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How to sell land: A buyer's market begs for seller-financing
By Curtis Seltzer

BLUE GRASS, Va.—No one likes getting kicked in the teeth. Particularly, repeatedly.

That's how Americans feel this week as the sinking economy flails about, dragging down banks, sales, jobs, credit, savings and hope.

Things that almost all of us had no part in--derivatives, credit-default swaps, subprime mortgage pools -- have stomped everyone into the financial dirt.

It's a bad time to be in the jam of having to sell real estate. Buyers are spooked, and rightly so. Big lenders appear to fear lending, particularly to each other, even though money is available. They want debt off their backs, as do we all.

It's a "buyer's market" in real estate, except buyers are afraid to buy even if they can.

We have a lot to fear, including fear itself.

Sellers who have a choice should take their properties off the market.

That leaves have-to-sell sellers. Some of this unhappy group should consider owner-financing, where the seller makes a deal by becoming the buyer's lender. About 20 percent of U.S. house sales use it in one form or another.

Unlike a bank, the seller does not lend cash to the buyer. Instead, the seller lends his property and what he has in it. The buyer is obligated to pay off the note with interest.

Sellers can gain from financing the sale of their properties. This approach expands the number of capable buyers, because it saves buyers money and frees them from much of the rigmarole of getting a mortgage from an institutional lender. It works for buyers with steady income but little cash.

In the right circumstances and with the right terms, even a seller who has little equity in his property may be able to finance a buyer with his lender's approval. Where a lender insists on full and immediate repayment of the existing mortgage, seller-financing won't work. It's also not an option for a seller who needs to get all of his cash out of his property up front.

Seller-financing is flexible. Seller and buyer work out terms that work for

them. In today's peculiar circumstances, lenders may be willing to be helpful when the proposed arrangement makes them feel more secure.

Seller-financing can take several forms.

One common example occurs when a buyer can't come up with the full sales price or meet some or all of his lender's down-payment requirement. The seller "takes back" a second mortgage for the money the buyer lacks. When a lender is involved, the seller's make-up-the-difference loan to the buyer is secured by the property but in second position. The seller transfers title to the buyer, lender or a trustee. The seller can foreclose if the buyer fails to pay him, but the lender will get paid first.

A second example has a seller -- who owns property free and clear -- transferring title to a buyer. No institutional lender is involved. The buyer gives the seller a promissory note for repayment and either a mortgage or a deed of trust, which gives the seller the right to foreclose if the buyer fails to meet repayment terms. The seller usually insists on some down payment.

In this case, the buyer -- because he holds title -- can refinance the property or sell it, as long as he continues to repay the seller under their terms.

A third example has the seller keeping title until the buyer completes paying off the note. This arrangement goes by different names--installment sale, land contract and contract for deed, among others.

The buyer agrees to repay principal and interest, property tax, insurance and repairs.

This buyer holds "equitable title" in the property and the right of possession and use. The specific rights of equitable title differ among the states, but common to all is the buyer's right to receive title upon full payment of the note. Until gaining title, the buyer cannot refinance or sell the property.

If the buyer defaults, the seller, generally, can evict him, retake the property and keep any monies paid. Many states offer some protections to defaulting buyers in land contracts. Eviction and foreclosure are unpleasant for all involved.

Sellers and buyers need to agree on how they will handle the sale of specific assets and leases, such as a timber sale, rental income from agricultural land and leasing of mineral or hunting rights. The seller needs to feel confident the buyer will maintain his property and do nothing to diminish its value without prior seller approval.

When a seller has a mortgage, he should get the lender's okay for any self-

financing arrangement with a buyer. If the seller has an assumable note with the lender, the buyer will have to qualify before he can replace the seller.

Sellers need to be careful. Property sold subject to a seller-financed mortgage may leave the buyer free of having to pay off the difference between what the property brings in foreclosure and what is owed. The seller in this event is on the hook for the difference. An assumed note puts the full burden on the buyer.

Sellers use owner-financing to move properties when interest rates are high, credit is tight and buyers need help. Sellers can charge above-market interest rates for helping a buyer and not pay for pre-sale repairs that lenders often require. The seller may want a buyer to pay for mortgage insurance.

A buyer benefits because interest on these loans is usually not front-loaded, and they're free of fees and points. Down payments can be smaller, and price may be lower.

Both seller and buyer should involve legal counsel in negotiating and drafting their documents.

Sellers benefit tax-wise. Taxable gain is spread out over a number of years rather than wadded up in a sale year, which can push the seller into a higher tax bracket. Time may also bring capital losses that offset gains. Each year, the seller pays tax on interest income and a proportional amount of gain. The seller needs to understand the tax benefits and implications from his particular arrangement. A tax-smart CPA is a necessity, not a luxury.

Both sellers and buyers can benefit from seller-financing. But both bear risks and the possibility of nightmare when documents are poorly drafted, details are left unresolved or when one side fails to do what the other expects. Both sides need a lawyer's help in protecting their respective interests.

Seller-financing can help sellers. It can get start a sale and allow a buyer to refinance conventionally a few years later in calmer times.

But, but, but! Choose your buyer carefully. If you make this marriage in a pepper-sprout fever, you're likely to get burned.

Curtis Seltzer, land consultant, is the author of *How To Be A DIRT-SMART Buyer of Country Property* at www.curtis-seltzer.com. He holds a Class A residential contractor's license in Virginia and has lived in a now 90-year-old farmhouse for 25 years.

Contact: Curtis Seltzer, Ph.D.
Land Consultant

1467 Wimer Mountain Road
Blue Grass, VA 24413-2307
540-474-3297
curtisseltzer@htcnet.org
www.curtis-seltzer.com