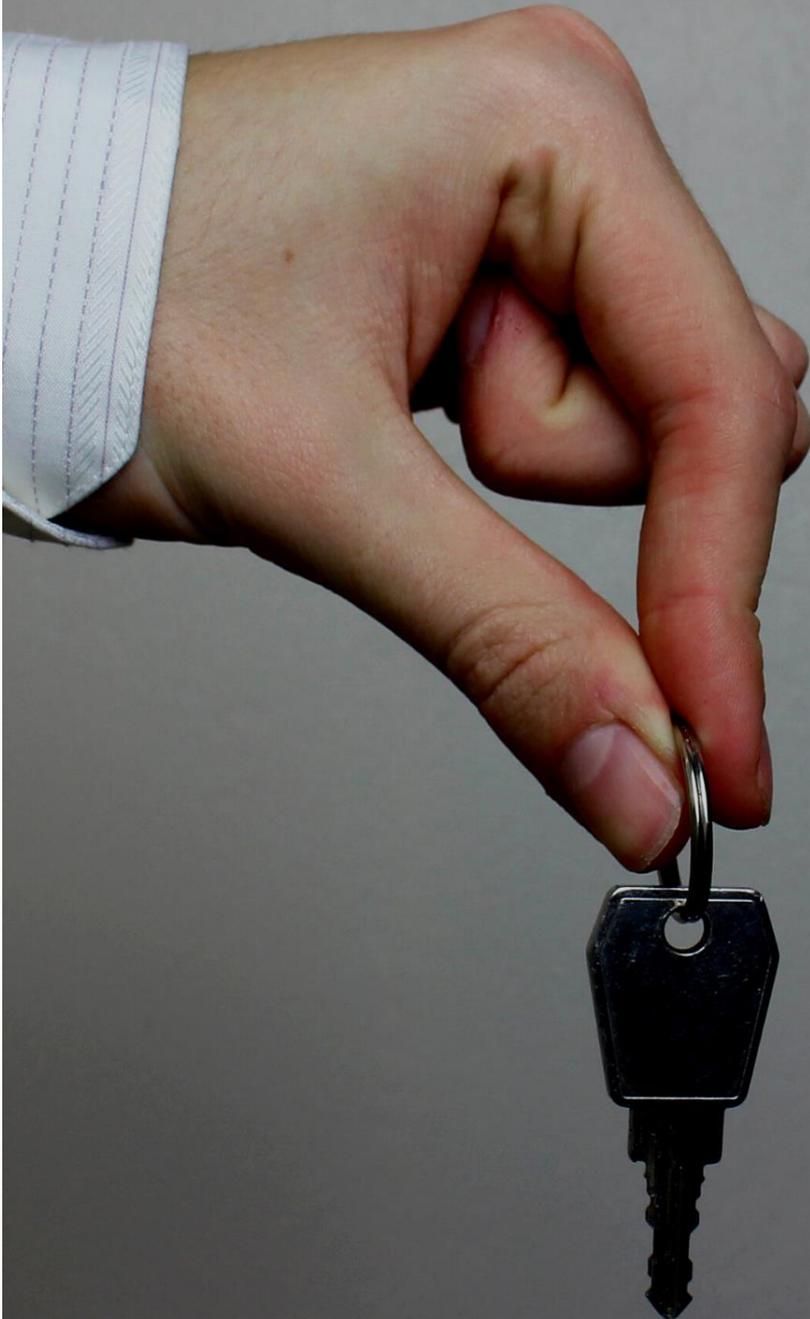


# FORMAL, WHAT????? ASSUMPTIONS



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*Washington State Approved Real Estate School for Clock Hour Education under R.C.W. 18.85.*

# CORRESPONDENCE CLOCKHOURS

## Or LIVE Class

### INSTRUCTIONS ON CORRESPONDENCE CLASS

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, or call me with it at 509-216-3220
6. Upon receipt, I will email you a certificate.

### INSTRUCTIONS ON 'LIVE' CLASS

1. Class material will be given to you at class
2. Class will be discussed with instructor and power point referred to
3. A clock hour is 50 minutes
4. There is no test on a LIVE class
5. Agent must complete registration and evaluation and turn into instructor
6. Certificates will be handed out at class or emailed within 48 hours.

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](mailto:clockhoursbyangie@gmail.com)

# FORMAL ASSUMPTIONS, WHAT?

## Curriculum

Session/hours	Topics	Method of instruction
30 minutes	History of assumptions	Discussion/take notes
30 minutes	Assumption package review	Discussion/take notes
30 minutes	Application process	Discussion/take notes
30 minutes	The closing statement	Discussion/take notes
30 minutes	Review of 5 closing statements	Discussion/take notes
30 minutes	Assumption of seller Financing	Discussion/take notes

# COURSE OBJECTIVE

The students of this class will have a better understanding of “formal assumptions” and how they work. This is a “newer” type of financing now that our interest rates are climbing, those lower interest rates of 2020-2021 are looking very attractive to “assume”.

With this additional “tool” in their toolbox, a well-informed agent will have other options to offer their purchasers, if everything lines up.

## **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% mortgage, for example, and the best the buyer can get in the current market is 5.125%, both parties can be better off if the buyer assumes the 2% 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% loan repaid, which would allow the lender to convert it into a new 5% loan, the 2% 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.

