What’s in your toolbox?

(Cash, VA, FHA, Conv., Assumption, Seller Financing?)

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

CORRESPONDENCE CLOCKHOURS

INSTRUCTIONS:

1. Print out the class
2. Read the class material
3. At the end of the material there is a quiz (all the answers are in the material that you have read).
4. Answer the questions
5. Return to me the Quiz, evaluation, and a check for the class payable to **CLOCKHOURS BY ANGIE,** or complete your credit/debit card information on the sheet provided, or call me with it at 509-216-3220
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 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

What's in your toolbox?

Curriculum

Session/hours	Topics	Method of instruction
15 minutes	Cash transactions	Discussion/take notes
30 minutes	VA transactions	Discussion/take notes
30 minutes	FHA Transactions	Discussion/take notes
30 minutes	Conventional transactions	Discussion/take notes
30 minutes	Formal Assumptions	Discussion/take notes
30 minutes	Seller Financed Escrow Collection	Discussion/take notes
15 minutes	Overall review of spread sheet	Discussion/take notes

What’s in your toolbox?

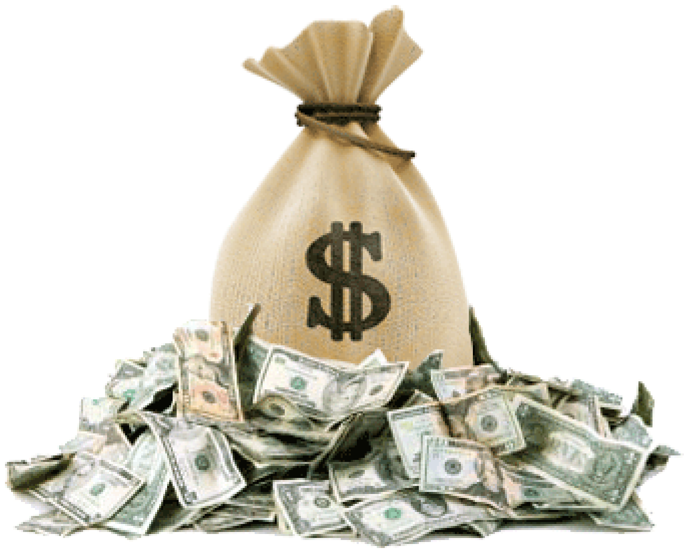
The first thing you normally want to do with a new purchaser is to get them “pre-qualified” with a lender so you know what price range they are qualified for. How will they pay for the home? Do they have enough to pay 100% cash? Do they have some cash and want a VA, FHA, or Conventional Loan? If so,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

COURSE OBJECTIVES:

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

1. Understand the costs involved in a cash transaction.
2. Have a better knowledge of the costs involved in a VA transaction and the differences.
3. Know what charges and credits are in a FHA transactions and the limits
4. Recognize the different type of conventional transactions and the qualifications required.
5. Know that FHA and VA loans can be “formally” assumed and that they may be very attractive with interest rates going up.
6. Understand how a seller financed transaction works and the necessary forms to complete to be compliant.
7. Understand why an escrow collection on seller financed transaction is needed and what services they offer.

Cash



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

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

To make this easy for you to compare the different purchasing methods I have used the following terms on all of the samples used in this class:
$200,000.00 sales price

6% commission

All examples are based on the "boiler plate language" in the purchase and sale agreement stating that the closing fee is split 50/50 and the seller will pay the owner's title premium and excise tax. But remember, closing costs are negotiable.

Let’s review a copy of the seller’s and purchasers closing statement on a cash transaction – see copy of **HANDOUT #1**

You will note this form is a HUD-1 form, as you would not be provided with a Closing Disclosure (Effective 10/3/15) because this type of sale does not require it. Some closers will provide you with a “closing statement” that will just have items, amounts, and debits/credits – usually a one-page statement and very easy to read.

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

In **HANDOUT #1,** page 2 you will notice the purchaser’s total costs are $1,078.66 and that is carried forward to page 1, added to the sales price and any pro-rates for a total to bring to closing of $200,935.22.

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

On page 2, for the seller’s side, you will notice the costs total $17,152.55 (this includes a $400.00 holdback for final utilities) and that figure is brought forward to page 1. If the seller owed any money to anyone else, it would show on lines 504 and 505. Then, the sales price and any pro-rate credits are totaled and subtracted from the total under 520, thus resulting in the seller netting $182,704.01.

