new 6.5% loan, the 2.5% stays on the books. Back in the 70's and 80's, lenders couldn't do anything about this. Mortgage notes at that time did not prohibit assumptions, and the courts ruled that lenders could not prevent them.

Following that time frame, lenders have placed due-on-sale clauses in the note. (An exception is FHA and VA mortgages, which do not contain these clauses). These clauses state that if the property is sold the loan must be repaid. Even with a due-on-sale clause, the lender may allow an assumption – keeping the loan on the books avoids the cost of making a new loan, but the interest rate will be raised to the current market rate.

Purchaser's costs: The first year's insurance, ½ closing fee, deed recording fee, the two fees the lender is requesting on the formal assumption ($500.00 fee and $35.00 credit report), pro-rates for taxes and insurance, and the $895.03 amount in reserves which would be a charged to purchaser and credited to seller.

Seller's costs: The seller would pay the customary charges of commission, ½ closing fee, owner's title policy, utility holdback, 1/1/16 payment, and the taxes and interest would be pro-rated, and any payments to lender that may be due at that time.

ASSUMING FHA and VA MORTGAGES

Loans insured by FHA or guaranteed by VA have always been assumable. During periods when borrowers are concerned about future rate increases, this gives them an edge.

FHA loans closed before December 14, 1989, and VA loans closed before March 1, 1988 were assumable by anyone. **It was as simple as if you had a pulse and $45.00 assumption fee, you could assume the loan**! Buyers who assume these mortgages did not have to meet any requirements at all, but the seller remained responsible for the mortgage if the buyer doesn't pay**. This was called an "informal assumption".**

Any seller who allows an assumption by a buyer without a release of liability from the lender is looking for trouble. Even if the buyer makes timely payments the seller's ability to obtain another mortgage will be prejudiced by his continued liability on the old one. The release of liability from the lender must be in writing.

If an older FHA or VA is attractive to a buyer, the seller can request that the agency underwrite the buyer. If the buyer is approved, the seller will be released from liability.

Assumption of FHA or VA loans closed after the dates shown above require the approval of the buyer by the lender. The process is much the same as it would be for a new borrower. Upon approval of the buyer and the sale of the property, the seller is relieved of the liability. FHA allows lenders to charge a $500.00-$1,000.00 assumption fee and a fee for the credit report. VA allows a processing between $300 – 1,000) fee and the VA itself receives a funding fee of ½ of 1% of the loan balance.

The lender DOES NOT require a new appraisal or a lenders policy. Only the purchaser goes thru the application process, NOT the home.

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ALLOWABLE ASSUMPTIONS UNDER "GARN-ST. GERMAIN"

Whether a mortgage includes a due-on-sale clause or not, assumptions are explicitly allowable on certain types of transactions under the Garn-St. Germain Act of 1982. For example, if the title is transferred after a death or a divorce, the mortgage can be assumed by the owner.

HISTORY: THE GARN-ST GERMAIN DEPOSITORY INSTITUTIONS ACT OF 1982 (https://www.congress.gov/bill/97th-congress/house-bill/6267). Enacted October 15, 1982) is an Act of Congress that deregulated savings and loan associations and allowed banks to provide adjustable rate mortgage loans. It is disputed whether the act was a mitigating or contributing factor in the savings and loan crisis of the late 1980's. The bill whose full title was "An Act to revitalize the housing industry by strengthening the financial stability of home mortgage lending institutions and ensuring the availability of home mortgage loans," was a Reagan Administration initiative. The bill is named after its sponsors, Congressman Fernand St. Germain, Democrat of Rhode Island, and Senator Jake Garn, Republican of Utah. The bill had broad support in Congress, with co-sponsors including Charles Schumer and Steny Hoyer. The bill passes overwhelmingly, by a margin of 272-91 in the House.

