

# Create A Saleable Note

by By John J. Merchant, J.D, EMS

Here is an outline of the elements that should be considered when creating and structuring a note which the note holder/payee wishes to sell at or shortly after closing.

## **Credit of the Property Buyer(s)**

The better it is, the more valuable the carryback note is going to be to a prospective note buyer. Don't know what the property buyer's credit is? Then don't bet the barn on a great note

sale, because the note buyer will want to know the buyer's credit. And if the property buyers are husband and wife, or more than one buyer, demand credit and financial statements from everyone. These days it's common for the wife to earn more than the husband, and you want to know all about both. If the noteholder is not equipped to obtain a credit report, ask your bank or local credit agency. They'll help you get it.

## **Sales Price of the Property**

This should be at or LESS than the provable/establishable value of the property. Is it more than the actual value of the property? Then expect your note to sell for LESS than you want, because the experienced note buyer wants the property buyer to have some equity in the property so the property buyer isn't likely to default.

## **Provable Value of the Property**

Don't know? And the property buyer hasn't demanded an appraisal of any kind? Great, if the property is selling for all cash -- but if you're taking back a note and you want to sell that

note simultaneously, be aware that the note buyer is going to want to know the property value. And many problems are created if your note sale is AFTER the property sale, and the property is now inaccessible to an appraiser.

## **Down Payment**

Zero down deals are done all the time but are not popular with note buyers. They want to know that the buyer has immediate equity in the property, something to protect, so the less the down payment you're taking, the less the cash you're going to be selling your note for.

## **Terms Of The Carry-Back Note**

**A. Interest Rate:** The higher the better, but not so high as to gamble with usury law violations. Many states have [usury laws](#) that govern personal, consumer loans (e.g. Washington State has a 12% "do not exceed" rate); however, not all states have [usury laws](#). So check before you structure your deal. Don't know what a good interest rate is for your deal? Ask a mortgage person or residential agent. They live with this on a daily basis and they'll give you some good advice. The lower the rate, the poorer the deal for the note buyer, and he'll just make it up by charging you more of a discount when he buys it.

**B. Length of Note:** Again, ask what is normal currently. Probably the typical length is 5 years, or maybe 10 to 25 years but with 3 to 5 year balloon. This is important to the note buyer, because he doesn't want to wait forever to get repaid. But not too short...I've seen

notes with 6-12 months go begging for a buyer because the note buyers feared the property buyer couldn't pay it off in that time period.

**C. Balloon:** Again, the note buyer wants to have this on his books for no more than 3-5 years, so even if the new note has a 20-25 year amortization period, to keep the monthly payments within reason, the note should have a 5 or so year balloon for full payoff in that time.

**D. Loan-To-Value Ratio (LTV):** Total loan-to-value, of both the first and new second, must be considered, and typically not to exceed 75% of provable value, for the buyer of the new

second to be seriously interested. Also, many second buyers want the ratio of the first to the second to be no more than 4:1. Translation: they don't want a little second that's behind a huge first, which might have a much bigger RATIO than 4:1. (e.g. \$100,000 first and \$10,000 second would be 10:1; but \$30,000 first and \$10,000 second would be 3:1). Do some shopping and learn what note buyers would accept before you structure your property sale. Of all the elements listed here, this is probably the one most ignored by note buyers. If they like everything else, they might not care at all about the LTV.

**E. Will the Lender on the First Permit the Second You're Willing to Carry?**

Frequently, the lender on a new institutional loan inserts a clause to the effect that it is permitting NO carryback loan by the seller, and you'd better hammer this out up-front if you plan to carry a second and are expecting to sell it.

**F. Security For Your Second:** Normally it should be a recordable [deed of trust](#), or mortgage in non-deed of trust states, drafted to comply with laws of property situs (where it's at!) to secure payment of the second. And to be recordable in deed records it should normally be signed and acknowledged by a notary. Further, it should normally have provisions to the effect that any default on buyer's part in payment of his first note is also a default in the carryback second. And, although frequently omitted, it should contain explicit, written permission for its holder to verify the current status of the first.

**G. Buyer's Identity:** If the payors are husband and wife, make sure they ARE husband and wife and have both executed the note and deed of trust individually. Don't permit one to sign for both. This is not permissible or binding on the spouse in every state, and you don't even know for sure they're still married. If you're selling to a corporation or LLC, make sure you're also getting the buyers on the note and deed of trust INDIVIDUALLY. I see too many notes where ONLY the corp/LLC is on there, and the people signing, sign ONLY as [corporate officers](#) -- this doesn't bind them individually and your note isn't going to sell.

One element that has not been addressed in this article is "seasoning," or aging. While there is no doubt that a note that has a few years successful seasoning is a more valuable note, of course this element is completely absent in a "simultaneous" sale, where the note is purchased as the property sale is closed.

John J Merchant, J.D., EMS, is a graduate of SMU School of Law. He practiced law for a number of years before leaving law practice to devote his time to a variety of business interests and investments. He has been very involved in investment real estate since before graduating from high school, and he has owned and managed a plethora of properties in several states, including ranches, oil leases, gas stations, rentals, both single family and multiplexes, office buildings, warehouses and even fast food restaurants.

John is owner and broker of MesaRoya Properties, in Tacoma, Washington, a [commercial real estate brokerage](#). He is a Gold Card member of National Council of Exchangers, (EMS -

Equity Management Specialist) and a member of various other real estate exchange and marketing groups. His articles appear often in THE PAPER SOURCE JOURNAL

This is some great insight from another professional in the note business. Contact us at National-Note-Buyer.com to buy or invest in private paper. We can provide you with a preliminary cash quote for your note in a matter of hours. Contact Tom, 866-935-3100 or email [ts6947@ymail.com](mailto:ts6947@ymail.com) for more information.