FOR SALE

the creative seller financing

PLAYBOOK.

The complete Arizona guide to buying and selling real estate using Agreements for Sale, Wraparounds, Carry-Backs, True Seller Financing, and Subject-To structures.

INEVITABLE. BY DESIGN. ANY MARKET.

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A NOTE FROM JUSTIN

Here is what 23 years of selling Phoenix real estate has taught me:

the traditional agent playbook is obsolete.

Since 2003 I have closed over a thousand transactions, and I have personally signed both sides of dozens of creative seller-financed deals — as buyer, as seller, sometimes both inside the same calendar year. When I tell you a structure works, it is because I have lived inside it, paid taxes on it, and watched it perform through every kind of market.

This guide exists because too many homeowners and would-be buyers are stuck in a market that is rewarding the wrong things. Sellers locked into 3% mortgages are afraid to move. Buyers who can document income but do not fit a bank box are sitting on the sidelines. Rental investors are staring down a 33% tax bomb if they cash out conventionally. And in the middle of all of it, the same five structures keep solving the same problems — quietly, profitably, and entirely within Arizona law.

What follows is the playbook. Not a sales pitch. The actual mechanics of how Agreements for Sale, wraparound mortgages, seller carry-backs, true seller financing, and Subject-To transactions are negotiated, documented, closed, and serviced in Arizona. I have laid out every step for both sides of the table — because the side you are on this year may not be the side you are on next year.

Read it. Mark it up. Bring your questions. Then call me.

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INSIDE THIS GUIDE

DISCLAIMER

LEGAL NOTICE

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This guide is provided for general educational and informational purposes only. Nothing in this document constitutes legal, tax, financial, investment, mortgage, or accounting advice.

Real estate transactions involve significant financial and legal complexity. Before structuring any transaction — particularly transactions involving seller financing, IRC § 453 installment sales, 1031 exchanges, or other creative structures — you should engage licensed qualified professionals, including a licensed Arizona attorney for legal review, a Certified Public Accountant for tax planning, and a licensed mortgage loan originator if loan origination services are required.

Statutory references reflect Arizona Revised Statutes and federal law as of the date of publication and are subject to change. Market data and tax-rate examples are illustrative only and are not predictions of any specific outcome. Historical performance is not a guarantee of future results. All transactions are subject to verification, market conditions, applicable law, and the satisfaction of all closing conditions.

PART 1 · FOUNDATION

What "creative seller financing" actually means

Creative seller financing is the umbrella term for any transaction where the seller — not a bank — provides some or all of the financing the buyer needs to take possession of the property. The seller becomes the lender, in effect, and is paid over time according to terms the parties negotiate.

That is the entire concept. Everything else in this guide is a variation on three questions:

- How is the financing documented?
- Who holds legal title at closing?
- What happens to any existing underlying mortgage?

Most agents will tell you there is one way to sell a house: list, market, find a cash or conventionally-financed buyer, close, collect proceeds. That is one structure out of five well-established ones. The other four exist because they solve problems the standard product cannot.

Why these structures matter in today's Arizona market

Three pressures are now permanent features of the Greater Phoenix landscape:

- **The lock-in effect.** Roughly two-thirds of Arizona homeowners with a mortgage hold a rate below 5%. Moving means surrendering that rate. Many will not sell at all — which constricts inventory and freezes mobility.
- **The qualification gap.** Self-employed buyers, recent transplants, gig-economy earners and 1099 professionals can often document substantial income but cannot fit a conventional underwriting box. They are not unqualified buyers. They are unconventional ones.
- **The tax bomb.** Long-tenured Arizona investors and second-home owners often face capital gains plus depreciation recapture exposure that consumes 25–35% of their gross proceeds in a single year of sale.

Each of the five structures in this guide addresses one or more of these pressures directly. Used correctly, they expand the buyer pool, preserve favorable financing, defer or compress tax, and turn equity into long-term cashflow.

THE BIG IDEA

When a deal can't happen the conventional way, it isn't because the deal is broken. It's because the structure is wrong.

Change the structure and the same parcel, the same buyer, the same seller suddenly close.

The five structures at a glance

Here is the high-altitude view. Each is dissected in detail in Part 2.

STRUCTURE	WHO HOLDS LEGAL TITLE AT CLOSE	UNDERLYING LOAN	BEST FOR
True Seller Financing	Buyer (Deed of Trust to seller)	None — property owned free and clear	Free-and-clear sellers who want monthly cashflow and tax deferral
Seller Carry-Back	Buyer	Senior loan from a third-party lender; seller carries a junior note	Bridging an appraisal gap, down-payment gap, or buyer-qualification gap
Wraparound	Buyer (Deed of Trust to seller)	Stays in seller's name; new note from buyer "wraps" it	Sellers with a low-rate mortgage who want to monetize the rate spread
Agreement for Sale (Contract for Deed)	Seller keeps legal title; buyer holds equitable title	Typically stays in seller's name	Faster default remedy than foreclosure; thinner buyer files
Subject-To	Buyer (deed transfers)	Stays in seller's name; buyer pays "subject to" the existing loan	Distressed or motivated sellers; investor buyers who want the existing rate

A note on terminology. "Contract for Deed" is the historical name used in many states for what Arizona statute calls an *Agreement for Sale* (A.R.S. §§ 33-741 through 33-750). Throughout this guide I use the Arizona statutory term. If your out-of-state attorney or CPA refers to a "land contract" or "installment land contract," they are describing the same instrument.

PART 2 · THE FIVE STRUCTURES, IN DEPTH

This part is the technical core of the guide. Each structure is presented in the same order: what it is, the mechanics step-by-step, the documents that travel with it, the situations it fits, and the trade-offs each side accepts. The Arizona-specific legal notes that apply to all five appear in Part 5; the items here are the ones unique to that particular structure.

HOW TO READ THIS PART

If you are a SELLER: read the structure that matches your loan position (free-and-clear, low-rate mortgage, distressed), then look at “What the seller gives up / gains.”

If you are a BUYER: read the structures your situation supports (cash for down, partial cash, no qualification), then look at “What the buyer gives up / gains.”

Then read Part 3 or Part 4 for the step-by-step transaction process.

Structure 1 · True Seller Financing

True seller financing is the cleanest, most familiar form: the seller owns the property outright (no mortgage to pay off), the buyer comes in with a down payment, and the seller “becomes the bank” for the balance. At closing, the buyer takes legal title and immediately signs a promissory note and a deed of trust back to the seller.

What it is

A sale where the entire balance after the buyer’s down payment is financed directly by the seller, secured by a first-position deed of trust on the property. There is no underlying mortgage and no third-party lender. The note is a private mortgage between two parties.

HOW IT WORKS — MECHANICS AT CLOSING

1. Buyer and seller agree on price, down payment, interest rate, amortization term, and balloon date (if any).
2. Title and escrow open. Title is searched, defects are cured, and any liens or judgments are paid off from proceeds.
3. Buyer wires the down payment, plus typical buyer-side closing costs, into escrow.
4. Seller signs a warranty deed transferring legal title to the buyer.
5. Buyer simultaneously signs a promissory note in the seller’s favor for the financed balance.
6. Buyer signs a deed of trust in favor of the seller, naming a neutral trustee (usually the title company), recorded in first position against the property.
7. All documents record in the correct order at the County Recorder.

8. A third-party loan-servicing company (e.g., Western Progressive, FCI Lender Services, Allegro) is engaged to collect monthly payments, manage impounds for taxes and insurance, and issue annual IRS Form 1098 to the buyer and Form 1099-INT to the seller.