An important consumer change was to allow anyone to place real estate in their own trust without triggering the due-on-sale clause that allows lenders to foreclose on a current loan upon transfer to another. This greatly facilitates the use of trusts to pass property to heirs and minors. It may also protect the property of wealthy or risky owners against the possibility of future lawsuits or creditors, because the trust owns the property, not the individuals at risk. The bill states "….a lender may not exercise its option pursuant to a due-on-sale clause upon….a transfer into an inter vivos trust which the borrower is and remains the beneficiary and which does not relate to a transfer of rights of occupancy in the property.*

Inter vivos

From Wikipedia, the free encyclopedia

The term is often used to describe a trust established during one's lifetime, i.e., an **Inter vivos trust** as opposed to a **Testamentary trust** which is established on one's death, usually as part of a will. An Inter vivos trust is often used synonymously with the more common term Living trust, but an Inter vivos trust, by definition, includes both revocable and irrevocable trust.

WASHINGTON USDA LOAN

Eligibility requirements – Washington

Washington residents have a great opportunity when house hunting thanks to USDA Loans. USDA Loans require no down payment or qualifying assets, have no maximum loan amount and can be used for both new and existing properties. Plus, fixed rate interest rates mean that your payments won't increase over time

For a family of 1- in Washington, the average household income limit for a USDA loan is about $140,650 a year, and for families of 5 or more the limit can be as high as $185,650 For more information contact a USDA specialist.

There is a map that shows the areas of Washington that are eligible for USDA loans.

- No down payment
- No maximum loan amount in Washington
- No assets needed to qualify
- Flexible credit guidelines
- USDA loans are for new and existing properties

ASSUMPTIONS USING A "WRAP-AROUND" MORTGAGE

There are cases where the seller and buyer agree to a sale using a wrap-around (also called an "overall contract") without the knowledge of the lender. The seller takes a mortgage from the buyer, which may be for a larger amount than the balance of the old loan, or not, and continues to pay the old mortgage out of the monthly payment proceeds of the new one. The new mortgage "wraps" the old one. This is dangerous business, particularly to the seller, who has given up ownership of the house but retained liability for the mortgage. The seller is in trouble if the buyer fails to pay, or if the lender discovers the sale and demands immediate repayment of the original loan.

LIMITATIONS OF LIMITED PRACTICE OFFICERS

If your seller elects to allow his "due on sale" underlying lien to be "wrapped" remember that LPO's are not allowed to do this type of transaction. It would need to be done by an attorney as LPO's cannot add the language to the Note/trust deed or Real Estate Contract to accomplish this "wrap" transaction. This is a rule from the Washington State Bar Association.

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SELLER FINANCING

Whether you call it "*Creative Financing", "Seller Financing*", or "*Seller Carry-back*" it is an option that the seller may choose. Some of the reasons for this type of option may be:

- The seller owns the property free and clear and does not want to receive all the proceeds at once, but would rather receive it over time and therefore avoid all of the capital gain at once. (They only pay based on the amount received at closing and installments received in the calendar year. Advice should be given to have the seller contact their accountant to get a clarification on how this will affect them.) Avoid giving legal advice on this. Always instruct your client to talk to the professionals, whether an attorney or an accountant, even though you think you know the answer.
- The property may not fully appraise at this time for the sales price, but the parties still wish to continue with the sale.
- The property may not be eligible for conventional financing at this time.
- The purchaser may not qualify for a conventional loan at this time due to credit issues or other issues.
- The property may be a commercial property with unusual terms.
- The property may be a land purchase with "deed release provisions" that will be handled over time.

RULES ON "*OWNER OCCUPIED*" CREATIVE FINANCING

The first thing we need to review, if you choose creative financing as an option, is what is the buyer's intent regarding occupancy? Will the purchaser occupy the home as their primary residence? If so, you and your client will need to follow some simple NEW RULES.

NOTE: THE RULES ONLY APPLY TO *OWNER OCCUPIED*.

Understand that "residential" creative or seller financing is regulated at both the State and Federal levels. In Washington, the Consumer Loan Act, chapter 31.04 RCW and chapter 208-620 WAC, regulates the lending of money or extension of credit for family, personal or household use. This includes financing residential mortgages which can include financing the sale of raw

land or vacant lots. Regulation under the Consumer Loan Act begins with the licensing process. Licensing is twofold in that both companies and individual mortgage loan originators must be licensed.

