

SELLER FINANCING

(WHEN THE SELLER WANTS TO BE THE LENDER)



clockhoursbyangie@gmail.com

www.clockhoursbyangie

(509) 216-3220

A Washington State Approved Real Estate School for Clock Hour Education under R.C.W.18.85.
Copyright@clockhoursbyangie updated 2/16; 11/16; 2/18; 1/19; 8/19, 12/22

CORRESPONDENCE CLOCKHOURS

INSTRUCTIONS:

1. Print out the class
2. Read the class booklet
3. At the end of the material there is a quiz (all of 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

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 differently 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

CREATIVE FINANCING

Curriculum

Session/Hours	Topics	method of instruction
60 minutes	Seller financing can be an option Review of 31.04 State vs. Federal requirements Need for a waiver Difference between Note and Trust deed and Real Estate Contract	read material/take test
60 minutes	Review of 22C	read material/take test
30 minutes	Understanding the risks	read material/take test
30 minutes	Escrow Collection	

SELLER FINANCING

Creative financing, seller financing, seller carry-back, whatever you want to call it, once you understand it, it will enable you to offer to your client alternative financing when traditional financing is not available or the seller does not want to be paid in full.

It will open up doors for both the purchaser and the seller.

COURSE OBJECTIVES:

As a result of taking this class, the agent shall be able to do the following:

1. Understand form 22C
2. Have a much better understanding of the difference between a Note and Trust Deed vs a real Estate Contract
3. Know the risks involved for your client
4. Understand the importance of the history of escrow collection and how it will help your clients.

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).

CW 31.04.025

Application of chapter.

(1) Each loan made to a resident of this state by a licensee, or persons subject to this chapter, is subject to the authority and restrictions of this chapter.

(2) This chapter does not apply to the following:

(a) Any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities conducting transactions under chapter 63.14 RCW (retail installment sales of goods and services), unless credit is extended to purchase merchandise certificates, coupons, open or closed loop stored value, or other similar items issued and redeemable by a retail seller other than the retail seller extending the credit;

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

(e) Any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary dwelling;

(f) Any person selling property owned by that person who provides financing for the sale when the property does not contain a dwelling and when the property serves as security for the financing. This exemption is available for five or fewer transactions in a calendar year. This exemption is not available to individuals subject to the federal S.A.F.E. act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings;

(g) Any person making loans made to government or government agencies or instrumentalities or making loans to organizations as defined in the federal truth in lending act;

(h) Entities making loans under chapter 43.185 RCW (housing trust fund);

(i) Entities making loans under programs of the United States department of agriculture, department of housing and urban development, or other federal government

program that provides funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing;

(j) Nonprofit housing organizations making loans, or loans made, under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income Washington state residents;

(k) Entities making loans which are not residential mortgage loans under a credit card plan;

(l) Individuals employed by a licensed residential mortgage loan servicing company engaging in activities related to servicing, unless licensing is required by federal law or regulation; and

(m) Entities licensed under chapter [18.44](#) RCW that process payments on seller-financed loans secured by liens on real or personal property.

(3) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making or servicing loans when the director determines it necessary to facilitate commerce and protect consumers.

(4) The burden of proving the application for an exemption or exception from a definition, or a preemption of a provision of this chapter, is upon the person claiming the exemption, exception, or preemption.

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

LET'S REVIEW THOSE FORMS:

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 AddressFor 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

Copyright@clockhoursbyangie updated 2/16; 11/16; 2/18; 1/19; 8/19, 12/22

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 APPLY.

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 SECURED 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 contract 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 contract 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 contract 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.

The next 4 pages are called” **THE BASIC DIFFERENCES BETWEEN REAL ESTATE CONTRACT AND DEED OF TRUST**

After reading this information your client will know the differences between the two forms of security and be able to make a decision. If they still do not understand, once again, point them in the direction of their own attorney to help them with this process.

(And the information provided will keep you out of the arena of “practicing law”.)