The four documents that travel together

- Promissory note (the "IOU" — amount, rate, payment, maturity, default terms)
- Deed of trust (the security instrument that lets the seller foreclose non-judicially under A.R.S. § 33-807 if the buyer defaults)
- Warranty deed from seller to buyer (transfers legal title at close)
- Loan servicing agreement with a licensed third-party servicer

When this structure fits

- Seller owns the property free and clear (paid off, or paid down enough to clear at closing).
- Seller does not need 100% of the proceeds at closing.
- Seller wants monthly cashflow with interest income for a defined term.
- Seller wants to spread capital gain across multiple tax years under IRC §453.
- Buyer can document income and assets but does not qualify conventionally — or simply prefers not to use a bank.

What each side gives up and gains

SELLER	BUYER
• GAINS: monthly P&I and interest income for the note term. • GAINS: ability to spread capital gain across the years principal is received under IRC §453. • GAINS: typically a 1–4% premium on sale price over a comparable cash deal. • GIVES UP: immediate access to the full proceeds. • GIVES UP: certainty — bears the credit risk of the buyer, mitigated by the down payment and the deed of trust.	• GAINS: ability to buy without conventional bank approval. • GAINS: faster close, lower costs (no origination fees, no points, no appraisal-driven delays). • GAINS: negotiable rate and term — terms reflect the deal, not a rate sheet. • GIVES UP: the seller's underwriting eye — a thoughtful seller will still pull credit and verify income. • GIVES UP: the down payment and any equity built — same default exposure as any mortgage.

ARIZONA NOTE — TRUE SELLER FINANCING

Use a Deed of Trust, not a mortgage. Arizona's non-judicial trustee's sale process under A.R.S. §§ 33-801–811 typically takes 91+ days and is faster and cheaper than judicial foreclosure on a mortgage.

The trustee must be a qualified party under A.R.S. § 33-803 (commonly an escrow officer at the title company, a licensed AZ attorney, or a licensed real estate broker).

Anti-deficiency: a true purchase-money obligation on a residential property of 2.5 acres or less, limited to one or two single-family dwellings, is protected by A.R.S. § 33-729 (mortgages) and § 33-814(G) (trustee's sales). This protects the buyer; sellers price and underwrite around it.

Structure 2 · Seller Carry-Back

A seller carry-back is the most common form of "partial" seller financing. The buyer brings cash and a third-party loan (often a conventional mortgage, VA, FHA when allowed, or a portfolio bank loan), and the seller carries a smaller second note for the rest. The seller is paid two ways: cash at closing, then monthly payments on the carry-back note until it matures.

What it is

A traditional purchase where the bulk of the purchase price is funded by a senior third-party lender, supplemented by a junior-position note from the seller. The seller's note sits behind the bank's loan in priority and is secured by a second-position deed of trust.

HOW IT WORKS — MECHANICS AT CLOSING

1. Buyer applies for a conventional first mortgage with a third-party lender — usually for 70%–85% of the price.
2. Buyer brings cash to escrow for their share of the down payment (often 5%–15%).
3. Seller agrees to carry the remaining 5%–20% as a private second note.
4. Buyer's lender must approve the carry-back arrangement in writing. Most conforming loans (Fannie Mae, Freddie Mac) allow up to a certain Combined-Loan-to-Value (CLTV), often 90%, with the seller second amortizing over a minimum term.
5. At closing the senior lender funds, the seller receives their cash portion of the proceeds, and the buyer signs a second promissory note plus a second-position deed of trust in the seller's favor.
6. Both deeds of trust record — the senior in first position, the carry-back in second.
7. A third-party servicer collects on the carry-back, just as in true seller financing.

When this structure fits

- Buyer is qualified but short on down payment, and the seller wants to expand the buyer pool without dropping price.
- Appraisal came in below the negotiated price — the seller carry-back "fills the gap" rather than killing the deal.
- Seller is willing to defer a portion of proceeds to net higher overall.
- Buyer is conventionally qualifiable but has cash tied up (e.g., 1031 exchange timing, business proceeds pending).

SELLER	BUYER
• GAINS: cash at closing for the majority of the price plus monthly income on the carry-back. • GAINS: the carry-back portion qualifies for IRC §453 installment treatment. • GAINS: often a higher overall sale price by removing the buyer's financing constraint. • GIVES UP: junior-lien position — if the buyer defaults on the senior, the seller must cure or risk being wiped out at trustee's sale. • GIVES UP: full liquidity on the carried portion.	• GAINS: ability to close on a property that conventional underwriting won't fully fund. • GAINS: lower out-of-pocket cash at closing. • GAINS: the prestige rate on the senior loan, with negotiable terms on the second. • GIVES UP: two monthly payments (senior plus carry-back) instead of one. • GIVES UP: must satisfy both the senior lender's underwriting and the seller's comfort level.

ARIZONA NOTE — SELLER CARRY-BACK

A subordination agreement may be required by the senior lender — review it carefully; some clauses can erase the seller's position entirely on refinance or modification.

If the senior is an FHA, VA, or conforming loan, confirm carry-back is permitted and that the structure satisfies the lender's CLTV and amortization rules.

The same anti-deficiency protection (§ 33-729 / § 33-814(G)) generally protects the buyer on a purchase-money carry-back of qualifying residential property.

Structure 3 · Wraparound Mortgage ("Wrap")

A wraparound exists for one reason: the seller has a low-rate underlying mortgage worth more than the cash it would generate at sale. Instead of paying that mortgage off at closing, the seller leaves it in place and writes a new, larger seller-financed note to the buyer that "wraps around" the existing one. The buyer's monthly payment to the seller is high enough to cover the underlying mortgage plus a profit spread on the equity portion.

What it is

A new, all-inclusive promissory note (often called an “AITD” — All-Inclusive Trust Deed) issued by the seller to the buyer at a face amount equal to the seller’s remaining equity plus the unpaid balance of the underlying loan. The existing senior mortgage stays in the seller’s name; the buyer is contractually obligated to make payments to the seller (via a servicer), and the seller (via the servicer) continues paying the underlying lender.

HOW IT WORKS — MECHANICS AT CLOSING

1. Seller and buyer agree on: a sale price, a buyer down payment, an interest rate on the wrap (typically 1–3 points above the seller’s underlying rate), an amortization, and a balloon date (typically 3–10 years).
2. Title and escrow open. The underlying lender is NOT paid off.
3. Buyer wires down payment into escrow.
4. Seller signs a deed transferring legal title to the buyer.
5. Buyer simultaneously signs an All-Inclusive promissory note in favor of the seller for the wrap amount, secured by an All-Inclusive Deed of Trust (AITD) recorded against the property.
6. A third-party servicer is engaged — and this is non-negotiable on a wrap. The servicer collects from the buyer, pays the underlying mortgage on time every month, and remits the spread to the seller.
7. Closing disclosures, IRS 1098/1099 reporting, and impound accounts for taxes and insurance run through the servicer.

HOW THE WRAP MAKES MONEY

Example: Seller owes $300,000 at 3.0% on the underlying loan. House sells for $500,000. Buyer puts $50,000 down. Seller writes a wraparound note to buyer for $450,000 at 7.0%.

Buyer pays seller approximately $2,994/mo (30-year amort. of $450,000 at 7.0%).

Servicer pays seller’s underlying loan approximately $1,265/mo (the original P&I).

Seller nets approximately $1,729/mo in positive cashflow plus collects $50,000 cash at closing — without selling the rate.

The “due-on-sale” conversation

Almost every mortgage in the United States contains a “due-on-sale clause” — language allowing the lender to call the loan immediately if title transfers. The Garn-St. Germain Depository Institutions Act of 1982 (12 U.S.C. § 1701j-3) preempts most state restrictions on these clauses and confirms a lender’s right to enforce them on most residential transfers, with certain exemptions (trust transfers between spouses or to children, certain death transfers, etc.).In practice, lenders rarely call performing loans — they want their interest income, not a foreclosed property. But the risk exists. Every wrap must be entered with that risk acknowledged in writing by both parties, disclosed by the broker, and reviewed by counsel. This is one of several reasons a wrap is not a DIY structure.