There are some exemptions from licensing at both the company and individual levels. The company level exemptions are found at RCW 31.04.025. The individual level exemptions are found at WAC 208.620-015.

A license waiver is available pursuant to RCW 31.04.025(3) for eligible transactions under the Consumer Loan Act. A license waiver can be issued for eligible seller financed residential mortgage loan transactions. An eligible transaction is one in which the seller owns the property being sold; is selling to a buyer for their family, personal or household use; is carrying the financing taking an interest in the property; and who is not subject to the federal law that requires the licensing of mortgage loan originators.

Washington State Department of Financial Institutions has adopted a rule to implement a license waiver under RCW 31.04.025(3).

According to Washington State, Department of Financial Institutions, you may be eligible to make five or fewer residential mortgage loans (owner occupied) during a calendar year without holding a company level license if you are not subject to licensing as a mortgage loan originator. See WAC 208-620-105. If you are eligible for the license waiver, you must comply with the conditions.

The following pages are from Department of Financial Institutions:

1. License Waiver Steps
2. Residential Seller Financing License Waiver

License Waiver Steps

Please note: You do not need a license waiver if you are carrying the financing on the sale of the home you live in. See the reference above to Interpretive Statement 2010-1 Revised.

Additionally, you do not need a license waiver if you are carrying the financing on raw land, even if that raw land is zoned residential. See RCW 31.04.025(2)(f) (link is external).

1. Print the License Waiver
2. Fill out the license waiver, including the declaratory portion at the bottom, and return it to the Department via email to Michele.Gill@dfi.wa.gov, via fax to the attention of Michele Gill at 360-664-2258, or via hard copy to the Department at the address at the bottom of this webpage, to the attention of Michele Gill. You can now provide the completed License Waiver to the escrow or title company or attorney. Do not provide any other loan documents to the Department.
3. As to Item No. 1 in the License Waiver, access the links below to print, fill out and provide the applicable disclosure summary to the borrower. Do not provide the disclosure summary to the Department.
4. **Disclosure Summary Forms for use with License Waiver**

- Disclosure Summary – Fixed Rate Loan
  Print this document, fill it out and provide it to the buyer. Do not provide to DFI.
- Disclosure Summary – Variable Rate Loan
  Print this document, fill it out and provide it to the buyer. Do not provide to DFI.

Contact Us

If you have any questions about seller financing, please contact Michele Gill.
Phone: 360-664-7866
Toll Free: 1-877 RING DFI (746-4334)
Email: Michele.Gill@dfi.wa.gov.

Mailing Address For U.S. Postal Service:
Department of Financial Institutions
Attn: Michele Gill
Division of Consumer Services
PO Box 41200
Olympia WA 98504-1200

For Overnight Delivery:
Department of Financial Institutions

Attn: Michele Gill
Division of Consumer Services
150 Israel Rd SW
Tumwater WA 98501

RESIDENTIAL SELLER FINANCING LICENSE WAIVER

Name: ______________________________
Address: ______________________________
____
RE [Property Address]: ______________________________
____

Pursuant to RCW 31.04.025(3) the Seller(s) is/are granted a waiver from the licensing provisions of the Consumer Loan Act (CLA), chapter 31.04 RCW. The license waiver is granted only for the specific transaction involving the Property Address above and as described by the Seller or Seller's representative. The license waiver is conditioned on the accuracy and completeness of the information provided is valid only upon the following additional conditions:

1. If you do not provide the borrower with a compliant disclosure under Regulation X (12 CFR 1024), you must provide the buyer with a disclosure summary of the loan's material terms and conditions. Access the link below to print, complete, and provide the applicable disclosure to the borrower. If a section of the disclosure is not applicable, write "N/A". You may provide the required information in your own format.
http://dfi.wa.gov/cs/seller-financing.htm
2. In order to foreclose you must follow the specific foreclosure process set forth in chapter 61.24 RCW or as otherwise required by Washington law.
3. The license waiver is not available for loans above the state's usury limit of twelve percent.