THE BASIC DIFFERENCES BETWEEN REAL ESTATE CONTRACTS AND A NOTE AND DEED OF TRUST

DEFINITIONS:

DEED OF TRUST

A Deed of Trust is an instrument used by a lender to secure real estate as collateral for a Note. The Note states the “terms of the loan”. The borrower is in title to the property, (is the owner of the property). A third party is named as the Trustee to release the lender’s interest in the property once the loan is paid and is also given the power to sell the property in case of non-payment.

REAL ESTATE CONTRACT

A Real Estate Contract is an instrument used when an owner of real estate agrees to sell the property and accept periodic payments from the purchaser. The seller remains in title to the property, (is the legal owner of the property), while the purchaser is entitled to possession of the property and the right to acquire title to the property in accordance with the terms of the contract.

RELEASE OF LENDER’S INTEREST AT FINAL PAYMENT:

DEED OF TRUST

The lender surrenders the original note and Deed of Trust to the Trustee. The Trustee executes and records a Reconveyance which releases the Deed of Trust from public records.

TIP:

To avoid possible loss of misplacement of original Note and Deed of Trust by a private party lender, a True Estate can be set up. The True Escrow company holds the documents in safekeeping, collects payments and releases the documents upon final payment

REAL ESTATE CONTRACT

The Real Estate Contract seller executes and records a Warranty Fulfillment Deed, which releases the debt and places the purchaser in title to the property.

TIP:

The Warranty Fulfillment Deed can be prepared by a Limited Practice Officer or attorney and signed by the contract seller at the time of preparing the Real Estate Contract. The original document can be held in a True Escrow. The True Escrow company holds the document for safekeeping, collects the payments and releases the document upon final payment.

FAILURE OF SELLER TO MAKE PAYMENTS ON UNDERLYING LOANS:

DEED OF TRUST

If the seller fails to make a payment on underlying loan(s) that the seller agreed to continuing paying, the buyer/owner has no remedy until the property goes into foreclosure by the underlying lender. The buyer/ owner may “cure” the default, which could be the entire loan balance plus costs, interest and attorney’s fees. Or, the buyer/owner may purchase the property at the Sherriff’s Sale or Trustee’s Sale. There is no provision for the buyer/owner to “take over” payments, should the seller default.

REAL ESTATE CONTRACT

If the Real Estate Contract seller fails to make payment on underlying loan(s) that the seller agreed to continue paying, the Real Estate Contract purchaser can make the delinquent payment(s) , after 1 days written notice to seller. The amount paid can be deducted from the payment(s) to the seller. After three such payments have been made by the purchaser, the purchaser can make all future payments directly to the underling lender and deduct that amount from payments to the seller.

REMEDIES FOR NON-PAYMENT BY BORROWER:

DEED OF TRUST

Judicial Foreclosure: The foreclosure is processed through the civil courts. Length of the foreclosure depends on availability of court dates which can range from three months to two years, depending on the volume in the courts in that county. The process can also be quite costly due to court costs, attorney fees and the length of time

The entire loan balance becomes due, plus costs and reasonable attorney’s fees can be recovered. The property is sold at a Sheriff’s sale to the highest bidder. The lender can obtain a Deficiency Judgment for the balance of the amount due after the proceeds of the Sheriff’s sale are applied. The Borrower continues to owe the lender the balance of the Deficiency Judgment after the property has been foreclosed.

The borrower has a twelve-month redemption period to pay the entire amount of the loan balance plus costs, if a Deficiency Judgment is obtained and eight months without a Deficiency Judgment. The borrower has the right to remain in the property during the redemption period if it is the borrower’s homestead (Primary Residence). The title to the property is conveyed in the form of a Sheriff’s Deed to the successful bidder after the redemption period.

Non-Judicial Foreclosure: The foreclosure process is handled by a Trustee, (usually an attorney), without court supervision. The foreclosure cannot be completed in less than 120 days from commencement and the Trustee’s Sale cannot be held less than 190 days after default.

The borrower may stop the foreclosure by bringing payments current plus interest and costs on or before the eleventh day prior to the Trustee's sale.

There is no right of redemption period or right to remain in the property for the borrower after the Trustee's Sale. The borrower has no further obligation to the lender (as in a Deficiency Judgment). The successful purchaser at the Trustee's Sale has immediate and clear title to the property and has the right to possession on the twelfth day after the sale.