When this structure fits

- Seller has a sub-5% mortgage and substantial equity above the loan balance.
- Seller wants cashflow rather than a lump sum.
- Buyer cannot or does not want to qualify for a new mortgage at today's rates.
- Both parties are prepared to manage the legal risk of the due-on-sale clause and to use a professional servicer.

SELLER	BUYER
• GAINS: positive monthly spread between the buyer's wrap payment and the underlying mortgage payment — often four-figure monthly cashflow. • GAINS: a price premium (often 3–7%) because the wrap solves a problem the open market can't. • GAINS: capital gain spread over years under IRC §453. • GIVES UP: the underlying mortgage remains in the seller's legal name and on the seller's credit until the wrap is paid off or refinanced. • GIVES UP: liability if the buyer defaults — the seller must continue paying the underlying loan or risk foreclosure on themselves. • GIVES UP: optional exposure to the due-on-sale clause until the wrap is balloon-paid.	• GAINS: access to the seller's favorable underlying rate via the lower blended payment. • GAINS: ability to close without bank qualification. • GAINS: equity build from day one through principal amortization on the wrap. • GIVES UP: relies on the seller (and servicer) to keep the underlying loan current. A third-party servicer is the mitigation. • GIVES UP: the same due-on-sale exposure as the seller — though the property is the buyer's collateral, not their credit.

ARIZONA NOTE — WRAPAROUND

Use an All-Inclusive Deed of Trust (AITD), recorded against the property, so the seller has non-judicial foreclosure rights under §§ 33-801–811 if the buyer stops paying.

A licensed third-party servicer is essential. Self-servicing a wrap exposes both parties to missed underlying payments and reporting errors.

Disclosures are extensive. The seller's broker must document the due-on-sale risk, the seller's continuing liability on the underlying loan, and the buyer's acknowledgement in writing. Have an Arizona attorney prepare the AITD package.

Structure 4 · Agreement for Sale (a.k.a. Contract for Deed)

An Agreement for Sale is a financed sale where the seller keeps legal title until the buyer pays off the contract (or pays it down to a defined trigger point). The buyer takes possession, gets the benefits and burdens of ownership, and accumulates equitable title with each payment — but the deed itself stays in escrow or in the seller's hands until the contract is fully performed.

What it is

A statutory installment sale governed by A.R.S. §§ 33-741 through 33-750. Mechanically it functions like seller financing but legally it operates as an executory contract: the seller is the legal owner of record until full payment is made. The buyer's rights are protected by the statute, by recordation of a memorandum of agreement, and by the holding of a fully executed warranty deed in escrow.

HOW IT WORKS — MECHANICS AT CLOSING

1. Buyer and seller execute a written Agreement for Sale that conforms to A.R.S. § 33-741 et seq. — price, down payment, interest, payment schedule, default and cure rights, and the events that release the deed.
2. Seller executes a warranty deed naming the buyer and deposits it into escrow with instructions for release upon final payment (or upon a defined paydown threshold).
3. Buyer takes possession and is responsible for taxes, insurance, HOA, maintenance, and improvements just as a fee-simple owner would be.
4. A Memorandum of Agreement for Sale is recorded against the property to give public notice of the buyer's equitable interest.
5. Payments are made through a third-party servicer to a defined payoff date or balloon trigger.
6. On full performance, the escrowed deed is released, recorded, and legal title vests in the buyer.

The forfeiture remedy — and why sellers use this structure

Arizona's Agreement for Sale statute gives the seller a remedy a deed of trust does not: forfeiture. If the buyer defaults, the seller can — after the statutorily required notice and cure period — terminate the contract and recover the property without a foreclosure sale. The forfeiture timeline scales with how much the buyer has paid in:

BUYER HAS PAID	MINIMUM CURE PERIOD AFTER NOTICE
Less than 20% of the purchase price	30 days
20% but less than 30%	60 days
30% but less than 50%	120 days

BUYER HAS PAID	MINIMUM CURE PERIOD AFTER NOTICE
50% or more of the purchase price	9 months (and statutory protections more closely resemble those of a mortgaged owner)

Source: A.R.S. § 33-742. Notice requirements, statutory forms, and cure-payment mechanics are detailed in the statute itself; this guide cannot substitute for an attorney walking the parties through them.

When this structure fits

- Seller wants a faster default remedy than non-judicial foreclosure on a deed of trust.
- Buyer cannot qualify conventionally and presents a thinner credit file.
- Either side wants to delay the formal transfer of title for tax-positioning or estate-planning reasons (review with CPA).
- Property type or location makes a deed-of-trust seller-finance structure harder to service.

SELLER	BUYER
• GAINS: faster, less costly default remedy via statutory forfeiture. • GAINS: holds legal title as the strongest possible collateral position. • GAINS: IRC §453 installment treatment generally available. • GIVES UP: must wait until full performance (or a defined paydown trigger) to release the deed. • GIVES UP: seller remains the legal owner of record — property tax bills and 1098-A reporting may need active management.	• GAINS: ownership-equivalent control of the property with no bank qualification. • GAINS: written statutory protections, particularly after 20%, 30%, and 50% paydown thresholds. • GAINS: deed is sitting in escrow with the buyer's name on it — release on payoff is mechanical. • GIVES UP: title is not in their name until performance is complete; refinancing is harder until the deed transfers. • GIVES UP: must keep the seller informed of insurance, taxes, and HOA standing.

ARIZONA NOTE — AGREEMENT FOR SALE

A.R.S. §§ 33-741 to 33-750 is the governing chapter. Read it.

After the buyer has paid 50% or more of the contract, statutory protections start to look more like those of a mortgaged owner — the practical remedy may shift back toward foreclosure-style process. Build the deal so the balloon arrives before that threshold if you want the forfeiture remedy preserved.

Record a memorandum of the agreement to put the world on notice of the buyer's interest. Do not record the agreement itself unless you intend the price terms to be public.

Structure 5 · Subject-To

“Subject-To” is the structure that lets a buyer take title to a property and assume the practical responsibility for the existing loan without going through formal lender assumption. The existing mortgage stays in the seller’s name, the deed transfers to the buyer at closing, and the buyer makes the seller’s mortgage payments going forward — “subject to” the existing loan.

What it is

A title transfer where the existing financing remains in place. The buyer is not a borrower on the original loan and is not personally liable for its repayment. The seller remains the named obligor on the underlying mortgage. The buyer takes title with the lien still attached and either pays cash for the equity above the loan, or signs a private note for it, or both.

HOW IT WORKS — MECHANICS AT CLOSING

1. Buyer and seller agree on the price and how the equity (price minus existing loan balance) will be paid — cash, seller carry-back, or a combination.
2. Title and escrow open. The existing loan is verified for balance, current status, and absence of recent modifications.
3. Buyer wires the equity portion (and closing costs) into escrow.
4. Seller signs a deed transferring legal title to the buyer, with the existing mortgage lien expressly remaining in place.
5. If part of the equity is seller-carried, buyer signs a promissory note and a junior deed of trust to the seller for that amount.
6. Going forward, the buyer pays the existing mortgage through a servicer that handles the impounds, sends payments to the original lender in the seller’s name, and reports for tax purposes.
7. The seller and buyer sign documentation acknowledging the due-on-sale risk, the seller’s continuing liability on the loan, and the protections (limited power of attorney for tax-record correction, escrow-account redirects) needed for the loan to function in the buyer’s hands.