## 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.

## **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.

## **NOTE FROM ANGIE:**

### **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.

## **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 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.

## **NOTE FROM ANGIE:**

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

Now let's review a sample of the various ways to purchase a property for \$400,000

**Cash sample closing statement**

ESCROW NO.      **Estimated Costs**

Pro-rated 7-1-22

	DEBIT	CREDIT		DEBIT	CREDIT
Sales Price	400,000.00				
Interest					
credit report					
VA Funding fee 1/2 of 1%					
reserve account transfer					
Assumption fee (\$500.00 POC)					
Owners title policy					
deed recording fee	204.50				
1/2 escrow fee	587.52				
1st years insurance	820.00				
7/1/22 PAYMENT					
Interest 6/1/22 to 6/30/22					
2022 taxes pro-rated 6-1-22 TO 6-30-22	316.62				
Sub total					
Balance due from buyer		401,928.64			
TOTALS	401,928.64	401,928.64			

**CHANGES TO VA LOANS:**

Form 22A, Financing Addendum;

4. *“loan cost provisions. Seller shall pay up to \_\_\_\$\_\_\_\_\_ or \_\_\_ \_\_\_\_\_% of the Purchase price (\$0.00 if not filled in), which shall be applied to Buyer’s Loan(s) 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 \$300.00 for Buyers Loan (s) and settlement costs for FHA/USDA/VA loans; and (b) unless agreed otherwise below. Buyer’s share of escrow fee for a VA loan. Seller shall pay the costs for (a) and (b), even if the amount agreed upon in this Paragraph 4 is insufficient to pay 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 or settlement costs exceeding one percent of the amount of the loan).*

Let's review a VA transaction with zero down payment, VA funding fee of \$9,200.00 added back to loan with interest at 5.125%

**VA SAMPLE CLOSING STATEMENT**

ESCROW NO.      **Estimated Costs**

Pro-rated 7-1-22

	DEBIT	CREDIT		DEBIT	CREDIT
Sales Price	400,000.00				
Loan Amount w, 9,200.00 VA funding fee added back		409,200.00			
Loan fee	4,092.00				
Flood certification	11.00				
credit report	49.00				
VA Funding fee	9,200.00				
Res for in (3 x 68.33)	204.99				
Res for taxes (4 x 321.02)	1,284.08				
Admin fee	1,125.00				
Lenders title policy	737.00				
Deed & DOT recording fee	420.00				
1/2 escrow fee	587.52				
1st years insurance	820.00				
Tax service fee	53.00				
Appraisal fee	800.00				
2022 taxes pro-rated 6-1-22 TO 6-30-22	316.62				
Sub total					
Balance due from buyer		10,500.21			
<b>TOTALS</b>	<b>419,700.21</b>	<b>419,700.21</b>			

**Conventional w/5% down sample closing statement**

ESCROW NO.      **Estimated Costs**

Pro-rated 7-1-22

	DEBIT	CREDIT		DEBIT	CREDIT
Sales Price	400,000.00				
Loan Amount		380,000.00			
Loan fee	3,800.00				
Flood certification	11.00				
credit report	49.00				
Res for in (3 x 68.33)	204.99				
Res for taxes (4 x 321.02)	1,284.08				
Admin fee	1,125.00				
Lenders title policy	71 0.00				
Deed & DOT recording fee	420.00				
1/2 escrow fee	587.52				
1st years insurance	820.00				
Tax service fee	53.00				
Appraisal fee	800.00				
2022 taxes pro-rated 6-1-22 TO 6-30-22	316.62				
Sub total					
Balance due from buyer		30,181.21			
<b>TOTALS</b>	<b>390,181.21</b>	<b>390,181.21</b>			

**Conventional w20% down sample closing statement**

ESCROW NO.      **Estimated Costs**

Pro-rated 7-1-22

	DEBIT	CREDIT		DEBIT	CREDIT
Sales Price	400,000.00				
Loan Amount		320,000.00			
Loan fee	3,200.00				
Flood certification	11.00				
credit report	49.00				
Res for in (3 x 68.33)	204.99				
Res for taxes (4 x 321.02)	1,284.08				
Admin fee	1,125.00				
Lenders title policy	670.00				
Deed & DOT recording fee	420.00				
1/2 escrow fee	587.52				
1st years insurance	820.00				
Tax service fee	53.00				
Appraisal fee	800.00				
2022 taxes pro-rated 6-1-22 TO 6-30-22	316.62				
Sub total					
Balance due from buyer		89,541.21			
<b>TOTALS</b>	<b>409,541.21</b>	<b>409,541.21</b>			

FHA

ESCROW NO.      **Estimated Costs**

Pro-rated 7-1-22

	DEBIT	CREDIT		DEBIT	CREDIT
Sales Price	400,000.00				
Loan Amount w, MIP added back		392,755.00			
Loan fee	3,860.00				
Flood certification	11.00				
credit report	49.00				
MIP added to loan	6,755.00				
Res for in (3 x 68.33)	204.99				
Res for taxes (4 x 321.02)	1,284.08				
Admin fee	1,125.00				
Lenders title policy	724.00				
Deed & DOT recording fee	420.00				
1/2 escrow fee	587.52				
1st years insurance	820.00				
Tax service fee	53.00				
Appraisal fee	800.00				
2022 taxes pro-rated 6-1-22 TO 6-30-22	316.62				
Sub total					
Balance due from buyer		24,255.21			
TOTALS	417,010.21	417,010.21			

\*14,000.00 down payment with funding fee of \$6,755.00 added back= \$392,755.00

And, let's check out a seller financing statement. Typically, the interest rate is 1-2% higher than the going rate, so it does look attractive to sellers. And, many sellers are worried about capital gain and they would only pay based on the principal payments received per year, so they will have to pay capital gains, but not all at once.