Suit for specific performance: To recover unpaid installments on the Note, a law suit for Specific Performance can be exercised. The law suit results in a judgment against the borrower/owner and it can be enforced against any other property owned by them. Costs and attorney's fees can be included in the judgment. The lender does not foreclose on the property and the borrower/owner continues to make the remaining payments under the terms of the Note. This could result in multiple suits and judgments for the chronic delinquent borrower. However, it allows the lender to collect payments by "attaching" other property.

REAL ESTATE CONTRACT

Judicial foreclosure: (same as Deed of Trust Judicial foreclosure).

Forfeiture of real estate contract: The forfeiture process is handled outside of the courts. However, severe penalties can be imposed upon Real Estate Contract sellers who fail to follow strict compliance with the forfeiture procedures and the forfeiture can be voided. It is therefore recommended that legal counsel be used to forfeit a Real Estate Contract. The process can take as little as 90 days, once notices are served in accordance with the law.

The purchaser may stop the forfeiture by making delinquent payments, plus costs as allowed in the contract, within 90 days prior to the forfeiture.

Upon forfeiture, all rights of the Real Estate Contract purchaser are terminated. All sums previously paid by the purchaser and improvements made to the property are retained by the seller. The purchaser has no further obligation to the seller (as in a Deficiency Judgment). The seller is entitled to possession of the property ten days after the forfeiture.

Suit for specific performance: (same as Suite for Specific Performance on a Deed of Trust-the purchaser continues to make the remaining payments under the terms of the Real Estate Contract.

NOW, HERE IS A REVIEW OF “NWMLS FORM 21 C” HAND OUT #1

REV 7/19

First of all, the name of this form finally is named something when you go to look for it in your form list, you will actually find it now.

SELLER FINANCING ADDENDUM TO PURCHASE AND SALE AGREEMENT

PAGES 1-4 SEE **HANDOUT #1 NWMLS 22C**

1. GENERAL TERMS:

- A. **Limited use.** Buyer represents that the Property __will __will not (will, if not filled in) be used for a residential dwelling. **If the Property will be used for a residential dwelling, this Addendum may be used only if:**
- i. Seller is a natural person (and not a loan originator), estate or trust;
 - ii. Seller has not financed the sale of another property within the past 12 months;
 - iii. Seller did not construct or act as a contractor for the construction of a residence on the Property in the ordinary course of Seller’s business;
 - iv. The repayment schedule does not result in a negative amortization;
 - v. The financing has a fixed rate of interest or an adjustable rate of interest that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and
- B. **Washington State DFI Waiver.** If the property is used for a residential dwelling, Seller shall obtain a waiver from the Washington State Department of Financial Institutions (“DFI”) under RCW 31.04.025(3). If Seller does not give notice to Buyer that Seller has obtained the DFI waiver within _____ days (f days if not filled in) of mutual acceptance, Buyer may terminate the Agreement at any time prior to Seller giving such notice. If Buyer terminates under this Paragraph, the Earnest Money shall be refunded to Buyer.

The above terms are very important for you to review with your client if the property is sold to an owner-occupied purchaser. You will note that this form limits the seller to one in a 12-month period, yet State law says five and Federal says three.

- C. **Limited Practice Board Forms.** The current version of any Limited Practice Board (“LPB”) form referenced below shall be attached to this Agreement as a blank form:

Washington State is the only state that has Limited Practice Officers who are licensed by the Washington State Bar Association and can prepare closings but must use the designated forms "LPB" from the list of approved forms. These forms are available by you accessing the Washington State Bar Association, Limited Practice Officer Forms and your choices are as follows:

LPB Form 28A Promissory note

LPB Form 22 Deed of trust

LPB Form 22A deed of trust with due on sale and due date

LPB form 44 Real Estate Contract

If your client decided to sell/purchase the property on a real estate contract you would need to print out LPB form 44 and attach it to your NWMLS Form 22C, but do not fill it out. You are merely attaching it in blank form so the client can approve it for form and content. Your chosen closer will prepare a similar form at closing.

