The '4' <u>Legal</u> Options of Owner Financing

"Thank you so much for your hard work and dedication to "getting the deal done!" I have in the past refrained from using a Real Estate Agent, what a mistake! I have learned that using a professional, dedicated, and persistent real estate professional like John is a relationship worth building, You truly are a valuable requirement in building a successful real estate portfolio."

- Jason Connolly - Phoenix, NY

Have you considered selling your property with owner financing BUT were told that you could not because you have a mortgage on it and cannot sell to a new buyer until you pay off your current mortgage first? Wonder no more…there is a solution! Now before we proceed, please understand, I'm not an attorney and if you believe this advice stated here worthy of following, always run it past your attorney first before proceeding.

Here's the situation: Home owner (Billy Smith) has a $50,000 mortgage balance on his property and wants to sell his home with owner financing to buyer (Mable Jones) ***without paying off his first mortgage***. Just to be clear the seller (Smith) wants to sell and vacate and the new owner (Jones) wants to own and move in with the seller (Smith) providing owner financing and (Smith) still has his first mortgage on the property he is selling to Jones.

Before we begin unraveling the solution it begs the question why would anyone sell their house without paying off the mortgage first? One reason is because the buyer cannot get a mortgage with a lending institute and therefore the only option IS owner financing. Can it be done? Because we now have 2 mortgages in place on one property? Smith to the bank and Jones to Smith.

I asked a local real estate attorney, Doug Taylor, this very question and what you are about to read is in his own words of the 4 legal options of owner financing. (Names have been changed)

Mr. Taylor's Response:

You have asked for an opinion as to the options available for Mr. Smith to sell real property for $50,000, which is encumbered by a mortgage in the amount of $36,000, to a buyer who is unable to qualify for their own mortgage. The buyer has $14,000 cash to put down. There are a number of alternative options, all with advantages and disadvantages. Here are the most common:

1) Sell the property to the buyer "subject to" the existing mortgage, with an agreement that the buyer will assume and pay the mortgage.

The advantage is that after recording a deed from Mr. Smith, the buyer will appear as the owner in the public records. Therefore, since Mr. Smith no longer owns the property, he will have no liability to pay property taxes and any other expenses of home ownership, nor can he be liable in a personal injury lawsuit.

The disadvantage is that Mr. Smith's name will NOT be taken off the mortgage. That can only occur if the new owner obtains their own mortgage and pays off Smith's. If the buyer fails to pay the mortgage, Mr. Smith could still be held liable. Plus, there is no way for Mr. Smith to get the property back from the buyer in case of default, short of getting a deed signed by the buyer at closing to be held in escrow. You would have to find an independent person to hold the escrow. Plus, there is a strong argument that the deed might not be enforceable.

Furthermore, most bank mortgages contain clauses, which state that the mortgage is NOT assumable without permission, and that the bank may call the loan immediately due if the house is sold. This rarely occurs so long as the payments are being made on time, but it is a risk.

2) Sell the property under an installment contract, under which your mother remains the owner until the mortgage is paid, and only then records a deed.

In this case, the advantage is that Mr. Smith remains the owner has more control if the buyer defaults on making payments, as the payments would go to Smith, and he would then pay the mortgage company. However, if the buyer defaults and refuses to move out, Mr. Smith must bring an expensive foreclosure action to regain possession. Plus, holding a deed in escrow at closing is not enforceable.

Another disadvantage is that Mr. Smith remains liable as a homeowner for taxes, insurance, and anything that happens on the property, even though he does not live there.

3) Lease the property with an "option to purchase."

The buyer is a tenant and not a buyer until they decide they want to buy. They would pay rent $532.50 per month to Mr. Smith. Then Mr. Smith would pay the mortgage.

The advantage is that if there is a default and the buyer refuses to move out, Mr. Smith can bring an inexpensive eviction to get them out.

The disadvantages are that Mr. Smith remains liable as a homeowner, incurs additional legal responsibilities as a Landlord, plus the tenant would NOT pay the $14,000 cash until they decide to buy. If they paid the money up front, they would become a buyer and not a tenant, and you are back to option 2.

4.) "Wrap around" or "Piggyback" mortgage scenario.

This is similar to Option 1, except that there is additional money being paid by the buyer in excess of what the seller currently owes on the existing mortgage.

For a ***FREE* 30 min consultation** on how to buy or sell with creative financing, grab your phone now and dial John Adolfi at **(315) 695-6434.**