BREAKDOWN OF TRANSACTIONS AND SERVICES

SUBJECT-TO

Subject- to refers to a real estate transaction in which a buyer acquires a property "subject to" the existing financing that is already in place. In simpler terms, the buyer takes ownership of the property while leaving the existing mortgage or loan in the seller's name.

Here's a breakdown of the key components of a "subject-to" transaction

- **Existing Financing**: In a "subject-to" deal, the buyer assumes ownership of the property subject to the existing financing that the seller has in place. This means that the buyer does not secure a new mortgage but rather takes over the seller's existing mortgage.

- **Transfer of Deed:** The property's ownership is transferred to the buyer through a deed transfer, but the existing mortgage or financing remains in the seller's name. This is a legal and contractual arrangement.

- **Due-on-Sale Clause:** Most mortgages have a "due-on-sale" clause, which means that the lender can demand full repayment of the loan if the property is sold or transferred. In a "subject-to" transaction, the buyer risks triggering this clause, but many lenders may not enforce it as long as the mortgage payments continue to be made.

- **Seller's Liability**: Despite transferring ownership, the seller remains legally responsible for the mortgage. If the buyer fails to make payments, it can negatively impact the seller's credit, and the lender could potentially foreclose on the property.

- **Risks and Benefits:** "Subject-to" transactions can be advantageous for buyers who can acquire a property without needing new financing. However, it also involves risks, especially for sellers who retain liability for the mortgage. Both parties need to be aware of the legal and financial implications.

- **Legal Documentation:** To formalize a "subject-to" deal, proper legal documentation is crucial. This typically includes a purchase agreement, a deed transferring ownership, and any additional agreements outlining the terms of the transaction.

WRAP

In creative financing, a "wrap" is a specific type of financing arrangement where an existing mortgage is not paid off when a new mortgage is created. Instead, the new mortgage "wraps around" the old one. This strategy is also known as a "wraparound mortgage" or simply a "wrap.

Here's a breakdown of how a wrap works:

- **Existing Mortgage**: The property in question already has an existing mortgage in place, usually held by the seller.
- **Creation of a New Mortgage (Wrap):** The buyer and seller agree to create a new mortgage (the "wrap") that encompasses the existing mortgage. The new mortgage "wraps around" the original mortgage, hence the term.
- **Terms of the Wrap Mortgage:** The wraparound mortgage includes its own terms, such as interest rate, monthly payments, and loan duration. These terms are negotiated between the buyer and seller.
- **Payments by the Buyer:** The buyer makes payments to the seller based on the terms of the wraparound mortgage. These payments typically include both the amount owed on the new mortgage and the underlying payments on the existing mortgage.
- **Seller's Responsibilities:** The seller remains responsible for making payments on the existing mortgage. The buyer's payments on the wraparound mortgage cover both the existing mortgage and the additional financing provided by the seller.

- **Risk and Benefit for the Buyer:** The buyer assumes the risk of the existing mortgage, as failure to make payments on the wraparound mortgage could result in default on the original mortgage. However, the buyer may benefit from more favorable terms on the wrap, such as a lower interest rate.

- **Due-on-Sale Clause Consideration:** The existing mortgage may have a due-on-sale clause, allowing the lender to demand full repayment if the property is sold. The wrap is structured carefully to avoid triggering this clause, but it's a potential risk.

- **Flexibility for Creative Financing:** Wraps are often used in creative financing scenarios where traditional financing is challenging. They provide flexibility in structuring deals and may be attractive in situations where the seller is willing to finance part of the purchase.

- **Legal Documentation:** The wraparound mortgage requires proper legal documentation, including a wraparound mortgage agreement. Legal advice is essential to ensure compliance with relevant laws and regulations.

SELLER - FINANCING

Seller financing is a real estate arrangement where the seller provides financing to the buyer to facilitate the purchase of the property. In a typical real estate transaction, a buyer secures a mortgage from a third-party lender, but in seller financing, the seller effectively becomes the lender.

Here's a breakdown of key components in a seller financing arrangement

- **Agreement Terms:**
  - Interest Rate: The interest rate on the seller-financed loan is agreed upon by both parties. It can be a fixed rate or adjustable, depending on the terms negotiated.
  - Loan Duration: The buyer and seller determine the duration of the loan, known as the loan term. Common terms range from a few years to several decades.
  - Repayment Structure: The parties outline how the loan will be repaid. Payments can be structured similarly to a traditional mortgage with regular monthly payments, including principal and interest.

- **Promissory Note:** A promissory note is a legal document outlining the terms of the loan, including the amount borrowed, interest rate, repayment schedule, and consequences for default. Both parties sign this document.

- **Security Instrument:** In seller financing, the seller often retains a security interest in the property. This is typically accomplished through a deed of trust or mortgage, allowing the seller to reclaim the property if the buyer defaults on the loan.