If your client decided to sell/purchase the property on a note and deed of trust, you would need to print out LPB form 28A, promissory note, and then chose which deed of trust you would need 22 or 22A depending on whether the client chose a due on sale clause or not. Remember if they did not choose the due on sale clause deed of trust, the note and trust deed would be fully assumable.

I have attached for you HANDOUT #2 AND HANDOUT # 3 which are the forms that you may print and attach to form 22C as instructed on that form

- D. **Attorney Review.** Buyer and Seller are advised to seek the counsel of an attorney to review the terms of this Agreement and this Agreement is conditioned upon review and approval by counsel for Buyer and Seller. Unless a party gives written notice of disapproval of this within _____ days (5 days if not filled in) of mutual acceptance, this contingency shall be deemed satisfied (waived).
- E. **Attorney Review.** If Buyer and Seller agree to financing terms that differ from the terms in this Addendum or an attached LPB form, including, but not limited to making interlineations or otherwise modifying or supplementing any pre-printed terms in this Addendum or attachments thereto, the parties shall have this Agreement reviewed by legal counsel. If Buyer and Seller do not give notice of approval of this Agreement by their counsel within _____ days (10 days if not filled

in) of mutual acceptance, this Agreement shall terminate and the Earnest Money shall be refunded to the Buyer.

NOTE: Some attorneys prepare their own note, trust deed, and real estate contract and are NOT the approved LPB Forms as noted in your Agreement. If you are aware of that fact with the chosen attorney, request a blank copy of those documents so they can be attached to the 22C to be reviewed by the parties and accepted.

- F. **Prior Indebtedness and Security.** Seller understands that Seller's security interest in the Property may be inferior to a third party's interest in the Property, such as a prior lender.

This clause further notifies the seller that in the event they are not in "first position" their position will be inferior and they would need to take a strong look at the terms of the security that is in front of them in the event of default to protect their position.

2. PAYMENTS TO SELLER AND METHOD OF PAYMENT

- A. **Down payment.** Buyer shall pay a down payment, including Earnest Money, which shall be applied to the Purchase Price at Closing as follows:
Earnest Money: \$_____ + Additional Money Down: \$_____ = Total Down Payment \$_____
- B. **Interest Rate.** The balance of the purchase price (the "Indebtedness") shall accrue interest at _____% per annum. Interest will begin to accrue on _____ closing _____ (closing if not checked).
- C. **Payments to Seller.** Buyer shall pay (check applicable box):
- i. No installment payments are required
 - ii. Principal and interest installments are required
 - iii. Interest only payments on the outstanding principal balance.

The installment Payments, if any, shall begin on the _____ day of _____ and shall continue on the _____ day of each succeeding (check applicable box): ___ calendar month ___ third calendar month ___ sixth calendar month ___ twelfth calendar month ___ other _____

When you get to this section it would be the perfect time to come up with a payment amount the purchaser/seller agrees upon and then to run an amortization schedule to be sure the payment amount will amortize. Many purchasers know what their limits are based on what they can afford each

month. Please be sure to take into account at this time how much the estimate would be to pay monthly for the taxes and insurance if a reserve account is also being set up (that information will come later in this form (5 A iii) Many times an agent will fill in the payment amount in this area but not take into account how much will be needed monthly towards the reserves and it can be a shock to the buyer at closing when the closer reviews what the total PITI payment will be.

D. Promissory Note and Deed of Trust

i. **Security:**

You have the choices here of checking what position the deed of trust in favor of the seller will be in: First, Second, Third. It will default to First if you do not fill in anything. The most common position and the best protection for the seller will be First Position, as nothing would come before the seller's deed of trust.

ii. **Promissory note:**

It is repeated here once again that the closer will use LPB form 28A (Promissory Note). Remember that you must attach a "blank" copy of this form to NWMLS Form 22C. Do not complete the form – you are only attaching it to be approved by purchaser and seller as to the "form and content".

iii. **Deed of trust:** *Under this section you are given the choice of the two LPB forms available – those being LPB form 22 or 22A.*

If form 22 is chosen, the note may be assumable to a third party.