Why anyone would do this

Subject-To exists for the same reason Wrap exists — to preserve a favorable underlying interest rate — but it is most often used in distressed-seller situations rather than as a profit-spread instrument. Common patterns:

- Seller is behind on payments, facing foreclosure, and has little or no equity. A Subject-To allows them to walk away with their credit intact (the loan continues to pay).
- Seller is relocating, inherited the property, going through divorce, or otherwise needs out fast and cleanly.

- Investor buyers want the existing low rate and are willing to manage the due-on-sale risk.

The risks — and why this is the structure most often misused

Subject-To has the same due-on-sale exposure as a wraparound, but typically without a meaningful equity "cushion" on the seller's side and without the buyer being qualified by anyone other than the seller. It must be documented carefully, disclosed clearly, and only entered with eyes open by both parties.

SELLER	BUYER
• GAINS: a fast, often expense-free exit from a property they cannot otherwise sell. • GAINS: in distressed situations, preservation of credit because the mortgage continues to pay on time. • GIVES UP: legal liability on the underlying loan continues until it is paid off or refinanced. • GIVES UP: ability to qualify for another mortgage with this debt-to-income exposure (in some cases — lender treatment varies). • GIVES UP: any subsequent missed payment by the buyer hits the seller's credit.	• GAINS: access to a sub-market mortgage rate that no current lender will write. • GAINS: ability to acquire property with low or no qualification. • GAINS: equity from day one if acquired below market. • GIVES UP: must service the loan flawlessly — late payments damage the seller's credit and trigger contractual remedies. • GIVES UP: due-on-sale exposure — the lender can theoretically call the loan at any time.

ARIZONA NOTE — SUBJECT-TO

Subject-To is legal in Arizona and used regularly in the investor community. It is not a fringe structure — but it is a structure where amateur execution causes real harm.

Required documents include, at minimum: a Subject-To addendum to the purchase contract, a written acknowledgement of the due-on-sale clause and ongoing seller liability, a limited power of attorney from seller to buyer (for tax/insurance/escrow administration), and a third-party servicing agreement.

Do not enter a Subject-To without an Arizona attorney drafting or reviewing the package. The downstream consequences of a poorly documented Subject-To — to seller credit, to buyer title, to lender relationships — outlast the deal by years.

Side-by-side: choosing the right structure

The decision tree below is the same one I walk every new client through. Read it from the seller's side first, then again from the buyer's side. The answer is rarely "any of them." Usually one structure stands out cleanly, two are workable with trade-offs, and two should not be used at all for the situation.

FEATURE	TRUE SELLER FIN.	CARRY-BACK	WRAPAROUND	AFS / SUBJECT-TO
Seller free & clear required?	Yes	No	No	No
Buyer needs bank qualification?	No	Yes (for senior)	No	No
Due-on-sale exposure?	None	None for first; junior fine	Yes	Yes (AFS lower / Sub-To same)
Who holds legal title at close?	Buyer	Buyer	Buyer	Seller (AFS) / Buyer (Sub-To)
Default remedy	Non-judicial foreclosure	Non-judicial (junior position)	Non-judicial foreclosure on AITD	Forfeiture (AFS) / Foreclosure (Sub-To)
IRC §453 available?	Yes	Yes (carry portion)	Yes	Yes / generally yes
Documentation complexity	Moderate	Moderate (with senior coord.)	High	High

PART 3 · BUYING WITH CREATIVE SELLER FINANCING

This part walks the buyer from “interested” to “recorded title” in order. The steps are written for a residential transaction in Arizona, but they map cleanly to the same process for investment property or land with light adaptation.

THE BUYER’S MINDSET

Creative financing is not a shortcut around qualification. It is a different path to a similar outcome — usually with more flexibility, sometimes with more paperwork, always with the buyer carrying responsibility a bank would have carried.

If you are a buyer who would not pass a conventional underwriting on income and asset documentation, ask yourself why — and whether the answer is one a thoughtful seller would also accept.

The buyer’s ten-step path

Step 1. Get crystal-clear on your financial picture.

Pull your own credit. Gather two years of tax returns (or W-2s), two months of bank statements, and a written list of monthly debts. If you are self-employed, prepare a year-to-date P&L. The first thing any seller (or seller’s broker) is going to do is verify what you are bringing to the table. Walk in with the file already built and your odds of acceptance go up dramatically.

Step 2. Choose your structure target before you start hunting.

Buyers with significant cash but uncomfortable income docs are best matched to true seller financing or carry-back scenarios.

Buyers with little cash but solid income are best matched to wraparound or Subject-To scenarios where the existing financing is the asset.

Buyers who want maximum control without bank scrutiny but can’t close large equity gaps may fit an Agreement for Sale.

I run a 30-minute targeting session with every buyer client to identify the right one or two structures before we look at any property.

Step 3. Build your professional team early.

An Arizona-licensed real estate broker who has actually closed creative deals (ask for transaction examples and the year of close). An Arizona-licensed attorney to review documents. A CPA familiar with installment sales and the interest-deduction rules under §163. A licensed third-party loan servicer the seller and you can agree to use.

Step 4. Identify the property and the seller's structural fit.

Not every property suits every structure. A free-and-clear home is a true-seller-finance candidate; a property with a low-rate 2021 mortgage is a wrap or Subject-To candidate; an underwater property is essentially a Subject-To only. Before negotiating price, the broker should pull the property's current lien picture (open mortgages, recorded liens, judgments, tax status) so the structure aligns with reality.

Step 5. Make the structural offer in writing.

The offer is more than price. It includes proposed structure, down payment, interest rate, amortization, balloon date, monthly payment, impound treatment, servicer, occupancy timing, and the documentation the seller will receive (your credit pull, income, identity verification).

A thoughtful structural offer often gets a yes where a price-only offer would get a counter. The seller knows you have thought it through.

Step 6. Open escrow and order the title commitment.

Use a title company that has handled creative-finance closings before — they are the ones who will hold the deed in escrow (Agreement for Sale), record the AITD (wrap), or coordinate the carry-back (carry-back). Order the title commitment immediately. Read the exceptions schedule. Anything unusual surfaces here.

Step 7. Conduct inspections and property due diligence.

All the usual inspections apply: structural, mechanical, pest, sewer scope, roof, HVAC, pool, environmental as needed. Plus: confirm property tax status, HOA standing (estoppel letter from the association), and — if applicable — the underlying loan's payment history. On Subject-To and Wrap, request the most recent mortgage statement and any modification documents directly from the seller.

Step 8. Final document review with your attorney.

The package will include some combination of: promissory note(s), deed of trust(s), warranty deed, AFS contract and memorandum, Subject-To addendum, due-on-sale acknowledgement, limited power of attorney, servicing agreement, and disclosures.

Do not sign anything without your attorney having reviewed it. The cost of attorney review is typically 0.1–0.3% of the purchase price. The cost of skipping that review is sometimes the entire deal.

Step 9. Close, record, and engage the servicer.

Sign at escrow. Funds wire. Deeds and deeds of trust record at the County Recorder. The servicer activates the loan, sets up the impound account, and sends you a payment coupon. From this point forward you are an owner with a mortgage — just one not held by a bank.

Step 10. Live the loan well.

Pay on time. Keep impounds funded. Carry insurance with the seller named as additional insured / loss payee. File your interest deduction. And start thinking, from year one, about your refinance or sale exit before the balloon arrives. A balloon you forget about until 90 days before is a balloon that hurts.

BUYER'S DEAL-KILLERS

Trying to negotiate price and structure separately — sellers want one decision, not two.

Showing up without a complete document file — it signals the seller will be the one holding all the risk.

Refusing to use a third-party servicer — the servicer protects you as much as the seller.

Skipping the attorney to save fees — the only kind of saving that costs more than it saves.