**Seller financing sample closing statement**

ESCROW NO.      **Estimated Costs**

Pro-rated 7-1-22

	DEBIT	CREDIT		DEBIT	CREDIT
Sales Price	400,000.00				
Note and trust deed to sellers		320,000.00			
Interest credit report					
VA Funding fee 1/2 of 1% reserve account transfer					
Assumption fee (\$500.00 POC)					
Owners title policy					
Deed and DOL recording fee	420.00				
1/2 escrow fee	587.52				
1st years insurance	820.00				
7/1/22 PAYMENT					
Interest 6/1/22 to 6/30/22					
2022 taxes pro-rated 6-1-22 TO 6-30-22	316.62				
Escrow set up and annual fee	250.00				
Res for taxes (4 x 321.02)	1,284.08				
Res for ins (3 x 68.33)	204.99				
Sub total					
Balance due from buyer		83,883.21			
TOTALS	403,883.21	403,883.21			

## **CERTIFICATE OF ELIGIBILITY ON VA ASSUMPTION:**

Letter from lender to seller:

*You have requested an assumption of a VA loan which is guaranteed by the seller's entitlement. If you are doing a substitution of entitlement, we must have the original Certificate of Eligibility for both the buyer and seller. Without these, the Veterans Administration will not process the substitution. Your DD-214 does not represent the Certificate of Eligibility. If you have not obtained your Certificate of Eligibility, you may request it at the below VA website.*

<https://www.ebenefits.va.gov/ebenefits-portal/ebenefits.portal>

*You may obtain this form from your local VA office listed below or by checking your telephone book for the local listing in your area:*

*Department of Veterans Affairs*

*VA Regional Loan Center*

*If Entitlement is not substituted, the veteran's eligibility remains with the property until the loan is paid in full or a qualifying assumption with substitution of entitlement is completed. In the event of default or foreclosure, the veteran may be held liable by the Veterans Administration for any debt incurred. This debt must be paid to retain eligibility or the veteran's entitlement will be forfeited.*

## **IF YOU DO NOT HAVE A RELEASE OF LIABILITY, WHAT HAPPENS TO THE SELLERS VA REMAINING ELIGIBILITY?**

**If the purchaser assumed a loan in the amount of \$376,680.34, but did not release the seller from liability, with the Washington State limits of \$647,200.00 he would have left of his liability \$270,519.66 to use towards another purchase.**

## **\$647,200 – Washington State**

To compensate for rising home values, the Federal Housing Finance Agency (FHFA) recently announced it will raise the 2022 conforming loan limit on home loans backed by the Department of Veterans Affairs (VA). The massive increase raised the former limit to **\$647,200** — close to a \$100,000 increase. Apr 27, 2022

## **ASSUMPTION /RELEASE OF LIABILITY REQUEST FROM EXISTING LENDER**

Typically, when a purchaser wants to formally assume an FHA or VA loan one of the following options happens.

Seller contacts their lender and says I have a purchaser who wants to assume my loan will you send me an assumption package. And they do.

OR

Lender will NOT send assumption package and tells seller to have the purchaser contact them and they will do a loan application over the phone, then if pre-qualified, will send out loan package

## **NOTE FROM ANGIE:**

Since “formal assumptions” are just starting to occur as our interest rates go up, most lenders do not have an Assumption Department. It is a “newer” form of financing that few have done or even know about. Lenders typically have a person or persons who take on this task until there is a necessity to have a specific department set up. So, bear in mind, there is a lot of “learning” happening on all ends. Most lenders I have talked to say that a “formal assumption” could take between 6-8 weeks to complete, so you must allow for this time frame also. But, in the end, it will be worth the wait to your purchaser!

## Here is a typical letter from a lender on a VA loan

*Dear future homeowner applicant:*

*Thank you for your assumption/release of liability request. The assumption process usually takes four to six weeks to complete.*

*To expedite the processing of your application, please review the enclosed documents carefully and then sign and return them to our office along with the following items:*

*Credit report fee \$50.00*

*Assumption fee \$300.00*

*Real Estate title fee \$75.00*

*VA funding fee (1/2 of 1% of the unpaid balance, due at closing)*

*In addition to the above, we will need:*

### **INCOME:**

*Copies of the following Federal Tax returns (including all schedules) Must e re-signed and re-dated with the current date. **Applicable only if you are self-employed or have rental properties***

- Personal Returns for 2020 and 2021
- Business Returns for 2020 and 2021 (if you are self-employed)

*Copies of your latest year-to-date pay stubs for one full month for each source of income. Pay stubs must be dated and no earlier than 30 days prior to application,*