Obtaining and complying with this license waiver from state law does not meet the requirements under the federal Truth in Lending Act as implemented by Section 1026.36 of Regulation Z (12 CFR 1026). It is your responsibility to determine applicability of that law to your transaction. We encourage you to consult with an attorney.

I,
____[Printed Name], declare:

1. I am not in the business of financing residential mortgage loans.
2. I have not received five License Waivers from the Department of Financial Institutions prior to this one.
3. I have not constructed or acted as a contractor for the construction of a residence on the property in the ordinary course of my business.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this _____ day of _______________, 2014 in _______________[City], _______________[State]
_________________________________[Signature] __________________[Contact Telephone Number

You will note in the above information the State of Washington has in its rules that the seller may be eligible to make "**FIVE OR FEWER**" in a calendar year.

Next, you will review the FEDERAL rules, which say "**THREE OR FEWER**" in a 12-month period.

AND then, we will review your form, NWMLS 22C, which says "**ONE**" in the past twelve months.

Seem confusing… yes!

DO THE "SELLER FINANCING" RULES APPLY?

Once again, the three questions that you ask:

1. Is there a dwelling?
2. Is the buyer a natural person?
3. Is the natural person moving into the dwelling?

If you answer "yes" to all three, THE RULES APPLYS.

If you answer "no", THE RULES DO NOT APPLY TO:

- Vacant land
- The purchase of properties acquired strictly for business purposes, such as commercial and investment properties that will NOT be owner-occupied, even if such properties include a dwelling.
- Land bought primarily for agriculture purposes, even if it includes a dwelling.
- Property/dwelling is purchased by a buyer other than a natural person such as an estate, trust, corporation, partnership, association, church, union, or fraternal organization. For purposes of Regulation Z, a land trust is considered a Natural Person.
- Owner-occupied rental property that is a triplex or larger. Duplexes are not exempt.
- A home purchased for use as a second or vacation home if the buyer intends to spend 14 or fewer days in the home in the coming year.

NOTE AND TRUST DEED OR REAL ESTATE CONTRACT?

The client must choose which to use, NOT the agent, as you never want it to be said you were "practicing law".

If the client is not sure, advise the client to seek legal advice from their personal attorney.

Here is a brief explanation of the two choices:

1. PROMISSORY NOTE SECURRED BY A DEED OF TRUST

   At time of closing, the real estate closer will prepare a warranty deed from the seller to the purchaser and record said deed at closing, thus title will pass to the purchaser and they will then be the record owner of the property. A promissory note will be prepared at closing setting out the payment terms due to the seller by the purchaser. Also, to be prepared and recorded is a deed of trust. This is the security for the promissory note. So, in basic terms, the note says "Mr. Seller, I agree to pay you and this is how" and the deed of trust says "this is what will happen to me and the property if I don't pay you Mr. Seller." When the deed of trust is recorded at closing, that document says the seller has a security interest in the property.

2. REAL ESTATE CONTRACT

   At time of closing, the real estate closer will prepare a real estate contact and record it at closing. They will also prepare a Fulfillment Warranty Deed, which will be executed by the seller, notarized, but not recorded at closing. The seller will remain in title and be the owner of record on the property. When the real estate contact is recorded it gives the purchaser a beneficial interest in the property. The warranty deed will be held in escrow collection until the purchaser has paid the contact in full. At that time the deed will be recorded and title will pass to the purchaser. It is kind of like buying a car – you don't actually get the title to the car until you have paid the car in full.

ASSUMPTION OF EXISTING "SELLER FINANCED" CONTRACT OR NOTE AND DEED OF TRUST

Many times, if there is a real estate contract or a privately financed note and deed of trust against a property, the property may be fully assumable if there is no provision providing for a due-on-sale clause.

If it is **not** assumable, then this is what each document commonly says.