NOTE ON UTILITY HOLDBACK

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

VA LOAN

Veterans United
Home Loans

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

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

HISTORY:

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

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

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

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

On October 26, 2012, the Department of Veterans Affairs announced it has guaranteed 20 million home loans since its home loan program was established in 1944 as part of the original GI Bill of Rights for returning World War II Veterans. The 20 millionth loan was guaranteed for a home in Woodbridge, VA. purchased by the surviving spouse of an Iraq War Veteran who died in 2010.

VA Loan Application:

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

Purchasers will need the following paperwork to apply:

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

VA non-allowable fees:

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

- Loan Closing Lender Fees
- Lender Document Preparation Fees
- Conveyance Fees
- Attorney’s services other than for title work
- Photographs
- Interest rate lock in fees
- Postage and other mailing charges, stationery, telephone calls and other overhead
- Amortization schedules, pass books, and membership or entrance fees
- Commitment fees or marketing fees of any secondary purchaser of the mortgage and preparation and recording of assignment of mortgage to such purchase
- Trustee’s fees or charges

- Loan application or processing fees
- Fees for preparation of truth in lending disclosure statement
- Fees charged by loan brokers, finders, or other third parties whether affiliated with the lender or not
- Tax service fee

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

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

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

Let's take a look at a combined Closing Disclosure which is **HANDOUT #2**

Page 1: This page will tell the purchaser many things about their loan. They will have a great understanding of the important points prior to their signing appointment. Page 1 has the sales price, loan amount, interest rate, and monthly payment. It further gives the borrower their payment amount including reserves. Then, at the bottom they are given a breakdown of the total closing costs and the cash to close. By having this "CD" three or more days prior to closing, it will give the borrower the chance to understand the loan and ask any questions directly to their loan officer, or the loan officer's designated person to handle this.

Page 2: This page lists loan costs, recording fees, prepaids, reserves, and any other costs and then will total those amounts and carry them to page 3 under "K" for the borrowers and under "N" for the sellers.

Page 3: At the very top of this page, the lender sets out two columns so the borrower can review what they were originally told by their lender when they received their "loan estimate" within 3 days of making application, against the figures on the final statement, which is the "closing disclosure" they are reviewing.

Now, the middle of this form looks very familiar to most agents, as it is mirrored off the HUD-1 with Borrower's totals on the left and Seller's totals on the right side.

Each section is totaled and "brought up". So, under the Borrower's side you would see the costs from page 2, section "J" added to the sales price creating the first figure there under "K". Then, under "L" the same thing happens: all credits are shown here in this section, including the to the sales price, the earnest money deposit, pro-rates, and the adjustment for the title premium. Then at the bottom, each of the totals are shown (total debits from "K" and total credits from "L"). The credits are subtracted from the debits leaving the amount needed from the buyer to bring to closing.

The same thing happens on the seller's side.

Now, let's take a look at one of the items that seems to be creating most of the questions for sellers, purchasers and agents **– THE TITLE FEES**

There are so many entries on this new Closing Disclosure form regarding the title policy. Note the charge to the buyer of $1,059.83 on page 2 under "C", then on page 3, under "L" there is a credit of $684.81, thus making the lenders policy charged to the purchaser $375.02.

For the Seller, on page 2 under "H", the charge to the seller is $211.97 then on page 3 under "N" a charge of $684.81 (which was the exact amount of the credit on the purchaser's title premium) thus making the owners policy charged to the seller a total of $896.78.

The borrower and seller are then paying the exact amounts originally quoted on the rate sheets provided by any title company, BUT just done a little differently with the debits and credits required by the CFPB computations.

Page 4: This page gives the purchaser a lot to read, AND, if they read it, they will know quite a bit about their loan prior to the signing appointment.

Examples:
1. Assumption
2. Demand Feature
3. Late Payment
4. Negative Amortization
5. Partial Payments
6. Security Interest, with a clause that amazes me personally that they felt it needed to be there:
   "You may lose this property if you do not make your payments or satisfy other obligations for this loan"
7. Escrow Account

Page 5 of 5 will review for the borrower the following:
1. Total of Payments
2. Finance Charge
3. Amount Financed
4. Annual Percentage Rate (APR)
5. Total Interest Percentage (TIP) this is the NEW ONE! Rather intimidating

And the next section will give you CONTACT INFORMATION on all the people who helped to put this transaction together.

FHA LOANS

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

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

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

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

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

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

FHA Loan Requirements

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

Let's review a "**combined**" closing disclosure. **See HANDOUT #3**

The Closing Disclosure is 5 pages.

