THE GURVEY LAW GROUP, PC

SUB2 CALCULATION PAGE

This page is intended to assist parties and agents with the language in a contract so that the parties expectations are met.

BASIC RULES:

1. **Without a new lender involved, funds to pay all costs (Commissions, Seller funds, Closing Funds, etc) TYPICALLY come from the BUYER. For a SUB2 closing to be successful, you must start with knowing what the BUYER is able to pay at closing.**

2. **SOME fees are able to be paid after closing – IF the PAYEE agrees. A closing attorney can draft a Note for either the Buyer or Seller to sign. For example: A Seller can be paid a year later, a Realtor's commission can be paid two months after closing. One point: the closing attorney NEVER guarantees payment.**

INITIAL CONSIDERATIONS:

1. **How much money does the BUYER have to bring to closing?**
2. **How much money is the SELLER needing to have at closing?**
3. **Is there an amount that the BUYER and SELLER need to agree on to have financed to make the deal work ?**
4. **Are the loans current? Is there any past-due balance?***
5. **Who is making the next loan payment? The Buyer or Seller?**

***Arears can be messy and very unexpected. Obtain the most current loan statement when you can. Keep in mind that stopping a foreclosure AND reinstating a loan takes TIME. It could take 15 days to obtain a reinstatement letter.**

STRUCTURE:

1. **BUYER makes payments directly to the SELLER'S lender.**
2. **BUYER makes payments to the SELLER and the SELLER continues to make their payments as usual.**

A WRAP AROUND is a type of SUB2 that puts controls over the Maturity Date or who makes the payments to the existing lender. #1 above could be a wrap around that has a maturity date shorter than the existing loan being paid. If it is not, the Buyer may not be under an obligation to pay off the loan prior to the Maturity Date. #2 IS a WRAP AROUND.

The "MAGIC" happens in the SPECIAL STIPS. Every legally binding contract is required to have a specific purchase price OR a way everyone can calculate the price.

REQUIRED LANGUAGE:

> ***The parties acknowledge that this is a Subject-To Transaction where the BUYER agrees to take over payments on the SELLERS loan and that this loan(s) will not be paid off at closing.***

IF THE SALES PRICE IS SET, THEN IT IS BEST PRACTICE TO MENTION THE LOANS ON TITLE AND DEFINE WHAT THE SELLER WALKS AWAY WITH:

> ***The following loans and approximate amounts are to be taken subject-to:***
> ***a) ABC Bank: 123,456***
> ***b) HUD: $8,000***
>
> ***SELLER to Net $5,000 at closing.***
> ***SELLER to receive the balance between the sales price, loans being taken SUB2 and any closing costs – including but not limited to Realtor Commissions.***

OPTIONAL LANGUAGE DEPENDING ON THE STRUCTURE:

> ***BUYER will sign a WRAP AROUND note and Security Deed for $350,000 at 6% interest with a maturity date of December 1, 2032.***
> ***Seller to finance $130,000 to Buyer for 5 years at 0% interest, no payments until Maturity Date.***
> ***The purchase price consists of the following: the balance***
> ***BUYER has the option to terminate the contract and receive back their earnest money if the outstanding debt is greater than $250,000.***