1. **Promissory note and Deed of Trust**

LPB Form 22A (Deed of Trust with Due on Sale and Due Date) securing the Property. The parties shall initial the Due on Sale clause, which provides: "The property described in this security instrument may not be sold or transferred without the Beneficiary's consent. Upon breach of this provision, Beneficiary may declare all sums due under the note and Deed of Trust immediately due and payable, unless prohibited by applicable law."

2. **Real Estate Contract:**

LPB Form 44 (Real Estate Contract) Optional Provision – Due on Sale If Purchaser, without written consent of Seller, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease or assign, (f) grants an option to buy the property, (g) permits a forfeiture or *foreclosure or trustee or sheriffs sale of any of the Purchaser's interest in the property or this Contract, Seller may at any time thereafter either raise the interest rate on the balance of the purchase price or declare the entire balance of the purchase price due and payable. If one or more of the entities comprising the Purchaser is a corporation, any transfer or successive transfers in the nature of items (a) through (g) above of 49%or more of the outstanding capital stock shall enable Seller to take the above action. A lease of less than 3 years (including options for renewals), a transfer to a spouse or child of Purchaser, a transfer incident to a marriage dissolution or condemnation, and a transfer by inheritance will not enable Seller to take any action pursuant to this Paragraph; provided the transferee other than a condemnor agrees in writing that the provisions of this paragraph apply to any subsequent transaction involving the property entered into by the transferee.*

NOW, LET'S THINK OUTSIDE THE BOX

If either of the above “due-on-sale” clauses is on the instrument, many times the beneficiary might be interested in having the subsequent purchaser take over the contract or note and deed of trust. Just by asking, you would be surprised how many say “yes”! Of course, they will want to review the credit worthiness of the new “purchaser” or may want to get some information on their income, debt, work history, or other items. This is an approach that so many agents never think to check out. Many of the escrow collection companies state that these contract sellers get so used to monthly contract payments that they don’t want to be paid off. They love the interest they earn and if they get paid off, now they may have to worry about capital gains on the payoff amount received. If the subsequent “purchaser” has credit worthiness that is equal to or exceeds the present purchaser, the contract seller may be interested in allowing the assumption. If the seller agrees to have the new purchaser assume their loan, the escrow holder will require a written statement from the seller stating that they agree to the assumption and the closer will also need a copy of this document for their file. A simple one-page statement works!

When assuming a note and deed of trust or real estate contract on a private financing transaction, the closing statement would be handled the same way a formal FHA or VA assumption would be handled. However, rather than a lender’s charge, the escrow holder would charge an assignment fee, which is usually between $50.00 - $100.00, and the escrow collection fee would also be pro-rated.

AND FINALLY, PURCHAING A PROPERTY "SUBJECT TO"

Buying a property "subject to" means a buyer essentially takes over the seller's remaining mortgage balance without making it official with the lender. It's a popular strategy among real estate investors.

Below are some takeaways about buying subject-to, how it works and the pros and cons:

- Buyer subject-to means the homebuyer is taking over the mortgage payments with no official agreement in place with the lende4r.
- Buying a subject-to home is attractive to buyers if they can get a lower interest rate by taking over payments.
- This arrangement poses the risks for the buyer if the lender requires a full loan payment (due on sale clause in the deed of trust) or if the seller goes into bankruptcy.

WHAT DOES BUYING "SUBJECT-TO" MEAN IN REAL ESTATE?

Buying subject-to means buying a home subject-to the existing mortgage. It means that the seller is not paying off the existing mortgage. Instead, the buyer is taking over the payments. The unpaid balance of the existing mortgage is then calculated as part of the buyer's purchase price.

For example, if the seller took out a mortgage for $200,000 and had paid $150,000 on it before they decided to sell the home, the new buyers would then make payments on the remaining $50,000

Under a subject-to- agreement, the buyer continues making payments to the seller's mortgage company. However, there is no official agreement in place with the lender. The buyer has no legal obligation to make the payments. Should the buyer fail to repay the loan, the home could be lost to foreclosure. It would be in the original mortgagee's name (i.e. the sellers)

REASONS A BUYER MAY PURCHASE A SUBJECT-TO PROPERTY:

The biggest perk of buying subject-to real estate is that it reduces the costs to buy the home. There are no closing costs, origination fees, broker commissions or other costs. For the real estate investor who plans to rend or re-sell the property down the line, that means more room for profits.