If form 22A is chosen, there will be a paragraph on the document that will need to be initialed by purchaser and seller at closing that states:

"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."

iv. **Due Date:**

Under this item, the agent will need to insert a date that the parties have agreed the note will be due and payable. Or, in the event based on the

payment terms and say for example a 30-year amortization, they will need to compute what that date will be in the future. So, running an amortization schedule ahead of time will help as it will give you the exact month/year that last payment will be made so there is no guessing.

v. **Default and Default Interest.**

There are lots of blanks to complete in this section. Your closer and your clients will appreciate the agent who takes the time to fill in what was agreed upon, rather than leaving the line blank and letting it “default” to the language provided. Many times, when the agent does not fill anything and lets it go to the default, the client at a later time says “I didn’t know that was what it meant by defaulting to that number”. It is always best to fill in the blanks.

This section covers the following items:

- 1. Default interest rate: This is the interest rate that the note will increase to while the purchaser is in default. Please note that the note provides for 18% to be the default if not filled in. At this time, the current rate allowable by law for the State of Washington on Owner Occupied Property is only 12%.*
- 2. Late charge: There is a choice here of either an exact amount or the percentage. Some sellers would rather have a dollar amount in this area rather than a percentage of the payment amount.*
- 3. Number of days late: Typically, 10 or 15 is used. The default is 15 days, but sometimes a seller wants a more severe late charge and will chose only 5 days, or less.*
- 4. Number of days to cure default: Typically, we see sellers agreeing that 30 is the normal being used. But, once again, the seller may not be willing to wait this long for the lateness to be cured and wishes to commence with foreclosure sooner than the 30 days.*

vi. **Prepayment:** “Buyer may prepay all or part of the balance owned under this Agreement at any time without penalty.”

This clause does not allow the agent to choose. If you have a seller who wants to have some type of “prepayment penalty” it is always best to have the seller’s attorney prepare the language of this penalty ahead of time and have it made a part of this agreement (to be approved by purchaser) with instructions for it to be attached to the promissory note. If your closer is an LPO, they cannot create this language but with the

proper instructions by a document prepared by an attorney, may be able to attach it to the promissory note.

vii. No Further Encumbrances:

Optional: If the agent checks this box, the closer will also check the box that is on the LPB form deed of trust and the purchaser and seller will need to initial this box on the document at time of closing with the following provision:

As an express condition of Beneficiary making the loan secured by this Deed of trust, Grantor shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the property or any interest therein nor cause or allow by operation of law the encumbrance of the Trust Estate or any interest therein without the written consent of a Beneficiary even though such encumbrance may be junior to the encumbrance created by this Deed of Trust. Encumbrance of the property contrary to the provisions of this provision shall constitute a default and Beneficiary may, at Beneficiary's option, declare the entire balance of principal and interest immediately due and payable, whether the same be created by Grantor or an unaffiliated third party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect."

viii. Real Estate Contract:

The LPB Form 44 is referred to again here. If the parties want the security document to be the real estate contract, then there are 5 separate boxes that are available to choose from. If a box is checked here, the closer will have the parties initial the contract at closing the applicable box that corresponds to the box checked. The choices are:

- a. Substitutions and Security on Personal Property*
- b. Alterations*
- c. Due on Sale*
- d. Pre-payment penalties on prior encumbrances*
- e. Periodic payments on taxes and insurance*

Also, there is a box to check when the entire balance will be due and payable. An amortization schedule prepared ahead of time will help assist you in placing a date there if the seller did not choose a specific due in full date.

3. ASSUMED UNDERLYING OBLIGATIONS AND METHOD OF PAYMENT

This section focuses on the transaction where there is an existing note and deed of trust OR real estate contract that is currently owed by the seller and will be assumed by the purchasers or is being sold on a “wrap”.

A. **Assumed Obligations.** *You would fill in this blank with the unpaid balance of the loan that the purchaser will be assuming, especially if a **FORMAL ASSUMPTION***

B. **Consent of Holder of Underlying Obligation:**

If the purchaser will be assuming a loan and its terms require the underlying lienholder to approve the new purchaser, this is the clause where you would insert the number of days the purchaser/seller agree on to allow the purchaser to provide necessary information to that lienholder in order to approve them to assume the obligation.

C. **Seller Wrap of Existing loan:**

A “wrap” is when the seller has an underlying loan on the property and will remain responsible for the loan and make the payments monthly according to the terms and conditions.

