Subject-To Transaction — Agent Overview

This document is designed to give you, as the listing agent, a clear understanding of how a subject-to transaction works so you can confidently present this option to your seller.

WHAT IS A SUBJECT-TO TRANSACTION?

In a subject-to transaction, the buyer purchases the property and takes title while the seller's existing mortgage stays in place. The buyer does not assume the loan — the loan remains in the seller's name — but the buyer takes over responsibility for making the payments. The seller is no longer responsible for the property or the monthly payment, but the loan stays on their record until it is paid off or refinanced.

This is a fully legal and widely used strategy in real estate. Title transfers through a licensed title company or closing attorney, just like any other sale, and the transaction is documented with a state-approved Purchase and Sale Agreement.

WHY WOULD A SELLER CONSIDER THIS?

Subject-to transactions can be a strong option for sellers in situations where a traditional sale may not be ideal. Common scenarios include:

- The seller needs to move quickly and wants to avoid the time and uncertainty of a traditional listing
- The property has little or no equity, making a conventional sale difficult after commissions and closing costs
- The seller is behind on payments and facing potential foreclosure — a subject-to can bring the loan current and protect their credit
- The seller has been relocated or inherited a property they no longer want to manage
- The seller wants to avoid the cost and hassle of repairs needed to list on the open market

HOW THE PROCESS WORKS

Agreement

Buyer and seller execute a Purchase and Sale Agreement that outlines all terms, including the subject-to arrangement. The agreement is handled through a licensed title company or closing attorney.

Closing

At close of escrow, title transfers to the buyer via warranty deed. The seller's existing mortgage remains in place. The buyer takes full responsibility for making the mortgage payments going forward. All closing costs and fees are paid by the buyer.

Post-Closing

The buyer owns the property and is responsible for all carrying costs — mortgage payments, taxes, insurance, HOA fees, utilities, and maintenance. The seller walks away from the property and the monthly obligation.

HOW THE SELLER IS PROTECTED

Payment Protection

The PSA includes clear obligations requiring the buyer to make all mortgage payments on time. If the buyer fails to perform, the agreement provides the seller with remedies including the right to reclaim the property. We also set up third-party payment servicing so the seller can verify that payments are being made directly to the lender.

Insurance

The buyer is required to maintain full property insurance at all times, with coverage amounts at least equal to the existing policy. The seller can be named as an additional insured or interested party on the policy, giving them visibility and notification rights if coverage ever lapses.

Title Insurance

A title policy is issued at closing insuring the buyer's interest in the property, paid for entirely by the buyer. Title is transferred through a licensed title company or closing attorney, ensuring proper documentation and recordation.

Exit Strategy

The buyer's goal is to refinance the property and pay off the seller's existing mortgage within a defined timeframe. This removes the loan from the seller's name entirely. The PSA outlines this timeline and the buyer's obligation to pursue refinancing in good faith.

ADDRESSING THE DUE-ON-SALE CLAUSE

Most mortgages contain a due-on-sale clause, which gives the lender the right to call the loan due if the property is transferred. This is a common question, so here is the reality: while the clause exists in most loan agreements, lenders rarely enforce it as long as payments are being made on time. The lender's primary concern is that the loan is performing. That said, we are transparent about this with every seller — the clause exists, and while enforcement is uncommon, it is not impossible. Our commitment to keeping the loan current and pursuing refinancing within a defined timeframe directly mitigates this risk.

COSTS

The buyer pays all closing costs, title insurance, and transaction fees. The seller incurs no out-of-pocket expenses aside from any listing agent commission on their side of the transaction. After closing, the buyer is solely responsible for all carrying costs associated with the property.

KEY TERMS

- **As-is purchase** — no repairs, credits, or concessions from the seller
- **Due diligence period** — buyer inspects, reviews title, confirms zoning; may terminate if unsatisfied
- **Buyer assumes all existing tenancies** at closing
- Buyer covers all mortgage payments, taxes, insurance, and carrying costs from the date of closing
- **Refinance timeline** — buyer works to refinance and pay off the seller's loan within a defined period

- Seller provides standard disclosures, mortgage statements, and property documentation during due diligence

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Questions? Happy to walk through the process anytime.

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