*Copies of your W-2's and/or 1099's for 2020 and 2021*

*Copy of most recent award letter for social security, disability or pension benefits. If applicable.*

*Year-to-date profit and loss statement signed by your accountant, if self-employed.*

*Letter addressing reasons for employment change if with current employer less than two years.*

*If using child support income for qualification, provide a 12-month child support ledger from the courthouse or copies of the last twelve (12) months of canceled checks showing receipt of child support.*

*Copy of complete Divorce Decree/Separation Agreement/Property Settlement Agreement.*

*Copies of current leases on all investment properties owned.*

**ASSETS:**

*Complete copy (all pages) of your most recent bank statement(s) for two (2) consecutive months for each bank account and investment account. Computer generated statements from your bank must be signed by a bank representative. Printed internet statements are acceptable if they have the bank name and balance. (Please include documentation for the source of any large deposits to your accounts.)*

**CREDIT:**

*Name, address and phone number for each landlord for the past two years.*

*If Bankruptcy has been filed within last seven (7) years, copy of the following:*

- *Petition*
- *Schedule of debts*
- *Discharge papers*

**OTHER:**

*Subject property must be owner occupied if substituting eligibility.*

*Copy of your signed purchase contract/offer for this property, signed by all buyers and sellers, stating the amount of equity to be exchanged.*

*If equity payment for property has been paid prior to application, provide proof of this payment.*

*Copy of most recent property tax bill and insurance bill for the subject property.*

*Copy of the listing agreement or sale contract on your present home, if any.*

*Evidence as to the source of funds used for down payment and/or assumption fee.*

*Copies of front and back canceled checks or bank statements showing rent/mortgage payments for the last twelve (12) months.*

*Copy of Social Security card (all applicants).*

*Signed 4506 tax Information Authorization and signed W-9 forms(s). Enclosed.*

*Copy of driver's license, birth certificate, passport or other legal documents verifying date of birth.*

*Copy of Death certificate, if applicable, and documentation evidencing the assumer(s) has rights to the property i.e. a copy of the Will and Last Testament.*

*\*\*\* The loan must be current PRIOR to the receipt of this Assumption Package. If the Loan becomes delinquent during the review process, the assumption process will automatically be terminated. \*\**

***CLOSING REQUIREMENTS FOR ATTORNEY/TITLE COMPANY: At time of closing***

- 1. Copy of the recorded deed transferring title will be required at closing*
- 2. Buyer will be required to furnish evidence of a one (1) year pre-paid hazard insurance policy.*
- 3. A current title search is required. The title search must be provided to our office prior to preparation and mailing of the closing package (Owner's policy only)*

*Please be advised that these terms and requirements are subject to change without notice.*

*If you have any questions, please contact us at 000-000-0000. These forms should be signed and returned directly to the assumption department.*

## **COMMON DOCUMENTS THAT NEED TO BE COMPLETED BY PURCHASER/SELLER:**

**1. Uniform Residential Loan Application commonly known as 1003**

*This document is many pages and is to be completed by the purchasers. They will fill in all the pages with such information as names, addresses, where they work, how much they make and all their assets and debts.*

**2. HUD/VA Addendum to Uniform Residential Loan Application**

*This document will have a repeat of names, address, type of loan. The borrower will sign on page 2 in two different places – one stating the lender has the right to verify the borrower's social security number with Social Security Administration and the 2<sup>nd</sup> time that they intend to occupy the home and understand loan was based on appraised value.*

**3. Department of Veterans Affairs – Statement of purchaser or owner assuming sellers' loan**

*This document questions whether the applicant is a Veteran and if so, required information so they can start their search.*

**4. Borrower Signature Authorization**

*This authorization, once signed, gives the lender authorization to verify income, bank accounts, stock holdings and any other asset balances that are needed to process the application.*

**5. Applicant's Agreements and Understandings**

**6. Certificate of Eligibility**

**7. Counseling Checklist for Military Homebuyers**

**8. Funding Fee Exemption Questionnaire**

**9. 4506-T – Request for Transcript of Tax Return**

**10. W-9 Request for Taxpayer Identification Number and Certification**

**11. Notice to FHA/VA Loan Applicants**

*This form explains that the current lender will process your assumption application as long as they can get a guarantee that the assumption is subject to the continuation of the FHA Mortgage Insurance program, or VA Loan Guaranty program, whichever is applicable, under its present rules and regulations.*

**12. Notice to VA Loan Applicants**

**13. Owner Occupancy Certification**

**14. Important Information about procedures for opening a new account Notice to Applicants**

**15. VA Department of Veterans Affairs – Request for a Certificate of Eligibility**

**16. Source of Funds Statement**

**17. Statement of Veteran Assuming GI Loan**

**18. VA Borrower Certification and Statements**

**19. VA Release of Liability Assumption Clause**

**20. Verification of VA Benefits**

**21. Application for assumption approval and/or release from personal liability**

**22. VA Amendment to sale contract**

**23. Definitions of Truth-in-lending terms**

**24. Patriot Act Information Form**

**25. The Federal Equal Credit Opportunity Act**

**26. Flood Disaster Protection Act of 1973**

**27. Federal Collection Policy Notice**

**28. Property Condition Certification**

**29. FACTS – what does the lender do with your personal information**

**30. Servicing Disclosure Statement**

**31. Acknowledgement**

**WHEW!!!!!! That's a lot of documents. Now, imagine your purchasers receiving this in the mail or emailed to them to complete with no one in front of them! Will they call you, most likely!**

## **SO, WHAT IS INVOLVED IN APPLYING FOR A FORMAL ASSUMPTION:**

Now, not all lenders will send ALL those documents, but quite a few are mandatory. With a formal assumption, the purchaser does not work with a loan officer at the lender's local office. Instead, it is all done thru mail, email and phone. At least by most of the lenders.