Page #1 this page will list the loan amount, interest rate and payment amount. At the bottom of this page it shows the borrower to bring to closing $10,459.35 (NOTE: FHA requires the 3.5% down which in this case would be $7,000.00 and the borrower elected to have the MIP of 1.75% 3,377.50 added back to the loan. $200,000.00 sales price less $7,000.00 down plus add back of MIP $3,377.50 = $196,377.50 loan amount.)

Page#2 this will list both the sellers and purchasers' costs. You will note the total of the purchasers closing costs is $8,665.10 and that is carried to page 3 and placed under "K"; the seller's total costs of $16,630.79 will be carried to page 3 and placed under "N".

Page #3 the top of the page "Calculating Cash to Close" will tell the purchaser a repeat of the LOAN ESTIMATE, which was provided to the purchaser within 3 days of making application by the lender. The FINAL is a breakdown of the CLOSING DISCLOSURE, so the purchaser can compare "side by side".

Then under, "Summaries of Transactions" the left-hand side is the purchaser/borrower's side and the right-hand side is the sellers. On the purchaser's side it will list the sales price and closing costs and the total is at the top under K; Then under L will be the deposits, loan amounts and any adjustments, thus resulting in the purchaser bringing $10,459.35 to close.

The seller's side has the sales price of $200,000.00 under M, then under N would be any payoffs, closing costs carried forward from page 2, adjustments and pro-rates for a total net to the seller of $131,656.81.

Page #4 this is some reading for the purchaser to do. Now remember, the Closing Disclosure is sent to the purchaser at least 3 days prior to the signing appointment, so they have a chance to ask questions to their lender and know quite a bit about their loan PRIOR to the signing appointment.

Page #5 under Loan Calculations it tells the purchaser what he/she would pay for the entire term of the loan, a breakdown of the finance charge, the APR and the **NEW ONE: TOTAL INTEREST PAID OR TIP,** which is the percentage of interest the purchaser would pay over the loan term. This is usually a huge surprise for the purchaser.

The bottom of this "Contact Information" has all the information the purchaser will need on the parties who handled the transaction.

Then, the purchaser's need to sign this statement. Now, they will sign it for the lender at least 3 days prior to the signing appointment, AND they will sign it again at the signing appointment. Duplication, yes, but it is required.

CONVENTIONAL LOAN

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

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

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

Generally, you can get a conventional loan if you:

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

Let's review the combined Closing Disclosure – see **HANDOUT #4 – this is an 80/20, so no MIP**

Page#1 Once again, this page will tell the purchasers about their loan, and the total closing costs and cash to close.

Page#2 this is the total of the purchasers and sellers' costs at the bottom and they are carried forward to page 3.

Page#3 this will show at the bottom the seller will be netting $131,656.81 and the purchaser will bring to close $43,232.96.

Page #4 Once again, this page gives the purchasers a lot of information about their loan, PRIOR to the signing appointment.

Page#5 Lists the totals for the purchasers and then all the contact information and is to be signed at the bottom.

FORMAL ASSUMPTIONS

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

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

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

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

The benefit to buyer and seller from assuming an old loan comes at the expense of the lender. Instead of having the 2.5% loan repaid, which would allow the lender to convert it into a new 5% loan, the 2.5% stays on the books. Back in the 70's and 80's, lenders couldn't do anything about this. Mortgage notes at that time did not prohibit assumptions, and the courts ruled that lenders could not prevent them.

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

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.

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 are assumable by anyone. Buyers who assume these mortgages don't have to meet any requirements at all, but the seller remains responsible for the mortgage if the buyer doesn't pay. Since it is now 2016, we don't see many of these left.

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 assumption fee and a fee for the credit report. VA allows a $255.00 processing fee and the VA itself receives a funding fee of ½ of 1% of the loan balance.

The lender DOES NOT require a new appraisal.

See HANDOUT #5 and let's review the seller's and purchasers closing statement on a formal assumption. Since this is NOT a new loan, the closer would be using a HUD-1 statement or their company's "closing statement" and NOT a "closing disclosure aka CD".

