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The Definitive Guide to Using Vendor Take-Back Mortgages (VTB's)

Real Estate Investment Network™
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Long-Term Sustainable Wealth Since 1992

Canada Mortgage and Housing Corporation (CMHC) describes a Vendor Take Back Mortgage (VTB) as the seller or vendor rather than a financial institution financing a portion of the mortgage. An agreement is made between the two parties independent of much of the administrative hassle associated with obtaining one through a financial institution. This can be helpful when the buyer cannot (or it does not provide decent leverage) finance the entire property from a down payment and conventional first mortgage.

A couple of terms that will be handy reference for this guide, including a simple way to remember the differences between Mortgagor and Mortgagee:

Mortgagor = Borrower (two "o's" in Borrower and Mortgagor)

Mortgagee = Lender (two "e's" in Mortgagee and Lender)

Loan-To-Value (LTV) = total mortgages divided by the total value (represented as a percentage) — example

House value=	\$200,000
Total Mortgages=	\$120,000
LTV=	60%

Buying investment properties conventionally with 20% down can sometimes be complex, filled with twists and turns. Once you start to add secondary financing on the property, all the variables become more complex and more time and effort will be required to complete the transaction.

A vendor take-back mortgage is a unique situation. It can work in your favour, but it can also be very complicated, and you will need some support to complete this deal.

If you consider this option, be sure to use a lawyer who is aware of the intricacies of a vendor take-back mortgage. You need to plan ahead for all sorts of situations.

For example:

- If the Mortgagee dies, and their estate (including your mortgage) needs to be 'liquidated'
- If the Mortgagee or Mortgagor becomes insolvent
- If property values drop and the property is mortgaged for more than the property is worth

However, the pros for vendor take back mortgages are often worth the hassle. Sometimes vendors may take a lower interest rate than a bank. They may not require the same kind of credit check. They may also be more flexible regarding repayment terms.

It's important to weigh the pros and cons. Understand your own unique situation. Consult a real estate lawyer who has handled vendor take back mortgage transactions before. Be sure the constraints of the mortgage agreement will work in your favour - and are more advantageous than using another type of lender, such as a finance company mortgage.

Myth's of Vendor Take-back mortgages:

- They are impossible to have a seller agree to
- A seller will offer you the entire down-payment via VTB, and you can buy the property with no money down. If you are dealing with Banks for your first mortgage financing you must have some 'skin' in the game. Typically 10% - 15% in as a down payment
- All second mortgages are risky, and most of these mortgages never get repaid

Advantages for VTB's (from the Buyers perspective):

- Potentially less down payment required to put down on your purchases
- Can top-up a low LTV from the bank (i.e. 65% LTV First Mortgage + 15% VTB = 80% LTV)
- More flexible than the bank for securing financing (i.e. potentially no credit check, complete Sophisticated Investor Binder package)

Advantages for the VTB's (from Sellers perspective):

- It provides steady cash flow over time, rather than dumping a pile of money and forcing you to go out and get a return on it somewhere else
- Flexibility when selling
- Entice buyers - a unique and attractive proposition to people (buy with low down payment), potentially selling a property in a slower market
- Ease of buying - providing financing for some buyers may make the buying process easier
- Potentially higher price - by making things easier to buy, the seller may be able to raise their price and eventually at full list or above-list price.
- The ability to defer some payment of capital gains taxes (non owner occupied property)—later in this guide you will be provided a detailed example of how the numbers work. Needless to say, you do need an accountant on your team to fully vet this information through.

Working with Banks and VTB's

If you are required to secure mortgage funds from a bank, you will have to follow their rules. Banks do allow VTB second mortgages, but do not assume that every bank will agree to your deal with the seller. Remember to follow all the rules when securing a VTB mortgage on a property you are buying.

It does make a difference to the bank holding the first mortgage if you are securing secondary financing. Some banks will not even allow secondary charges behind their first mortgages. Some banks will, but they do have strict rules. The reasons for these strict rules are the highest percentage of mortgage defaults in Canada come from investors who have high leverage, and not much equity in their properties.

Understand when dealing with the banks and VTB mortgages you will have more roadblocks and you will need more time to secure financing. Always include as much time as you can to negotiate for your financing conditions, and add at least another week if you are securing a VTB on your purchases.