PART 4 · SELLING WITH CREATIVE SELLER FINANCING

From the seller's side the same closing is a different journey. The seller is essentially launching a private mortgage business for the duration of the note, and the work that goes in upfront — pricing the structure, underwriting the buyer, drafting the package — is what separates a profitable note from a problem note.

> **THE SELLER'S MINDSET**
> You are no longer just selling a house. You are originating a loan secured by a house. Everything you would expect a bank to do — verify, document, underwrite, service — is your responsibility now, delegated to your broker, attorney, and servicer.

The seller's ten-step path

Step 1. Define your real objective — not just "sell the house."

Are you trying to maximize price? Net proceeds? Monthly cashflow? Tax efficiency? Speed to close? Liability minimization?

These goals point to different structures. A cashflow-focused free-and-clear owner often lands on True Seller Financing. A low-rate-mortgage owner who wants out without selling the rate lands on a Wrap. A distressed seller who needs to move fast and protect credit may need Subject-To.

I run a goals session and reverse-engineer net proceeds across the structures that fit your situation before we list anything.

Step 2. Order a market read, a structure read, and a tax read.

Three numbers, not one. Market value tells you the conventional price the home would sell for in cash. Structure read tells you what a wrap or AFS would let you ask. Tax read tells you what you actually keep under each scenario after capital gain, depreciation recapture, and Net Investment Income Tax.

Step 3. Set the financing terms before you go to market.

Decide the down payment minimum (10–25% typical), interest rate (at or above AFR; usually 6.5–9%), amortization (15–30 years common), balloon date (3–10 years common), late fees, default cure language, and which servicer you will use.

Terms drive who shows up. Tight terms attract qualified buyers. Loose terms attract everybody.

Step 4. Position the property correctly.

Marketing materials should lead with the financing feature — “Seller will carry,” “Wrap available,” “Assumable rate.” In an environment where 95% of listings hide this information, leading with it filters for the right buyers and produces faster, cleaner offers.

Step 5. Underwrite the buyer like a bank would.

Pull credit (with written authorization). Verify income with two years of returns or W-2s and recent pay stubs.

Verify assets and reserves with two months of statements.

Calculate debt-to-income at the proposed new payment plus all other debts.

Verify identity and ownership of the down-payment funds.

Ask the question a bank doesn’t — “Why aren’t you using conventional financing?” — and listen for an answer that makes sense.

Step 6. Document the deal correctly the first time.

Your attorney prepares (or reviews) the promissory note, deed of trust, AITD or AFS contract as applicable, due-on-sale acknowledgement, servicing agreement, and disclosures. Skipping a document, or copying one off the internet, is where most seller-finance regret originates.

Step 7. Close at escrow, record everything, and arm the servicer.

Title and escrow officer handle the simultaneous closing. The deed transfers (or is escrowed under an AFS). The deed(s) of trust record in the correct priority order.

Hand the package to the servicer the same day. Servicer sets up the impound account, sends the payment coupon to the buyer, and arranges the first month’s draw.

Confirm the buyer’s homeowner’s insurance lists you as additional insured / loss payee for the duration of the note.

Step 8. Manage the note professionally for the life of it.

Receive monthly statements from the servicer. Confirm taxes and insurance are being paid from impound.

Send the buyer an annual statement and the IRS Form 1098 (interest reported to buyer) and report the interest income on your own 1099-INT issued by the servicer.

Track the balloon date. Begin reminding the buyer 12 months before the balloon arrives. Offer to extend or refinance only if the underwriting still supports it.

Step 9. Handle default early, decisively, and through counsel.

If a payment is missed, your servicer sends a late notice the same day. If the cure period expires, your attorney files the appropriate notice (forfeiture under AFS, or notice of trustee’s sale under deed of trust). Early intervention almost always recovers the deal; late intervention almost always loses time and money.

Step 10. Plan the note's exit.

Most notes pay off voluntarily at the balloon — the buyer refinances or sells. Anticipate this so your reinvestment plan is ready.

If the buyer cannot refinance at balloon, options include: extend the note (with rate adjustment), accept a discounted payoff in cash, or convert to a long-term wrap with reset terms.

Some sellers sell the note itself to a note buyer for a lump sum. Notes generally trade at a discount; structuring the note with this resale in mind — strong amortization, seasoning, clean payment history — maximizes the price.

SELLER'S DEAL-KILLERS

Pricing without a structure read — leaving 5–7% on the table.

Under-underwriting the buyer — a 19-point credit-score gap on the same payment shows up as a 14-month default difference in the data.

Self-servicing the note — you will miss a tax payment, mishandle a 1098, and create an IRS problem two years later.

Skipping the attorney to save fees — your insurance against everything else.

PART 5 · THE ARIZONA LEGAL FRAMEWORK

Creative seller financing is legal in Arizona. It has been legal in Arizona for as long as there has been an Arizona. The structures discussed in this guide rely on a small but specific body of state statute and on a few federal overlays. This part is a working reference — not a substitute for an attorney, but the map your attorney is reading from.

Key Arizona statutes

These are the Arizona Revised Statutes (A.R.S.) that govern the documents and remedies in this guide. Every structure in Part 2 lives somewhere in this list.

CITATION	PLAIN-LANGUAGE NAME	WHAT IT GOVERNS
§§ 33-741 to 33-750	Agreements for Sale (Contract for Deed)	Defines the executory installment-sale instrument. Sets buyer's and seller's rights, the forfeiture remedy, and the graduated cure periods based on percentage paid.
§§ 33-801 to 33-820	Deeds of Trust / Trustee's Sales	Authorizes deeds of trust as security instruments. Defines who can serve as trustee, the procedure for non-judicial foreclosure, notice and timing requirements, and post-sale rights.
§§ 33-701 to 33-740	Mortgages and Liens on Real Property	Defines mortgages, lien priority, judicial foreclosure, and related real-property security law.
§ 33-729	Anti-deficiency — mortgages	Bars deficiency judgments after foreclosure on purchase-money mortgages for residential property of 2.5 acres or less, limited to a single one- or two-family dwelling. Buyer protection.
§ 33-814	Trustee's sale deficiency rules	Companion to § 33-729: bars deficiency judgments after non-judicial trustee's sales on the same class of qualifying residential properties (§ 33-814(G)).
§§ 33-411 to 33-426	Recording of instruments	Recording requirements, race-notice priority, and the public-record rules for deeds, deeds of trust, and memoranda.
§ 33-456	Form of conveyance documents	Statutory form and substance requirements for deeds and related conveyancing documents.
§§ 6-601 to 6-617	AZ Mortgage Brokers / Loan Originators	Licensing rules for those who act as mortgage brokers or loan originators — relevant when a seller finances more than three properties in 12 months (interacts with SAFE Act).

CITATION	PLAIN-LANGUAGE NAME	WHAT IT GOVERNS
§ 44-1201	Usury / interest rate cap	Arizona's default interest cap is 10% per annum; parties may contract for any rate in writing. Most seller-financed notes contract above the default cap by written agreement — fully permitted.
§§ 32-2101 to 32-2199	AZ Real Estate Law (Brokers and Salespersons)	Defines licensure, broker duties, disclosure obligations, and trust-fund handling that apply to any Arizona real estate broker representing a party in these transactions.

Key federal overlays

Arizona law governs the documents. Federal law governs the lending. Most creative-finance transactions are touched by one or more of the following.