For most homebuyers or investors, the primary reason is to take over the seller's existing interest rate.

Another reason that certain buyers are interested in purchasing a home subject-to is they might not quality for a traditional loan with favorable interest rates. Taking over the existing mortgage loan might offer better terms and lower interest rates over time.

I have had many calls from agents who stated their sellers received a call from an investor who proposed to purchase their property and take over the existing loan, subject-to. They don't understand this concept.

You, as an agent need to understand this concept and have your client contact their attorney to explain it to them. And if they agree to this type of purchase, an attorney should draw up the agreement for the parties to sign.

NEXT, finding a closer to close this type of transaction may be difficult and LPO's are not allowed to alter the limited practice board forms in anyway, and there is no way to close these without altering some of the language, so typically an attorney should close.

Quiz for Subject to – what?

1	An agent should always ask numerous questions with a cash transaction.	**True**	**False**
2	The NWMLS form 22EF should be used for a cash transaction.	**True**	**False**
3	Utility holdback can be any amount between $400 - $600 typically.	**True**	**False**
4	Insurance binders are mandatory in order to close.	**True**	**False**
5	FHA/VA/Conv all use Closing Disclosures as their settlement form.	**True**	**False**
6	FHA/VA/Conv all use a standard 1003 (loan application).	**True**	**False**
7	A veteran can pay their own closing fee if 22A 3 is checked.	**True**	**False**
8	CFPB became the regulator on 10/3/15.	**True**	**False**
9	FHA is insured by Federal Housing Authority.	**True**	**False**
10	MIP means Mortgage Insurance Premium.	**True**	**False**
11	MIP is only required for 10 years.	**True**	**False**
12	A Conventional loan can have PMI (Private Mortgage Insurance)	**True**	**False**
13	Conventional loans cannot be formally assumed.	**True**	**False**
14	The lender requires a new lenders policy on a formal assumption.	**True**	**False**
15	VA Loans are guaranteed by Veterans Administration.	**True**	**False**
16	LPO's are allowed to close "wraps" and "subject to".	**True**	**False**
17	If it difficult to assume a seller financed transaction.	**True**	**False**
18	There are limits on seller financing when the property will be owner occupied.	**True**	**False**
19	Buyer taking the property "subject to" the seller's loan can be a problem later.	**True**	**False**
20	The lender must approve and "subject – to" transaction prior to closing.	**True**	**False**

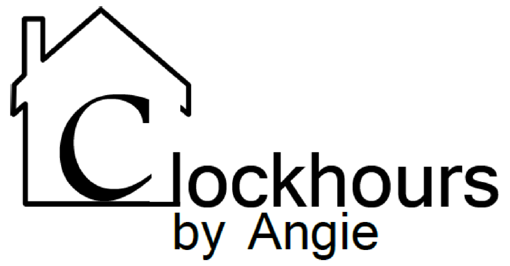
I hereby attest that I have read the material and answered the questions.

____

Signature

____

Date completed



Mandatory Evaluation for

Please fill out the following form and return with your completed clock hour class quiz.

Name/ Company: ____

Address: ____

City, State, Zip: ____

Phone: (personal) ___________________________(work)________________________

Email: ____

License Renewal Date: ____

Signature: __________________________________Date: ______________________

1. What are 3 things that you learned from this course?

   1. ____
   2. ____
   3. ____

2. Do you feel the clock hour material was easy to follow? ______________________________

3. Did the material give you information to help you in your profession? ____________________

4. Will the material help you with future transactions? _________________________________

5. Why did you choose to take this course? Topic __ Time __ Cost __ Ease __ Other__

6. How long did this class take you to complete? ________________ (a “clock hour” is 50 minute)

How will you pay for this correspondence class?

_____cash _____check ______debit/credit information needed:

Card number_________________________________exp date_______

3 digits on back______ zip code of where bill is mailed____________

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