Currently, banks view VTB Mortgages on an application by application basis. Two of the chartered banks' policies regarding VTB's and LTV are stated below (maximum allowable LTV's):

TD Canada Trust 75% First mortgage
 15% VTB (max.)
 10% Down payment

Scotiabank 80% First Mortgage
 10% VTB (max.)
 10% Down payment

MCAP 80% First Mortgage
 5% VTB (max.)
 15% Down payment

Concentra 80% First Mortgage
 10% VTB (max.)
 10% Down payment

Other banks will allow VTB's. Contact your professional mortgage broker for a full list of banks that will view favorably to your accepted offer.

Tax Deferral on Vendor-Take-Back Mortgages

Courtesy of Navaz Murji-- www.realaccountant.com

There are tax advantages of a vendor take back mortgage. Unfortunately, to explain this to a seller can be a challenge. A Vendor Take Back Mortgage (VTB) allows the seller to defer a portion of their profits on their property, excluding their principal residence. The maximum amount of deferral is the lowest of:

- 1) 20% of the profit from the property in each of the years on a cumulative basis. That means in year 1 the maximum deferral is 80% of the profit, year 2-60%, year 3-40% and year 4-20%
- 2) It is a prorate portion of the monies you have collected from the sale. That means at the end of each year - amount of VTB outstanding at the end of the year / proceeds from the sale of the transaction X profit on the transaction

Why should a seller use this? It helps to manage your tax brackets. Sometimes when you sell a property, it will take you to a maximum tax bracket. If you are coming up for retirement, it would be a good idea to have your accountant to run up the numbers for you.

Hint: This is the seller's tax return that is impacted by this transaction. If you are a buyer, you will have a hard time because accountants do not like to advise their clients to hold a second mortgage, though they do not have the tools to understand the transaction.

The vendor can only defer a portion of the Capital Gains taxes if he takes a vendor take back mortgage.

How does this work? A detailed example

Well, you can elect to defer the taxes on the ratio of the portion of monies collected to the total capital gains over a maximum of 5 years with 20% of the profit in each year.

Let's walk through an example. Say you bought a property for \$100,000. This property was not your primary principal residence and hence, you have to pay taxes on the capital gains. You sell the property for \$250,000. You take back a mortgage of \$150,000 repayable in 10 annual payments of \$15,000 each.

In summary:

Cost is:	\$ 100,000
Selling Price is:	\$ 250,000
Capital Gain is:	\$ 150,000
Initial Proceeds are:	\$ 100,000
Vendor-Take-Back:	\$ 150,000
1/5 of Capital Gain is:	\$ 30,000
Annual Payment is:	\$ 15,000

The amount of capital gains you can defer and have to take into income in each of the years is as follows:

In the year when you sell, you can defer lower of:

a) \$150,000 / 250,000 x 150,000 = \$90,000

VTB / Total Proceeds X Capital Gain = Deferral

b) \$150,000 (Capital Gain) x 80% = \$120,000

Therefore, in year one, the vendor's deferral will be \$ 90,000 and the vendor has to report \$60,000 in capital gain (only ½ of this is taxable).

In year 2, the deferral shall be the lower of:

a) \$135,000 / 250,000 x 150,000 = \$81,000

VTB / Total Proceeds X Capital Gain = Deferral

b) \$150,000 (Capital Gain) x 60% = \$90,000

In year 2, the vendor has to report \$9,000
(\$90,000 Balance to report - \$81,000)

In year 3, the vendor has to report:

a) \$120,000 / 250,000 x 150,000 = \$72,000

VTB / Total Proceeds X Capital Gain = Deferral

b) \$150,000 (Capital Gain) x 40% = \$60,000

In year 3, the vendor has to report \$21,000 (\$81,000 - \$60,000)

In year 4, the vendor has to report:

a) \$105,000 / 250,000 x 150,000 = \$63,000

VTB / Total Proceeds X Capital Gain = Deferral

b) \$150,000 (Capital Gain) x 20% = \$30,000

In each of years 4 and 5, the vendor has to report \$30,000.

This is a senior tax strategy and is for the benefit of the seller (whom will be holding the mortgage). Seek professional help when advising your VTB mortgage holder on any tax advice.