FEDERAL RULE	WHAT IT MEANS FOR CREATIVE FINANCING
Dodd-Frank Act / SAFE Act	An individual seller financing more than three properties in a 12-month period generally must engage a licensed Mortgage Loan Originator (MLO) for transactions involving owner-occupied dwellings. A seller financing 1–3 properties annually is typically exempt. Trusts and entities have separate rules. Always run a volume check with your attorney before exceeding three deals in a rolling 12-month window.
CFPB Ability-to-Repay (ATR)	Owner-occupied residential seller financing is subject to ability-to-repay rules. The seller (or their MLO) must reasonably determine the buyer can repay the loan, document the determination, and avoid prohibited features (negative amortization, certain balloons in certain situations). Investment-property transactions are largely exempt.
Garn-St. Germain Act of 1982 (12 U.S.C. § 1701j-3)	Federally preempts most state restrictions on due-on-sale clauses and confirms a lender's right to call a loan on transfer. Provides specific exemptions (transfers to a spouse, to a child, to a living trust, by death, by divorce). These exemptions are commonly used for inheritance and trust planning — not for arms-length creative finance — but are useful to know.
IRS Applicable Federal Rate (AFR) / IRC § 1274 / § 7872	Sellers must charge interest at or above the published AFR for the loan term to avoid "imputed interest" recharacterization. AFR rates are published monthly by the IRS. Most seller-financed notes contract well above AFR (6.5–9% is typical), so this is generally not a constraint — but is worth checking on each transaction.

FEDERAL RULE	WHAT IT MEANS FOR CREATIVE FINANCING
IRC § 453 — Installment Sale Treatment	Allows a seller carrying a note to recognize capital gain pro-rata as principal is received — spreading tax exposure across the years of payment rather than recognizing it all in the year of sale. Depreciation recapture is the exception: it is fully recognized in the year of sale under § 453(i). Detailed treatment in Part 6.
Truth in Lending Act (TILA) / Reg Z	Applies to owner-occupied consumer credit transactions secured by a residential dwelling. Imposes disclosure requirements (loan estimate, closing disclosure) that an MLO typically administers. Investment-property seller financing is generally outside TILA.

THE BOTTOM-LINE LEGAL READ

If you are selling 1–3 properties a year, to non-owner-occupants, with a properly drafted note and a properly recorded deed of trust, you are operating squarely inside both Arizona and federal law.

If you are selling to an owner-occupant, you should layer in a licensed MLO and the related federal compliance work — your attorney will coordinate.

If you are doing 4+ owner-occupied transactions in 12 months, you are now a small lender with the federal compliance load that comes with it.

PART 6 · TAX CONSIDERATIONS

The tax treatment of a creatively financed sale is often the difference between a structure that nets more than a cash deal and one that nets less. This part is the framework your CPA will use to model your specific situation — not tax advice for your transaction, which only your CPA can give you.

IRC §453: how installment sales actually work

§453 lets a seller who receives at least one payment after the year of sale report capital gain proportionally as principal is received — rather than as a lump in the year of sale. The mechanics are simpler than the statute reads.

THE §453 FORMULA

Gross Profit Ratio = Total Gain ÷ Total Contract Price

Capital Gain Recognized This Year = Gross Profit Ratio × Principal Received This Year

Interest received on the note is taxed separately as ordinary income in the year received — it is NOT part of the installment calculation.

A worked example

Free-and-clear Arizona seller, basis of $200,000, sale price of $500,000, $50,000 cash down, $450,000 carried at 7% over 30-year amortization with a 7-year balloon. Federal long-term capital-gain rate of 20%, state of 2.5%, plus 3.8% NIIT.

SCENARIO A — CASH SALE (TAX YEAR OF SALE)	SCENARIO B — INSTALLMENT SALE (§453)
Gross proceeds: $500,000 Gain: $300,000 Federal cap-gain tax: $60,000 NIIT: $11,400 AZ state tax: $7,500 Total year-one tax: ~$78,900 Net cash: ~$421,100	Year-one principal: $50,000 cash down + ~$4,500 first-year amortization = ~$54,500 Gross Profit Ratio: 300,000 ÷ 500,000 = 60% Year-one gain recognized: ~$32,700 Federal + NIIT + state tax on $32,700: ~$8,600 Total year-one tax: ~$8,600 Plus year-one interest income of ~$31,300 taxed at ordinary rates

Result: the cash seller hands the IRS roughly $79,000 in the year of sale; the installment seller hands the IRS roughly $9,000 in capital-gain tax that year and spreads the remaining $69,000 of capital gain over the life of the note. The installment seller also collects roughly $31,000 of interest income in year one alone, taxed at ordinary rates but received — not forgone.

Over the seven-year note, the installment seller typically nets 20–40% more after-tax than the cash seller would have netted, depending on bracket dynamics and reinvestment of the down payment.

Depreciation recapture: the §453(i) exception

For investor sellers who have depreciated the property: § 453(i) requires that depreciation recapture be recognized fully in the year of sale, regardless of when principal is collected. This is the single most important tax-planning detail for an investor going into a seller-financed sale: the down payment must be sized to at least cover the recapture tax, or the seller will be writing a check to the IRS without enough cash to pay it.

INVESTOR RULE OF THUMB

Down payment minimum = (Depreciation recapture exposure × 25%) + estimated year-one federal & state tax on recognized capital gain.

Run this number with your CPA before you ever quote a down payment to a buyer.

Other tax angles worth raising with your CPA

- **Interest income tax.** Note interest is taxed as ordinary income at the seller's marginal rate. It is a meaningful add to the deal, not a cost.
- **Net Investment Income Tax (3.8%).** Applies to both capital gain and net interest income above the income thresholds. Installment treatment can compress these into years where the seller is below the NIIT trigger — a quiet but real savings.
- **1031 exchange interplay.** An installment sale and a 1031 exchange are not mutually exclusive but are difficult to combine on the same property. There are structures (Monetized Installment Sales, Deferred Sales Trusts) that some advisors recommend in this space — each requires careful CPA review.
- **AFR floor.** Interest rate on the note must equal or exceed the Applicable Federal Rate for the term, or the IRS will impute interest under § 1274.
- **Cancellation and modification.** If the seller and buyer later modify the note, the modification can be treated as a deemed exchange that accelerates remaining gain. Modifications need CPA review before signing.
- **Note sale.** If the seller later sells the note to a note buyer, the entire remaining gain is generally recognized in the year of note sale. Plan ahead.

PART 7 · RISK MANAGEMENT & DUE DILIGENCE

A creatively financed deal that defaults is rarely a structural failure of the structure itself. It is almost always a documentation failure, an underwriting failure, or a servicing failure — things both sides can prevent. This part is the working checklist.

Seller-side underwriting checklist

Use this list at the offer stage. A buyer who fights any of it is signaling something.

- Tri-merge credit report with written authorization.
- Two most recent years' federal tax returns, all schedules.
- Two most recent W-2s, or 1099s, plus year-to-date P&L if self-employed.
- Two most recent months of all bank, brokerage, and retirement statements.
- Source-of-funds letter for the down payment (and proof of seasoning, 60–90 days).
- Government-issued photo identification.
- Existing housing payment history (12 months of canceled checks or VOR letter).
- Debt-to-income calculation at the proposed new payment plus all existing obligations.
- Written statement of why conventional financing is not being used.

Title and property due-diligence checklist

- Title commitment from a creative-finance-experienced title company.
- Owner & Encumbrance report if the buyer wants to vet the seller before opening escrow.
- Confirm property tax status — paid current with no liens.
- HOA estoppel letter — dues current, no pending assessments, governing-document copies.
- Insurance binder naming the seller as additional insured / loss payee.
- Confirmation of any solar lease or PACE lien — these survive sale and bind the buyer.
- Recent mortgage statement and most recent year-end statement on any underlying loan (Wrap and Subject-To only).
- Survey or ILR if there is any question of boundary, encroachment, or improvement positioning.