So, how does this all start

1. Seller contacts their lender and tells them they have a purchaser for their home who would like to formally assume their note & deed of trust
2. Lender will obtain name and address from seller of who the purchaser is
3. Lender will send assumption package to purchaser to complete and return along with appropriate fees. Typically, the credit report and assumption fee.
4. Then, the lender's work begins. They review all the documents and information provided, verify and then make their determination that the purchaser can qualify to formally assume the seller's loan. This process is the exact same process a typical purchaser goes thru when they are applying for a loan. EXACTLY! It can take from 6-8 weeks for approval.
5. Once the lender approves this assumption, they will send the designated closing agent certain documents to be signed at closing by the seller and purchaser and the actual assumption agreement which will provide the closer with the necessary information in order to accomplish this transaction.

**THE FOLLOWING IS WHAT A LETTER WILL LOOK LIKE FROM A LENDER TO THE CLOSER UPON APPROVAL OF THE FORMAL ASSUMPTION**

May 15, 2022

Angie DeArth

WFG Title Insurance Company

N 1420 Mullan

Spokane, WA. 99206

Re: Seller to Buyer

1234 E. Easy Living Street

Spokane, WA. 99202

Loan number # 456789

Dear Ms. DeArth:

The purchasers have been approved to formally assume the sellers existing loan. To help you to prepare the closing statement, we are providing the following loan information for you:

376,680.34 unpaid principal balance with interest paid to 6/1/22 -interest rate 2%

1,316.41 reserve account balance

Next payment due 7/1/22 (please collect at closing) in the amount of \$1,901.83

The payment breakdown is as following

1,512.48 principal & interest

321.02 reserves for taxes

68.33 reserves for insurance

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\$1,901.83 TOTAL PAYMENT AMOUNT

We will require the following from you in order to accomplish the completion of this formal assumption:

1. Executed closing statements signed by both purchaser and seller;
2. Copy of warranty deed (please forward a copy of the recorded deed under separate cover when you have received it back from the recorder);
3. Original assignment of loan reserves executed by the seller;
4. Insurance binder from the purchases which you need to collect at closing;
5. A check in the amount of \$2,077.15 which represents the following:
  - a. 1,901.83 7/1/22 payment
  - b. 1,883.40 ½ of 1% VA funding fee

The purchaser has already prepaid for the \$50.00 credit report and the \$500.00 if you wish to show them on the closing statement as POC (paid outside of closing)

If you have any questions, do not hesitate to contact me at 860-624-5934

Sincerely:

Johnny Lender

**Now, let's review an assumption statement**

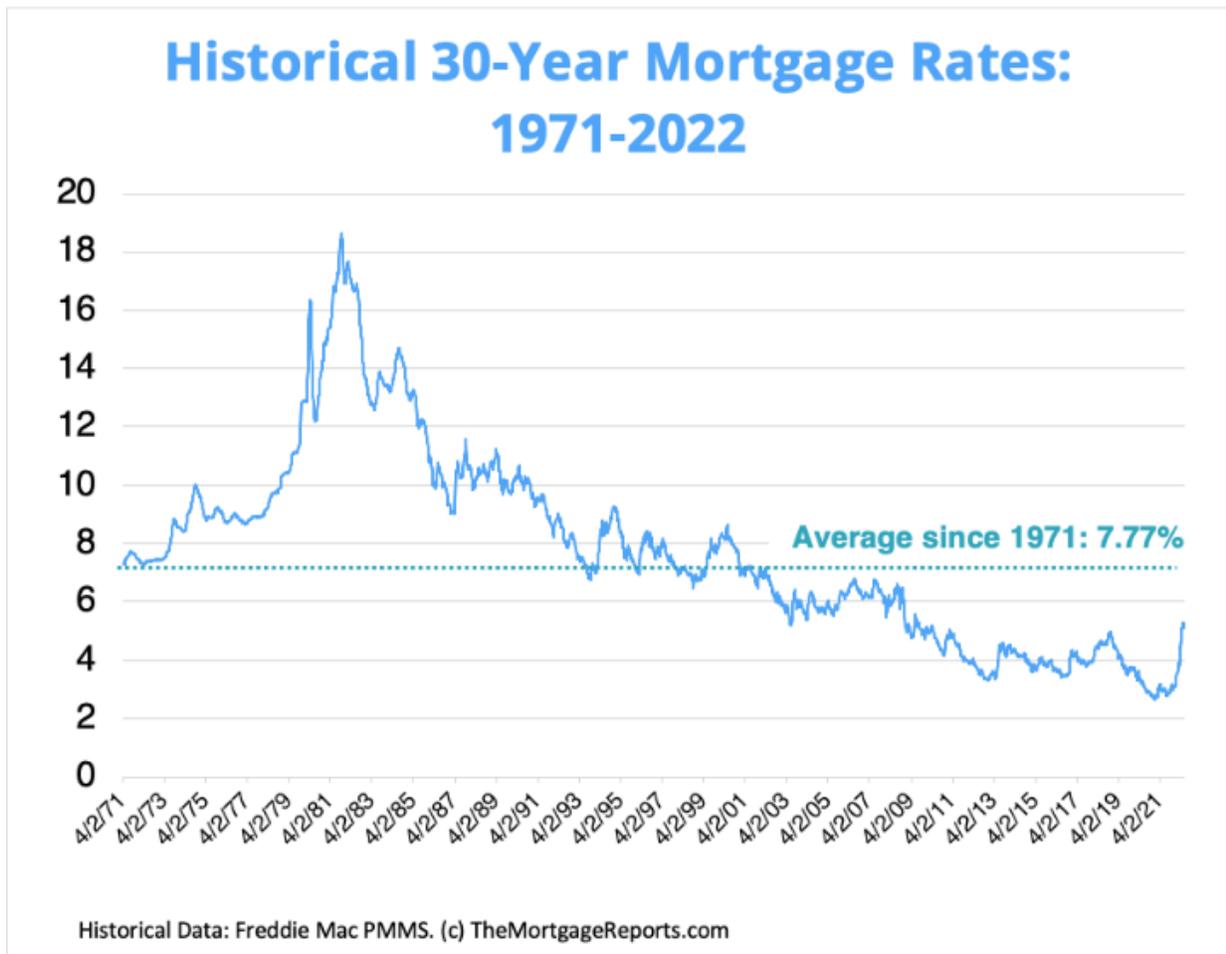
**VA FORMAN ASSUMPTIONSAMPLE  
CLOSING STATEMENT**

ESCROW NO.      **Estimated Costs**

Pro-rated 7-1-22

	DEBIT	CREDIT		DEBIT	CREDIT
Sales Price	400,000.00				
Loan Amount W/int to 6/1/22		376,680.34			
Interest 6/1/22 – 6/30/22	(627.78)				
VA Funding fee ½% of 1%	1,883.40				
credit report	49.00				
Reserve account	1,705.76				
7/1/22 payment	1,901.83				
Deed recording fee	204.50				
1/2 escrow fee	587.52				
1st years insurance	820.00				
2022 taxes pro-rated 6-1-22 TO 6-30-22	316.62				
Sub total					
Balance due from buyer		30,160.51			
<b>TOTALS</b>	<b>406,840.85</b>	<b>406,840.85</b>			

## Historical 30-year mortgage rates chart



*Chart represents weekly averages for a 30-year fixed-rate mortgage. Source: Freddie Mac*

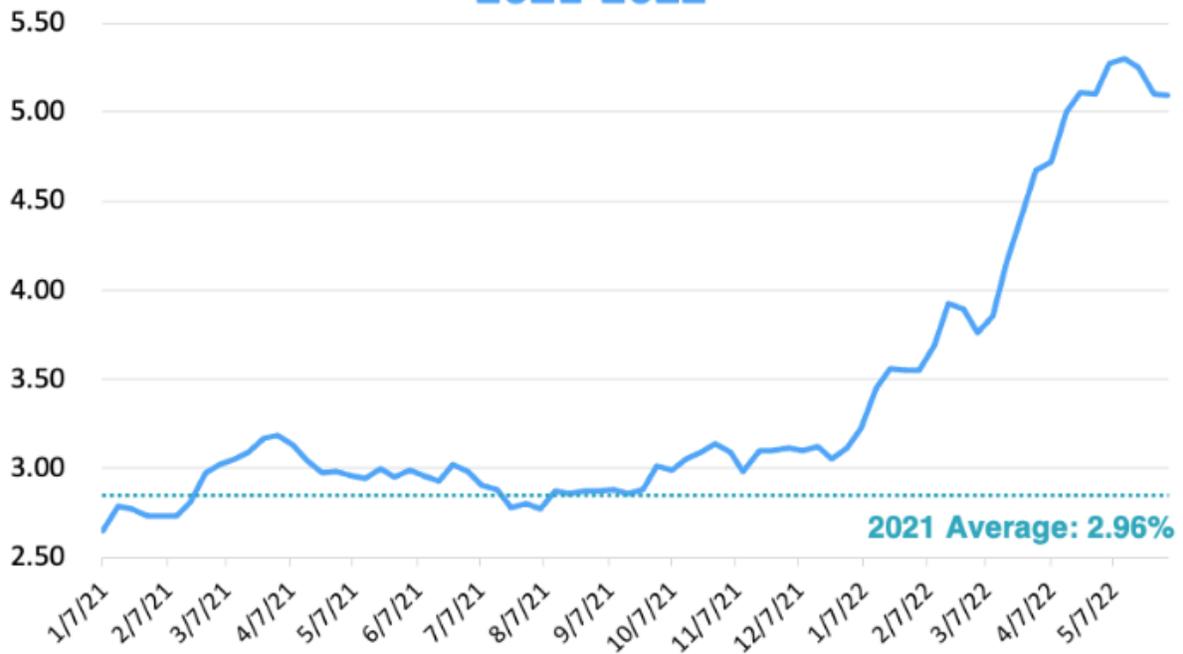
### HOW DO THE NUMBERS REALLY WORK?