The purchaser would apply for the formal assumption with the lender and the lender would approve the purchaser and send the closer a statement and the necessary documents to have signed by the parties that would have the following on it:

158,923.22 –principal balance with interest paid to 12/1/15

2.5% interest

Next payment due 1/1/16

Reserve balance $629.42

Assumption fee $500.00

Credit report $35.00

Breakdown of payment:

632.19 P&I

57.28 Insurance

208.33 taxes

____

$897.80 total payment

So, because this closing is pro-rated to 1/22/16 and the next payment due is 1/1/16, the closer would charge the seller for that payment and then make adjustments on the unpaid principal balance and the reserve balance to reflect that payment being made. In this example case, the closer was able to confirm the seller paid the 1/1/16 payment on 1/14/16 so she made adjustments to the balances being assumed:

158,923.22 With interest to 12/1/15

\+ 399.80 interest from 12/1/15 to 1/1/1

\- 632.19 1/1/16 P&I payment

$158,622.12 total amount to be assumed

629.42 reserve balance

\+ 57.28 insurance reserve w/ 1/1/16 payment

\+ 208.33 tax reserve w/ 1/1/16 payment

895.03 total amount of reserves

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

See page 2 of the handout first. You will note the purchaser costs total $1,613.66 and that figure is carried forward to the 1st page and added to the sales price, any pro-rates they owe and the reserve balance being assumed is there with the interest adjustment, for a total of $202,508.69. Then, on line 203, the amount of the loan being assumed is shown, which has been adjusted based on the 1/1/16 payment being made. That amount is totaled and subtracted from line 120, thus resulting in the amount the purchaser is to bring to closing of $43,504.11.

Seller's costs: The seller would pay the customary charges of commission, ½ closing fee, owner's title policy, utility holdback, 1/1/16 payment, and the taxes and interest would be pro-rated.

Look at page 1 of the handout. The sales price of $200,000.00 is on line 401 as a credit to the seller. Pro-rates are included in the 400 section along with the reserve amount that the seller is being reimbursed for by the purchaser in the amount of $895.03. Those amounts are totaled on line #420.

Now look at page 2 of the handout. You will note the seller's costs on line 1400 total $17,152.55, which have been carried forward to page 1 under line 502. This section also consists of the amounts owed by the seller (which would be the closing costs carried forward from page 2 which now are on line #502), then the amount of the loan being assumed (which has been adjusted with the 1/1/16 payment being made) would be $158,622.12 and added together for a total on line #520 for $176,128.44. The debits and credits are then subtracted from each other and the sellers net proceeds would be $24,766.59.

The closer would then be sending all the necessary documents to the assumption lender along with the fees the lender required, which in this case were the $35.00 credit fee and the $500.00 assumption fee.

The purchaser's next payment would be due 2/1/16

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

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

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

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

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

2. **Real Estate Contract:**

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

NOW, LET'S THINK OUTSIDE THE BOX

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

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

SELLER FINANCING

Whether you call it "*Creative Financing",* "*Seller Financing*", or "*Seller Cary-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.

RULES ON "*OWNER OCCUPIED*" SELLER FINANCING

The first thing we need to review if you choose Seller Financing as an option is will the sale be to a purchaser who will occupy the home as their primary residence? If so, you and your client will need to follow some simple 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 and that 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. They will issue a license waiver for eligible seller financed residential mortgage loan transactions. An eligible transaction is one in which the seller owns the property being sold and is selling to a buyer for their family, personal, or household use. Additionally, the seller must carry the financing, taking an interest in the property, and also not be 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 license waiver under RCW 31.04.025(3)

You may be eligible to make five or fewer residential mortgage loans 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 following conditions:

1. If you do not provide the borrower with a compliant federal disclosure of the loan terms and conditions and costs of financing you must provide the borrower with a disclosure prescribed by the director. (**SEE HANDOUT #6 and 7)** One disclosure is for a fixed rate note and the other is for adjustable rate note. These forms are on the DFI website and are very easy for the seller, agent, or closer to complete and give to the purchaser to be in compliance
2. You must comply with the state's usury rate limit. See chapter 19.52 RCW.
3. You must follow Washington law if you pursue a foreclosure.

LICENSE WAIVER STEP

1. Print the License Waiver (**SEE HANDOUT #8)** the seller is to complete this form, but many agents assist the seller.
2. Fill out the license waiver and return it to the Department via email to lfazio@dfi.wa.gov, via fax to the attention of Cindy Fazio at 1-360-664-2258, or via hard copy to the Department
3. Provide a copy of the completed License Waiver to the escrow or Title Company or attorney who will be completing the closing transaction for their files.
4. Provide the borrower with a copy of the waiver and the completed loan disclosure (use either handout #6 or 7 #) depending on the loan terms.

