Subject-To

What Is a Subject-To-Mortgage?

With a subject-to-mortgage arrangement, the buyer agrees to take over the mortgage payments for an existing loan, but the mortgage contract itself remains in the seller's name. While the buyer gains legal ownership of the property, the lender is not notified about the change in who is making the payments. Essentially, the buyer makes the mortgage payments on behalf of the seller. Only the deed is transferred, and the original lender remains uninvolved in this transfer. In other words, the buyer has legal rights to the property, while the seller retains legal responsibility for the existing mortgage.

What Are Some of The Advantages Of A Subject-To-Mortgage?

Some of the advantages are the buyer can often bypass many of the upfront costs of a traditional loan, like closing costs and down payments. The seller can avoid many costs associated with selling the property to a buyer who is qualifying for a new loan. This can be an attractive financing option for both parties involved. This is a good option for a buyer during economic downturns because the existing mortgage terms may be more advantageous to them, particularly when interest rates rise.

Understanding The Mechanics of A Subject-To-Mortgage Deal

First, it’s crucial to distinguish between a subject-to-mortgage and a loan assumption. In a subject-to-mortgage arrangement, neither the buyer nor the seller informs the lender that the mortgage payments are being taken over by someone else. This helps avoid triggering the due-on-sale clause, which could allow the lender to demand the full repayment of the existing loan upon transfer of the property.

In contrast, a loan assumption involves formally transferring the existing loan to the buyer, who must typically qualify for the loan themselves. With a subject-to-mortgage deal, the buyer makes the payments but does not formally assume the loan, keeping the original mortgage in the seller's name.

Risks For Buyers and Sellers

The seller is still legally responsible for making the existing mortgage payments. If the buyer doesn’t pay the mortgage payments on time and the seller can’t afford to make them as well, the seller will face a hit to their credit score. In other words, the buyer's credit history won't be impacted if they miss payments, but the seller's credit will. If the deed is transferred and the bank finds out, they can use the due-on-sale clause to demand the remaining loan balance immediately putting the seller into foreclosure. The buyer may also lose the house if the seller goes bankrupt, and the buyer will lose their investment.

Advantages for Buyers and Sellers

The sale is often much faster, which makes it a good choice for sellers who need money quickly. All that needs to be done is a deed transfer, a contract for the mortgage payments, and any down payment that the seller requests. Getting advice from legal and financial professionals is a must, as is developing a good contract.

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