Documentation checklist by structure

STRUCTURE	MINIMUM DOCUMENT SET
True Seller Financing	Purchase contract · Warranty deed · Promissory note · Deed of trust (1st) · Servicing agreement · Insurance with loss-payee endorsement · Closing disclosure / settlement statement
Seller Carry-Back	Everything in True Seller Financing · PLUS senior lender's subordination / approval of the carry-back · Second-position promissory note · Second-position deed of trust · CLTV documentation per senior lender
Wraparound (AITD)	Purchase contract · Warranty deed · All-Inclusive promissory note · All-Inclusive Deed of Trust (AITD) · Servicing agreement (mandatory) · Due-on-sale acknowledgement · Limited POA to servicer · Underlying-loan disclosure · Insurance with both seller and underlying lender as loss payee
Agreement for Sale	Agreement for Sale contract per A.R.S. § 33-741 et seq. · Memorandum of Agreement for Sale (recorded) · Warranty deed (escrowed) · Escrow instructions for release · Servicing agreement · Insurance with seller as loss payee · Property tax responsibility clause
Subject-To	Purchase contract with Subject-To addendum · Warranty deed (subject to existing lien) · Due-on-sale acknowledgement (signed both sides) · Limited power of attorney to buyer for tax / insurance / escrow administration · Authorization for the buyer to receive loan statements · Servicing agreement · If equity is carried: 2nd note + 2nd deed of trust

Default scenarios — what actually happens

Each structure has its own default path. Knowing this in advance makes the documentation choices intentional.

Default on a true seller financing or carry-back

Seller (through the servicer) sends a notice of default after a defined cure period. If the buyer does not cure, the seller's attorney records a Notice of Trustee's Sale. After the statutory waiting period — typically 91+ days — the property is sold at trustee's sale. The seller can credit-bid up to the loan balance. If the buyer reinstates by paying past-due amounts plus fees before the sale, the foreclosure is canceled.

Default on a wraparound

Same trustee's sale process under the All-Inclusive Deed of Trust. The complication is the underlying loan — the servicer must keep paying it while the trustee's sale proceeds, or the seller risks foreclosure on themselves. This is why servicing is non-negotiable on wraps and why the seller maintains the right to reinstate the underlying loan from servicer reserves if needed.

Default on an Agreement for Sale

Seller (through counsel) serves the statutory notice under A.R.S. § 33-742. The buyer's cure period depends on the percentage of the contract paid (see Part 2 table). If the buyer does not cure, the seller declares forfeiture. The recorded memorandum is released, the escrowed deed is voided or never released, and possession returns to the seller. Buyer's equitable interest is extinguished. Far faster than foreclosure; available only because the seller retained legal title throughout.

Default on a Subject-To

If the buyer stops paying the seller's underlying mortgage, the seller's credit is the first thing to take damage. Most Subject-To documents include performance covenants and remedies — typically a reconveyance or a recorded note allowing the seller to retake the property if the buyer breaches. The servicer's monthly statements are the early-warning system; the attorney is who acts on it.

PART 8 · YOUR PROFESSIONAL TEAM

Creative seller financing is not a DIY structure. Each of the parties below has a defined role; missing or under-equipping any one of them is the most common source of regret in this space.

The real estate broker

Should be an Arizona-licensed broker (not just a salesperson) with demonstrable transaction experience across multiple creative structures — not just a course completion certificate. Ask: how many wraparounds have you closed? How many AFS contracts? Can you walk me through the last one in detail? Anything less than a confident, specific answer is a flag. This is why I lead with both sides of the closing table on my own deals.

The Arizona-licensed attorney

Drafts (or reviews) the promissory note, deed of trust or AITD, AFS contract, subject-to addendum, due-on-sale acknowledgment, limited POA, and any disclosures. Coordinates with the title company on escrow language and with the CPA on the installment calculation. Generally costs 0.1–0.3% of sale price. The lowest-cost piece of insurance in the deal.

The CPA / tax advisor

Calculates the Gross Profit Ratio under §453, models the installment treatment versus a cash sale, sizes the minimum down payment to cover any depreciation recapture, and confirms the note interest rate meets or exceeds AFR. Re-engaged at any modification, at the balloon, and at note sale.

The licensed third-party loan servicer

Collects monthly payments via ACH. Maintains the impound account for property tax and homeowners insurance. Pays the underlying lender on Wrap and Subject-To structures. Issues Forms 1098 to the buyer and 1099-INT records to the seller. Sends amortization statements. Handles late notices and notice of default per the servicing agreement.

- Common Arizona-active servicers include: FCI Lender Services, North American Servicing, Allegro Escrow, Land Title and Escrow note-servicing departments, and Madison Management Services.

The escrow / title officer

Holds funds and signed documents until closing conditions are met. Handles simultaneous recording in the correct priority order. Holds the escrowed deed under an AFS. Issues the title policy that protects the buyer's position. Use one experienced in creative-finance closings — they are not all the same.

The licensed Mortgage Loan Originator (MLO)

Required when the seller is financing more than three properties in a 12-month period and the transaction involves an owner-occupied dwelling. An MLO administers TILA/Reg Z disclosures and confirms compliance with the SAFE Act. Many real estate brokers also hold MLO licensure or partner with one.

The insurance professional

Writes the homeowners policy with the seller (and any senior lender) named as additional insured and loss payee. Confirms coverage matches the loan balance. Re-checks annually — the most preventable failure in this space is a buyer who lets coverage lapse.

THE TEAM RULE

If you cannot name a person in your phone for each of the six roles above, you are not yet ready to execute the deal.

Build the team before you negotiate the price. Negotiations move quickly once a serious counterparty engages.

GLOSSARY

Terms used in this guide, in plain language.

Agreement for Sale (AFS). Arizona's statutory installment-sale contract under A.R.S. §§ 33-741–750. The seller retains legal title until the contract is fully performed; the buyer holds equitable title and takes possession. Same concept as "Contract for Deed" used in other states.

AITD (All-Inclusive Trust Deed). The deed-of-trust instrument used in wraparound sales. Secures a single, larger "all-inclusive" promissory note that includes the unpaid balance of an existing underlying mortgage plus the seller's carried equity.

Anti-deficiency. Arizona's borrower-protection rule (§§ 33-729 and 33-814(G)) that bars the lender from collecting any shortfall between the loan balance and the foreclosure sale price on qualifying owner-occupied residential property of 2.5 acres or less.

Applicable Federal Rate (AFR). Minimum interest rate the IRS requires on a private note. Published monthly. Notes below AFR trigger imputed interest under IRC § 1274.

Balloon payment. A scheduled lump-sum payoff at a defined date — typically year 3 to year 10 — that ends the note even though the monthly payment was sized as if it would run a longer amortization.

Carry-back. A junior promissory note carried by the seller behind a senior third-party mortgage. Used to bridge a financing gap without dropping the price.

CLTV (Combined Loan-to-Value). The ratio of all liens against a property to its value. Most conforming senior lenders cap CLTV at 80%–95% — including any seller carry-back.

Contract for Deed. Out-of-state name for what Arizona calls an Agreement for Sale.

Deed of Trust. Arizona's preferred residential security instrument. Allows non-judicial foreclosure (trustee's sale) under A.R.S. §§ 33-801–811.

Depreciation recapture. Tax owed on previously deducted depreciation when an investment property is sold. Under IRC § 453(i) it must be recognized fully in the year of sale, regardless of installment treatment.

Due-on-sale clause. Boilerplate clause in nearly every mortgage that gives the lender the right to demand full payoff if title transfers. Codified in 12 U.S.C. § 1701j-3 (Garn-St. Germain Act).

Equitable title. The buyer's ownership interest under an Agreement for Sale before the legal deed is released. Includes rights to possession, improvement, sale of equity, and protection against forfeiture after defined paydown thresholds.