During the years, 2013-20 sellers were paying a portion of “purchasers closings costs” as part of the transaction and sometimes were “buying down of interest rates”.

So, if the loan was obtained 1/1/19 and the average was 2.75 the seller could have bought the rate down by making it 2%.

Doesn't this rate of 2% look very enticing compared with a rate very close to 5% at today's rates?

## Current 30-Year Mortgage Rates: 2021-2022



A VA loan “assumption” allows a borrower to take over the terms of an existing mortgage, even if they aren’t a military service member, veteran or eligible surviving spouse.

#### **BUYER REQUIREMENTS:**

- Agreeing to take over all the liabilities associated with the mortgage
- Submitting evidence of on-time mortgage payments for the previous twelve months
- Having a debt to income ratio less than 41%
- Willing to pay a funding fee
- Having enough residual income

#### **SELLER REQUIREMENTS**

- You must have a current loan
- The new buyer must adhere to credit and income requirements defined by the VA and the lender
- The new buyer must assume all mortgage obligations.
- If not, any remaining dues must be paid before closing.
- The closing fee must be paid by either the new buyer or the original homeowner.

#### **VA LOAN ASSUMPTION CHALLENGES**

- VA loan assumption is only possible if the new borrower agrees to use the house as a primary residence. The house cannot be used as an investment property or vacation home.
- If the new buyer is a civilian, the remaining VA entitlement of the original buyer will not be recovered. This can stop the service member from using their VA loan benefits fully.
- You do not need to visit a regional office for approval if your lender has automatic authority. However, if this is not the case, you would have to seek the lender’s permission and the VA to assume a mortgage.
- A veteran willing to assume a VA mortgage might be required to pay a down payment in some cases.

#### **EXCEPTIONS TO VA APPROVAL FOR ASSUMPTIONS:**

According to the guidelines defined by the VA, the situations listed below do not require a VA approval to move forward with a VA loan assumption:

- In the event of the borrower’s death, the loan was assumed by a relative.
- The transfer/assumption occurred due to legal separation or divorce, and the spouse became the sole owner of the house.

- The assumption did not require the transfer of rights of occupancy, and the owner remained the beneficiary.
- The assumption occurred as a result of a spouse/child becoming a joint owner of the property.
- The assumption required the creation of subordinate to the lender's security instrument and did not include the transfer of occupancy rights to the property.
- A security interest in household appliances for purchase money was created in the assumption.

There might be other situations that do not require the VA's approval. Make sure to check with your lender before opting for the VA loan assumption.

I have seen completed assumptions where the buyer pays the seller \$10,000.00 and all the fees to do the assumption, so the seller walks away with a flat fee.

Many times, there are no agents and the attorney write up the purchase and sale agreement. Depending on who this is, the attorney can include this fee as part of the closing fee, or they charge extra to prepare it.

## 2022 VA Funding Fee Chart

<b>Down Payment</b>	<b>First-Time VA Loan Use</b>	<b>Subsequent VA Loan Use</b>
No Down Payment	2.3%	3.6%
5% or more	1.65%	1.65%
10% or more	1.4%	1.4%

## **ASSUMPTION OF NOTE AND TRUST DEED OR REAL ESTATE CONTRACT FINANCED TRANSACTION**

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 FURTHER OUTSIDE THE BOX:**

Say the purchaser has the ability to assume the FHA or VA loan (or seller financed) has some cash to put down, but not all of it. Maybe the seller would be willing to "carry" a small note and trust deed in second position.....??????

## 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 of the proceeds at once but would rather receive the proceeds over time and therefore avoid all 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 if 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.