The seller will sell to the purchaser on a real estate contract or note and trust deed that will be an “overall” or “wrap” of the seller’s encumbrance that will provide for monthly payments. Most transactions set up the contract or note and trust deed from the purchaser so that the payments that are remitted to the escrow holder instruct the holder to first pay the underlying lien, with the balance of the monthly payments to go to the seller. This is the best protection for the purchaser to have the payments made through escrow rather than all of the monthly payments going directly to the seller and the purchaser relying on the seller to pay the underlying.

D **Cash Down to Existing Loan:**

This section is where you will complete information about the loan being assumed by the purchaser and the conditions that the seller will still remain liable. Also, here is where the buyer/seller can have a review period for the loan being assumed.

OTHER TERMS

A. Payments to Collection Account.

Collection Account: *This is where you will set up which “third party” escrow holder will be the note or contract “servicer”, and establish whether the set-up charge and annual fee will be paid by the purchaser/seller or split 50/50. It also provides a box to check so that the fees for these services are collected at closing. This is a box that is missed many times by agents and it is an important feature to choose. This way, the closer will contact the escrow holder and find out what the fees are ahead of time and include them in the final settlement amounts due.*

Escrow *By checking this box, you are directing the escrow servicer to not only be responsible for collecting the monthly payments and servicing the escrow, but also to be responsible to hold the release documents.*

Taxes and Insurance *By checking these boxes you are instructing the closer to put the necessary language in the documents to have the servicer set up a reserve account for taxes and insurance as part of their service. Also, a box can be checked to instruct the closer to collect said reserves at time of closing in order to establish the necessary reserve account for the future taxes and insurance. The closer will need the insurance binder to compute what 1/12th of the insurance payment will be and will obtain the current tax amount to do the same. The funds will be remitted to the escrow servicer to hold on behalf of the purchaser for this escrow reserve.*

B. Seller’s Review of Buyer’s Finances Contingency.

This is where you can check various boxes based on the items the seller will require from the purchaser in order to “approve” the purchaser for this “creative financing” the seller is considering.

Choices are:

Buyers credit report

Buyer’s income tax returns

Verification of buyer’s employment

And other

C. Title Insurance

When title is addressed under this paragraph, it is for the buyer to purchase the seller a “lenders” policy. The “owner’s policy for the buyer is addressed on form 21

ESCROW COLLECTION

The role of an Escrow Collection Agent, or Escrow Servicer:

1. What is an escrow collection?

An escrow collection is when two or more parties enter into an agreement through documents (note and trust deed, note and mortgage, real estate contract, lease option, etc.) and have an independent third party hold these documents, comply with the information provided on these documents, applications of payments, and disburse accordingly.

2. Why place documents in collection:

- a. Safekeeping of documents in fireproof filing cabinets or vaults;
- b. Independent third-party computing balances and applications of payments.
- c. Fulfillment documents held by escrow holder, to be deposited at start of escrow collection, with instructions to be recorded when paid in full, or released or delivered by instruction of all parties in the transaction.
- d. 1099/1098 IRS reporting done annually.

3. Requirements of an escrow collection agent:

- a. Must be licensed by the State of Washington, Department of Financial Institutions under RCW 18:44
- b. Financial responsibility:
 1. Fidelity bond
 2. Errors and Omissions policy
 3. Surety bond
- c. Subject to audit by State of Washington Department of Financial Institutions.

ESCROW AGENT'S RESPONSIBILITY

The escrow agent on a collection escrow is responsible for servicing the collection according to the terms of the note, contract, or any other instrument deposited. Remember, the escrow holder is the "independent third party" and therefore cannot take directions from either party to the escrow. Directions must come from all related parties to the escrow and they must be in writing.

The escrow agent will complete "escrow instructions" for the parties to execute prior to accepting and disbursing payments. Said escrow instructions will normally describe documents placed into escrow, then repeat all the information provided in the documents to maintain this escrow and terms thereof.

A fee will be charged for this service and collected in advance or deducted from a payment received from a payment for the vendor's (seller's) portion. Escrow collection companies have a posted schedule of charges based on the various services they provide.