NOTE: When DFI receives this request for waiver, they are checking their records to see if this seller has done more than 5 in a 12-month period, so most sellers immediately are approved. Approval is by way of email and is usually received within 24-48 hours. When approval is sent, DFI will also send a copy of the Disclosure for Fix-Rate or Adjustable Rate, with instructions to complete and give to the purchaser.

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! Let's start with the first question, do you need a waiver?

To find out if the “Waiver” rules apply, here are the three questions that you ask:

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

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

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

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

NOW THE BIG QUESTION: NOTE AND DEED OF TRUST 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

Please pull out **HANDOUT #9 NOTE AND DEED OF TRUST OR REAL ESTATE CONTRACT.** This is a perfect handout to keep in your “tool box” to give to your client when they do not know which document to choose for their transaction. (And the handout will keep you out of the arena of “practicing law”.)

Here is a brief explanation of the two choices:

1. PROMISSORY NOTE SECURRED BY A DEED OF TRUST

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

2. REAL ESTATE CONTRACT

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

After reading Handout #9, 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.

Once the above is decided, the form that would be used by the agent would be the NWMLS Form 22C "**PAYMENT TERMS ADDENDUM TO PURCHASE AND SALE AGREEMENT**"

You, as the agent, would check the appropriate boxes and fill in the lines with the information that would help the closer generate the documents to close based on the terms filled in or checked. Be sure to complete each blank, whether it has a default or not, just so that the closer knows the default was the agreed upon term they will place in the note and deed of trust or the contact.

Now, let's review a closing statement on seller financing

See **HANDOUT #10 SELLERS AND PURCHASERS CLOSING STATEMENT**

Once again this is not a new VA, FHA, or Conventions loan, so the "Closing Disclosure" would not be used by the closer. A HUD-1 will be used or a "Closing Statement".

Purchaser's costs: First year's insurance, ½ closing fee, recording fees, ½ escrow set up charge ½ annual fee, reserve set up charge, reserves for taxes; reserve for insurance, pro-rated taxes

We will start with page 2 and you will note most of the same charges that have been on some of the previous statements, but now we need to add the ½ escrow set up charge ½ annual fees and any reserve set up fee to the purchaser's charges which would be sent to the escrow holder. The total of the charges is $1,945.11 which is on line # 1400, then carried forward to page 1 on line 103. To that is added the sales price and any pro-rates the purchaser owes for a total on line 120 of $202,120.45. Then, subtracted would be the credit for the amount of the note and deed of trust of $160,000.00 and totaled on line #220. Finally, subtracted from each other we get the amount the purchaser would bring to closing of $41,977.01.

Seller's costs: Real estate commission, ½ closing fee, owners title policy, excise tax, utility holdback, ½ escrow set up charge, ½ annual escrow fee, 1/2/ reserve set up, pro-rated taxes

Let's start with page 2 and review the costs. The seller's customary costs are there, and now you see the ½ set up, annual, and reserve fees are included as well. These fees would be sent to the escrow holder. The total of $17,246.59 on line # 1400 is carried forward to page 1 under line 502. Then the sales price is totaled with any other credits to the seller and shown on line 420. The charges are all totaled, which in this case are the costs from page 2 and the amount of the loan from the purchaser of $160,000.00 for a total on line 520 of $177,363.26. Finally, the two amounts are subtracted from each other (line 601 from line 602), thus resulting in the seller's net proceeds of $22,785.21 on line 603.

NOTE: The purchaser could pay for a lender's title policy premium if the seller wants this additional protection. That box would have to be checked on form NWMLS 22C

When seller financing is chosen, you should use the services of an escrow collection company and the following is information that you may find helpful.

ESCROW COLLECTION

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

1. What is an escrow collection?
   A collection escrow is when two or more parties enter into an agreement through documents (note and deed of trust, 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, apply 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 collections:
   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 the documents being placed into escrow, and 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.

Examples 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 to determine if the documents being held in escrow 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 when 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.

Now, let’s pull out HANDOUT**#11 “SPREAD SHEET OF THE SIX DIFFERENT WAYS TO PURCHASE**”

To make things easy to review, I have kept many items the same, such as the closing fee, first year’s insurance, recording fees, pro-rated taxes, etc.