NOW, LETS REVIEW THE WORKSHEET I HAVE PUT TOGETHER ON SALES PRICE OF \$400,000.00  
BASED ON

1. CASH
2. VA
3. FHA
4. CONVENTIONAL WITH 5% DOWN
5. CONVENTIONAL WITH 20% DOWN
6. FORMAL ASSUMPTION
7. SELLER FINANCING

closing date 7/1/22	CASH	VA	FHA	Conventional	Conventional	Formal assumption	seller financing
				20% down	5% down	of VA Loan	20% down
Sales price	400,000.00	400,000.00	400,000.00	400,000.00	400,000.00	400,000.00	400,000.00
Loan Amount		409,200.00	392,755.00	320,000.00	380,000.00	376,680.34	320,000.00
First Years Insurance	820.00	820.00	820.00	820.00	820.00	820.00	820.00
1/2 closing fee	587.52	587.52	587.52	587.52	587.52	587.52	587.52
Deed & DOT recording fees	204.50	420.00	420.00	420.00	420.00	204.50	420.00
taxes pro-rated 6/1/22 - 6/30/22	316.62	316.62	316.62	316.62	316.62	316.62	316.62
loan fee/ discount		4,092.00	3,860.00	3,200.00	3,800.00		
Appraisal fee		800.00	800.00	800.00	800.00		
flood Certification		11.00	11.00	11.00	11.00		
credit report		49.00	49.00	49.00	49.00	49.00	
MIP added back to loan amount			6,755.00				
VA funding fee (added back to loan)		9,200.00					
res for ins (3 x 68.33)		204.99	204.99	204.99	204.99		204.99
res for taxes (4 x 321.02)		1,284.08	1,284.08	1,284.08	1,284.08		1,284.08
admin fee		1,125.00	1,125.00	1,125.00	1,125.00		
lenders title		737.00	724.00	670.00	710.00		
tax service fee		53.00	53.00	53.00	53.00		
mortgage insurance premium							
VA funding fee 1/2% of 1% assumption						1,883.40	
Escrow collection fees							250.00
transfer reserve balance						1,705.76	
7-1-22 payment						1,901.83	
int 6-1-22 to 6-30-22						(627.78)	
down payment	zero	zero	14,000.00	80,000.00	20,000.00	23,319.66	80,000.00
closing costs	1,928.64	10,500.21	10,255.21	9,541.21	10,181.21	6,840.85	3,883.21
<b>Total Balance to close</b>	<b>401,928.64</b>	<b>10,500.21</b>	<b>24,245.21</b>	<b>89,541.21</b>	<b>30,181.21</b>	<b>30,160.51</b>	<b>83,883.21</b>
<b>PAYMENT BREAKDOWN</b>							
Principal & Interest		2,228.04	2,230.02	1,791.91	2,127.89	1,512.48	2,022.62
reserve for taxes		321.02	312.02	312.02	312.02	321.02	312.02
reserve for Insurance		68.33	68.33	68.23	68.33	68.33	68.33
MIP or PMI			271.43		110.83		
<b>TOTAL PAYMENT</b>		<b>2,617.49</b>	<b>2,881.80</b>	<b>2,172.26</b>	<b>2,619.07</b>	<b>1,901.83</b>	<b>2,402.97</b>
interest rate		5.125%	5.50%	5.375%	5.375%	2%	6.50%
MIP or PMI			62,011.72		13,298.79		
<b>Total down at closing &amp; 30 years</b>	<b>401,928.64</b>	<b>812,594.61</b>	<b>889,064.13</b>	<b>735,228.54</b>	<b>809,520.13</b>	<b>518,691.48</b>	<b>812,026.14</b>

includes 30 yrs  
MIP

80/20 - no PMI

PMI for estimated  
10 years  
to reach 20<sup>A</sup> paid

36 months payments  
made by seller

interest usually 1-2  
points higher than  
going rate

next pmt due 7-1-22

## QUIZ FOR FORMAL ASSUMPTIONS

1	The Garn-St. Germain Act of 1982 helped assignments into trusts so it does not trigger the due on sale clause.	True	False
2	Limited Practice Officers cannot prepare documents on “wrap arounds”	True	False
3	A “Limited Practice Officer” is also known as an LPO	True	False
4	Conventional loans cannot be formally assumed.	True	False
5	Prior to 1989 and 1988 all loans were assumable by anyone. No credit required.	True	False
6	The lender on a formal assumption will require a new appraisal.	True	False
7	Only FHA and VA loans can be formally assumed.	True	False
8	On a VA formal assumption, the “eligibility” issue must be considered.	True	False
9	Every lender has a fully staffed Assumption Department.	True	False
10	A formal assumption transaction only takes one week to process	True	False
11	Completing the paper work on the formal assumption application is a series of many repetitive documents that is required by the lender	True	False
12	The purchaser may need help completing the formal assumption documents.	True	False
13	Typically, the purchaser reimburses the seller for what is in the escrow account.	True	False
14	Lender will always require a credit report on the purchaser.	True	False
15	A non-Vet can formally assume a VA loan.	True	False
16	A VA loan does not have monthly MIP premiums.	True	False
17	An FHA loan has MIP premiums for the life of the loan based on the declining principal balance.	True	False
18	Typically, seller financing interest rate is 1-2 points higher than FHA/VA/Conv	True	False
19	If a seller financing transaction has a due-on-sale clause, you can still approach that seller to see if they would be willing to have someone else assume.	True	False
20	If the purchaser does not have funds to assume and “cash out” the seller, the seller may be agreeable to “carry back” a small 2 <sup>nd</sup> position note and trust deed.	True	False

**I HEREBY ATTEST THAT I HAVE READ THE MATERIAL AND ANSWERED THE QUESTIONS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



# Mandatory Evaluation

## — For FORMAL ASSUMPTIONS —

Please fill out and return

Name/ Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: (personal) \_\_\_\_\_ (work) \_\_\_\_\_

Email: \_\_\_\_\_

License Renewal Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

What are 3 things that you learned from this course?

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Do you feel the clock hour material was easy to follow? \_\_\_\_\_

Did the material give you information to help you in your profession? \_\_\_\_\_

Will the material help you with future transactions? \_\_\_\_\_

Why did you choose to take this course? Topic \_\_ Time \_\_ Cost \_\_ Ease \_\_ Other\_\_

How long did this class take you to complete? \_\_\_\_\_ (a "clock hour" is 50 minute)

**How will you pay for this class?**

\_\_\_\_\_ cash \_\_\_\_\_ check \_\_\_\_\_ debit/credit information needed:

Card Number \_\_\_\_\_ Exp Date \_\_\_\_\_

3 digits on back \_\_\_\_\_ zip code of where bill is mailed \_\_\_\_\_