An example of some of the services are:

- Reserve account
- Assignments
- Direct deposit/auto withdrawal
- Late notice or late notice with copy to vendor (seller)
- Payoff quote
- Additional disbursements
- Deed releases
- Forfeiture monitoring/demand fee
- Close out fee
- Returned check fee

THE ESCROW AGENT IS NOT RESPONSIBLE FOR:

1. The correctness or completeness of the documents placed into escrow collection. (Nor are they responsible if the documents, when the escrow closes and the documents record, whether they will complete the chain of title or clear title)
2. For the deposit, procurement, or renewal of insurance policies, riders or clauses.
3. For the payment of taxes, insurance, or assessments, unless the arrangements are made with the collection agent to do so and sufficient funds are held in reserves and the Collection Agent has the sufficient and accurate billing information to do so.
4. For the determination of balances to third parties or overpayment to them where instructed to make payments to persons other than vendors (sellers).
5. For the performance of any act not expressly set forth in the collection instructions even though contained in the documents deposited.
6. For the failure to notify any party of non-payment, declaration of default, notice of foreclosure, or notice of insurance cancellation.

Seller Financing

1	Creative financing can be when the seller wants to be the lender.	True	False
2	There are some new rules regarding owner occupied property.	True	False
3	It is very clear that the number of sales in a 12-month period that the seller can do private financing is limited to five or fewer.	True	False
4	If your purchaser is going to occupy the home, the seller must have a mortgage broker's license.	True	False
5	LPB stands for Limited Practice Board.	True	False
6	An agent must attach a copy of the LPB form that is chosen to the NWMLS Form 22C and fill out the blanks.	True	False
7	A waiver form is to be obtained from DOL if the purchaser will be occupying the property.	True	False
8	There is a provision in the NWMLS Form 22C that will allow the purchaser and seller to have a certain number of days to have their attorney review the terms.	True	False
9	If an attorney does not use the LPB Forms their form will comply with no other provisions since they are attorneys.	True	False
10	NWMLS Form 22C has many default clauses so the agent will not have to fill in all the blanks.	True	False
11	The deed of trust sets out the payment terms for the purchasers.	True	False
12	If the seller wants to have a "prepayment penalty" in their terms, the agent will need to create that language themselves.	True	False
13	If the purchaser will be assuming an existing contract that has a Due-on-sale cause, the purchaser will need to obtain the consent of the underlying lien-holder.	True	False
14	An "overall" and a "wrap" are terms referred to when there exists an underlying that will be serviced from the purchaser's payment.	True	False
15	An escrow collection is an independent third party holding the documents.	True	False
16	Normally the setup fee and annual fee are split 50/50.	True	False
17	There may be an additional charge for setting up a reserve account for taxes and insurance or assessments.	True	False
18	Since the seller will be the "lender" there is a provision in 22C that allows the seller to require certain items from the purchaser to approve them for the loan.	True	False
19	The seller will need to do the reporting to the IRS at year end on interest paid or received if an independent escrow collection is not used.	True	False

20	A request for Full Reconveyance is the document that will be held in escrow collection to be recorded when the note is paid in full.	True	False
21	When the real estate contact is paid in full, the escrow holder will record a fulfillment warranty deed.	True	False
22	An independent escrow company is regulated by the DOL.	True	False
23	The escrow holder (or servicer) is responsible for the correctness of the documents being held in escrow.	True	False
24	The escrow holder can make changes to the escrow with written instructions from either the purchaser or seller.	True	False
25	Escrow collection companies have their “menu” of rates posted with the insurance commissioner.	True	False

I attest that I have read the materials and have answered the questions.

Sign here: _____

Date: _____



Mandatory Evaluation For:

SELLER FINANCING

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

Name: _____

Company: _____

Address: _____

Phone _____ email _____

License renewal date _____

Signature _____ date _____

1. What are 3 things that you learned from this course?
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?
_____ Time _____ Cost _____ Ease _____ other
6. How long did this class take you complete? _____

Payment Choices:

_____ check _____ cash _____ Debit or Credit card

Card # _____ exp date _____

Three digits on back of card _____ Zip code of where bill is mailed _____