Let’s review each separately:

1. **CASH:** the total closing costs are $935.22 plus the sales price of $200,000.00 for a total to bring to closing (or have wired) $200,935.22

2. **VA:** Purchaser is not charged for closing fee or tax registration fee and there is no down payment. You will note a VA Funding fee of $1,125.00. Purchaser will bring $4,108.03 to closing. Based on 3.625% interest rate over 30 years (360 payments) the total interest and principal paid would be $335,937.48

3. **FHA: T**he purchaser pays ½ closing fee and tax registration fee. Also, you will note there is a charge for a mortgage insurance premium which has been added back to the loan, but can be paid at closing, PLUS an amount charged monthly in the payment for the ENTIRE term of the loan, so the total paid for 30 years is $380,091.50

4. **Conventional:** No VA funding fee or charge for MIP since the loan amount is only 80% of value. The total over 30 years is $262,903.45

5. **Formal Assumption:** No loan fee is charged but the lender does want a credit report fee and an assumption fee (which can be higher). The purchaser will reimburse the seller for what is in their reserve account. Now, on this particular sample, the loan being assumed has an interest rate of 2.5% AND there are 26 years left on loan to pay. So, notice the P&I is only $643.29, the total amount paid with principal, and interest over the remaining 26 years is $197,243.28. That difference in the payment is because of the lower payment AND 4 years already being paid on the loan really makes a huge difference in the long run.

6. **Seller Financing:** Most seller financing transactions don’t have loan fees but sellers typically get 1-2 points over the going interest rate. With this example, compared with the “formal assumption” example, both with $40,000.00 down - look at the huge difference in the P&I payment of $632.19 of the formal assumption vs. $858.90 of the seller financing. And, the total amount paid over 30 years is $309,207.60
   The following were six examples of types of ways to purchase a home. Of course, there are many other loan products out there for you to check out with your favorite lender.

QUIZ FOR What’s in your toolbox?

1	Most agents will find the house for the purchaser then figure out financing	**True**	**False**
2	Cash transactions are the easiest types of transactions	**True**	**False**
3	All closers holdback $400.00 for the final utilities	**True**	**False**
4	FHA financing is the hardest type of loan to be approved for	**True**	**False**
5	The acronym “MIP” means Mortgage Insurance Premium	**True**	**False**
6	MIP is based on the borrower’s loan to value ratio, loan size & length of loan.	**True**	**False**
7	VA financing is available to anyone.	**True**	**False**
8	There are certain fees that the Veteran cannot pay.	**True**	**False**
9	As of 2010 there were over 10 million VA financed loans in the US.	**True**	**False**
10	A conventional loan is insured by the Federal government.	**True**	**False**
11	The maximum amount of a conventional loan depends on County and State.	**True**	**False**
12	The acronym “PMI” stands for Premium Mortgage Insurance.	**True**	**False**
13	On a conventional loan if you pay less than 20% down, you will have to pay PMI	**True**	**False**
14	All types of loans can be formally assumed.	**True**	**False**
15	On assumptions, sellers must be cautious of transactions where the purchaser does not assume responsibility of the loan, thus releasing the seller of liability.	**True**	**False**
16	A lender on a formal assumption will always require a new appraisal.	**True**	**False**
17	A new reserve account is set up by lender on an assumption.	**True**	**False**
18	There are many reasons why a seller would want to use “seller financing”.	**True**	**False**
19	All seller financing transactions require a “waiver” from the State of Washington Department of Financial Institutions.	**True**	**False**
20	The reason for the “waiver’ is to determine if the seller has sold 5 or more homes in a 12-month period to owner occupied purchasers.	**True**	**False**
21	If the seller doesn’t know which form to use, note and deed of trust or real estate contact, then they usually go with whatever form the broker recommends.	**True**	**False**
22	There are no differences in the note and deed of trust or the real estate contract.	**True**	**False**
23	It takes 30 days to get the “waiver” approved with DFI.	**True**	**False**
24	The “closing disclosure” or “CD” is always used on seller financed transactions.	**True**	**False**
25	Usually escrow collection fees are split 50/50.	**True**	**False**
26	The escrow holder will be responsible for recording the fulfillment deed or the request for full reconveyance when the account is paid in full.	**True**	**False**
27	A new title report IS NOT ordered when the escrow account pays in full.	**True**	**False**
28	The documents the escrow holder has held in collection will always clear title when they are recorded.	**True**	**False**
29	There are many ways for a purchaser to finance a home.	**True**	**False**
30	There is only one standard closing statement used by all closers.	**True**	**False**

Signature: ____

Date: ____

Clockhours by Angie

Evaluation for: What's in your tool box?

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

Name/ Company: ____

Address: ____

City, State, Zip: ____

Phone: (personal) _________________________________(work)____________________________

Email: ____

License Renewal Date: ____

Signature: _______________________________________Date: ___________________________

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_________