Forfeiture. Arizona's statutory remedy for default under an Agreement for Sale (§ 33-742). Terminates the contract and returns possession to the seller without a foreclosure sale, subject to graduated cure periods.

Gross Profit Ratio (GPR). Total taxable gain divided by total contract price. Used under IRC § 453 to calculate the portion of each principal payment that is recognized as gain.

Impound account. Monthly escrow holding 1/12th of annual property tax and homeowners insurance. Administered by the servicer.

Installment sale. A sale where at least one payment is received in a year after the year of sale. Tax treatment under IRC § 453.

IRC § 453. The Internal Revenue Code section authorizing installment-sale tax treatment.

Lock-in effect. The market dynamic where homeowners with sub-market mortgage rates resist selling, suppressing inventory and mobility.

Loss payee. An additional party named on a homeowners insurance policy entitled to insurance proceeds for any covered loss. The seller (and any senior lender) is named in this position on seller-financed notes.

Memorandum of Agreement for Sale. A recorded short-form summary of an Agreement for Sale that gives public notice of the buyer's interest without disclosing the contract terms.

Mortgage Loan Originator (MLO). Federally and state-licensed individual who originates residential mortgage loans. Required for certain owner-occupied seller-finance volumes under the SAFE Act.

Net Investment Income Tax (NIIT). Additional 3.8% tax on net investment income (including capital gain and interest) for taxpayers above defined modified AGI thresholds.

Non-judicial foreclosure. Foreclosure conducted without a court proceeding, using a deed-of-trust trustee's sale process. Arizona's standard for residential deed-of-trust loans.

Promissory note. The "IOU" — the written promise to repay. Contains amount, rate, payment, maturity, default, and remedy terms.

Servicer (loan servicer). Licensed third party that administers a mortgage loan — collecting payments, managing impounds, paying underlying loans, and handling tax reporting.

Subject-To. A title transfer in which the existing financing remains in place and the buyer pays the existing loan "subject to" it, without formal assumption.

Trustee's sale. The non-judicial foreclosure sale conducted under a deed of trust per A.R.S. § 33-807 and § 33-808.

Wraparound. A seller-financed sale in which a new, all-inclusive promissory note encompasses an existing underlying mortgage that stays in place.

WORKSHEETS

Two side-by-side worksheets for your first conversation with a broker, attorney, or CPA. Fill them in before the call — every minute spent here saves an hour later.

Seller’s pre-listing worksheet

Estimated current market value	
Underlying mortgage balance (if any)	
Underlying mortgage rate / monthly P&I	
Estimated equity	
Your basis (purchase price + improvements)	
Depreciation taken (investor only)	
Year of purchase / occupancy type	
Minimum cash needed at close	
Monthly cashflow target	
Acceptable balloon date	
Tolerance for due-on-sale risk	None / Low / Moderate / High

Buyer's pre-offer worksheet

Total cash available (down + closing + reserves)	
Gross monthly income (last 24 months avg)	
Total monthly debt service	
Current credit score (tri-merge if available)	
Reason conventional financing isn't suitable	
Target monthly payment ceiling	
Expected exit (refi date or sale)	
Property type / occupancy intent	Primary / Second home / Investment
Source of down payment	
Comfort with due-on-sale risk (Wrap / Sub-To)	None / Low / Moderate / High

FREQUENTLY ASKED QUESTIONS

Is creative seller financing legal in Arizona?

Yes. All five structures in this guide are well-established under Arizona law and have been used in this state for decades. The relevant statutes (Agreements for Sale, deeds of trust, mortgages, recording) are catalogued in Part 5. The federal overlays (Dodd-Frank/SAFE, Garn-St. Germain, TILA, IRC §§ 453 and 1274) are catalogued there as well. Always retain a licensed Arizona attorney to draft or review the package.

How many properties can I seller-finance in a year without becoming a “lender”?

Generally three or fewer per rolling 12-month period for owner-occupied dwellings, without engaging a licensed Mortgage Loan Originator. Investment-property sales have separate exemptions. Volume in entities and trusts gets nuanced — your attorney confirms thresholds before the fourth deal.

What’s a typical down payment?

Ten to twenty-five percent of the sale price for most residential creative-finance transactions. The right number depends on (a) the seller’s tax exposure — the down payment must at minimum cover year-of-sale depreciation recapture if applicable, (b) the buyer’s profile — stronger buyers can sustain lower down, weaker buyers should be required to put more skin in the game, and (c) the property type. I model three down-payment scenarios with every client to find the balance point between affordability and protection.

What interest rate should the note carry?

At or above the IRS Applicable Federal Rate (AFR) for the loan term — typically 4–5% in 2026, depending on length. Most creatively financed notes in Arizona carry rates between 6.5% and 9.0%. Above AFR is required by federal tax law to avoid imputed interest under IRC § 1274. The actual rate is negotiated between the parties and should compensate the seller for capital tied up while remaining attractive enough for the buyer to choose the structure.

What happens if the buyer stops paying?

Each structure has a defined default path. For a deed-of-trust-secured note, the seller initiates non-judicial foreclosure under A.R.S. §§ 33-807–811 — a roughly 91-day process. For an Agreement for Sale, the seller initiates forfeiture under A.R.S. § 33-742 with a cure period that depends on what percentage of the contract has been paid. For Subject-To, the documents typically include performance covenants and reconveyance remedies, executed by the seller’s attorney. In every case, early notice through the servicer is the most important factor in recovering value.

Do I need an attorney?

Yes, for every transaction in this guide. The legal cost is typically 0.1–0.3% of the sale price and is the lowest-cost piece of insurance available. A poorly drafted note, a missing subordination, an unrecorded memorandum, or a missing due-on-sale acknowledgement can each unwind a deal that would otherwise have closed cleanly.

What's the difference between a Wrap and a Subject-To?

Both leave the underlying mortgage in the seller's name. The Wrap adds a new, larger promissory note from the buyer to the seller — the buyer's payment is large enough to cover the underlying mortgage plus a profit spread. The Subject-To has no new wrap note; the buyer pays the existing mortgage at its existing payment, and the equity above the mortgage is settled with cash, a seller carry-back, or both. Wraps are usually used to monetize a rate spread; Subject-To deals are usually used to clean up a distressed or motivated-seller situation.

How does IRC § 453 actually save taxes?

It lets a seller recognize capital gain only as principal is received, not all at once in the year of sale. A seller with $300,000 of gain on a 7-year carry note may recognize only $30,000–$40,000 of gain per year, often staying in lower brackets and avoiding the 3.8% Net Investment Income Tax in years that would otherwise have been borderline. Detailed treatment with a worked example is in Part 6. Always run the numbers with your CPA before deciding.

Can I sell the note later if I need the cash?

Yes. Private mortgage notes trade on a secondary market — generally at a discount that reflects the rate, the seasoning, the payment history, and the equity in the property. Structuring a note with later resale in mind (strong amortization, a clear servicer record, current insurance) maximizes its eventual sale price. A typical seasoned, well-performing note may sell for 70–90 cents on the dollar.

Is this just for distressed properties?

No. Creative financing closes premium properties at full price all the time — because the buyer pool widens, the buyer's urgency rises (the rate is not available elsewhere), and the seller's negotiating position improves. The single largest misconception in this space is that these structures are "desperate." They are the opposite. They are how informed sellers maximize net-of-tax proceeds in a high-rate environment.

CONTACT

When you're ready to talk

There is no obligation, no pressure, and no upsell behind the call. The 60-minute consultation is a working session. We will look at your specific property, your specific tax picture, your specific timeline, and which of the five structures (if any) fits. If a conventional sale is the right answer, I will tell you so. If a creative structure nets you meaningfully more, I will show you the math.

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