- **Down Payment**: The buyer may be required to make a down payment to secure the seller-financed loan. The down payment amount is negotiable and can vary based on the agreement between the buyer and seller.

- **Credit Check and Documentation:** While seller financing provides an alternative to traditional lenders, sellers may still conduct credit checks or request financial documentation from the buyer to assess their ability to repay the loan.

- **Transfer of Ownership**: The buyer gains ownership of the property upon closing, but the seller retains a security interest until the loan is fully repaid. If the buyer defaults, the seller may have the right to foreclose on the property.

- **Due-on-Sale Clause:** Sellers may include a due-on-sale clause in the financing agreement, allowing them to demand full repayment if the property is sold or transferred. This clause is negotiable and may or may not be included.

NOVATION

A Novation agreement in the context of creative financing refers to a legal contract that transfers the rights and obligations of one party in a financial arrangement to a third party. This is often used in situations where one party wants to exit or transfer its position in a contract to another party.

Here is a detailed breakdown of key aspects of a Novation agreement in creative financing

- **Introduction and Identification of Parties:**
  - The agreement typically begins with an introduction that identifies the original parties to the contract, namely the "transferor" (the party transferring its position) and the "transferee" (the party taking over the position). The original party that is not transferring its position is often referred to as the "obligor."

- **Background and Purpose:**
  - This section outlines the background and context leading to the need for the Novation agreement. It explains the reasons for the transfer and the objectives of both parties involved.

- **Transfer of Rights and Obligations:**
  - The core of the Novation agreement involves the transfer of all rights and obligations of the transferor to the transferee. This includes any financial responsibilities, benefits, and liabilities associated with the original contract.

- **Consent of All Parties:**
  - Novation requires the consent of all parties involved in the original contract. The agreement typically specifies that the transferor, transferee, and obligor must provide their written consent for the novation to be valid.

- **Release of Transferor:**
  - Once the novation is effective, the transferor is released from any further obligations under the original contract. This is a critical aspect of novation, as it ensures that the party transferring its position is no longer liable for the terms of the agreement.

- **Confirmation of Original Contract Terms:**
  - The Novation agreement usually includes a clause confirming that all other terms and conditions of the original contract remain unchanged, except for the substitution of parties.

LOAN- SERVICING

Loan servicing is a comprehensive set of administrative activities and responsibilities associated with managing a loan after it has been originated. It involves the ongoing management of the borrower's account, including the collection of payments, communication with the borrower, and compliance with various terms and regulations.

Here's a breakdown of key aspects of loan servicing

- **Payment Collection:**
  - Monthly Payments: Loan servicers are responsible for collecting monthly payments from borrowers. This includes the repayment of principal and interest on the loan, as well as any additional amounts for escrow accounts (property taxes and insurance).

- **Accounting and Record Keeping:**
  - Transaction Recording: Servicers maintain detailed records of all financial transactions related to the loan, including payments received, interest accrued, and any fees or charges.
  - Statement Generation: Servicers provide borrowers with regular statements that outline the breakdown of payments, the remaining loan balance, and other relevant details.

- **Communication with Borrowers:**
  - Payment Reminders: Servicers communicate with borrowers to provide payment reminders and ensure that payments are made on time.
  - Customer Service: Servicers address borrower inquiries, concerns, and requests for assistance, offering customer support throughout the life of the loan.

- **Escrow Management:**
  - Property Taxes and Insurance: If the loan includes an escrow account, servicers manage the funds in this account to pay property taxes, homeowners insurance, and other related expenses.

- **Loan Modifications and Forbearance**
  - Assistance Programs: Servicers may work with borrowers facing financial hardships to explore loan modification options or offer forbearance, allowing temporary suspension or reduction of payments

- **Default Management**
  - Collections: In cases of delinquency, servicers manage the collections process, which may include sending delinquency notices, working with borrowers on repayment plans, and initiating foreclosure proceedings if necessary

- **Investor Reporting**
  - Reporting to Investors: In cases where loans are bundled and sold as mortgage-backed securities, servicers provide regular reports to investors, detailing the performance of the underlying loans.

- **Regulatory Compliance**
  - Adherence to Regulations: Servicers must comply with federal and state regulations governing loan servicing practices. This includes adherence to laws such as the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA).

- **Transfer of Servicing**
  - Changes in Servicer: In some cases, the servicing of a loan may be transferred from one entity to another. Borrowers are typically notified in advance of such changes.

Loan servicing is a critical function that ensures the smooth management of loans, facilitates communication between borrowers and lenders, and helps maintain the stability of the overall mortgage market. It requires attention to detail, adherence to regulations, and effective communication with borrowers throughout the life of the loan.