For more information please contact the author

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How to Ask for and Negotiate VTB Mortgages:

- Ask, Ask, Ask...
- Ask through your Buyer's agent
- Ask via cover letters (see next pages for examples)
- Ask via writing offers
- Write multiple offers
- Determine if seller needs all the funds for another transaction
- Determine the seller's motivations
- Use the REIN™ Vendor Motivation Checklist (see following pages)

Working with a Realtor to Negotiate VTB's:

- Realtor has to have experience dealing and negotiating VTB's
- Does your Realtor like working with Investors
- Gets an initial willingness to the idea from the seller
- Negotiates directly with the buyer or through another Realtor
- Have your cover letter and offers ready and clearly written, in plain, simple and easy to understand language.

REIN™ Vendor Motivation Checklist -- Determine How Willing A Vendor Is To Sell Their Property

Use a selection of the following questions to get a feeling on how motivated the vendor is. The more willing they are to answer these questions, the more motivated they are to sell. Your goal is not only to get the answers to the questions... but also to get an intuitive feel as to how you may wish to approach the offer or multiple offer strategy. The notes in brackets give you an idea of why you ask the question. The more motivated the vendor, the more options for you.

If you are working through a realtor, they can find out the answers to many of the key questions in this list. Many sophisticated investors like to write down their questions for their realtor to present to the vendor so clear lines of communications are made.

Property Address: _____ Date: _____

Vendor's Name: _____ Tel #: _____

Realtor's Name: _____ Tel #: _____

1. Why are you selling? *(initial motivation)*

2. How long has your property been for sale? *(has it become a prolonged problem?)*

3. How long have you owned the house/property? *(emotional attachment)*

4. What do you like most about it?

5. What do you like least about it?

6. Where are you planning to live after you sell your house? *(do they need cash or cash flow?)*

7. When do you have to move to your new place? *(time motivation)*

8. Do you have any other properties for sale? If so, where are they located? (*often vendors sell many at the same time*)

9. Do you need to consult a spouse or partner before you can legally accept an offer? (*Is this the decision maker?*) NO YES _____

10. How does your partner feel about selling? (*only if appropriate*)

11. Do you have specific plans for the money from the property? (*same question – different angle. Be careful of this question as it could be perceived as too probing*)

12. If I was to pay you all cash, and close quickly, what would be the least amount you'd accept? (*getting them to state a real number to start the negotiations*)

13. Would you like to receive regular monthly cash flow with an interest rate much higher than the banks will give you? (*set-up for Vendor Take Back Mortgage*)

14. Would you accept a full price offer? (*follow-up to #13. Full price but at your terms*)

NO YES _____

15. Can I see it at 7:00 a.m. on Tuesday? (*setting YOUR time tests vendor motivation*)

NO YES _____

Additional Notes & Thoughts:

NOTE: As you get more practiced, you will find that you will add your own questions to the list. Practice these so you are comfortable with presenting them. Turn your conversation into a discussion rather than a question and answer session. Build rapport. Treat the vendor as you would like to be treated.

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Joe Buyer

1234 Main Ave.
Anytown ON K8R 3P6
123.456.7890
name@me.com

August XX, 20XX

Jane Seller
Anytown Ontario
K8R 3P6

Re: 123-45 Economic Fundamental Lane

Dear Jane:

It is with pleasure that I submit the following offer to purchase 123 – 45 Economic Fundamental Lane. As a veteran investor, I find it important to keep the lines of communication open between the vendor and the purchaser and trust that you'll find this quick cover note to be helpful.

I'd like to take the opportunity to point out a few items regarding the attached offer:

- ✓ I took a lot of time to carefully research the current market conditions and decided that my offer of **\$210,000** is very fair and reasonable. I am not trying to 'steal' or get an 'unbelievable deal' on your property but rather create a win-win scenario where I can take over and continue running this great revenue property you have created.
- ✓ I included a 'Vendor Financing' opportunity worth **\$21,000 at 10.00%** that will be secured against the property's title. Over the proposed 3 year term, this will provide you with about **\$6,300** worth of earned interest and this is honestly money that I'd rather give an investor like yourself rather than the bank.

After the conditions are met, I would also like to offer an extendable possession date. I offer this just in case there are any unforeseen surprises in your business or personal life that may affect the closing on this property. As such, we can extend the possession date by 30 days with 30 days written notice for up to 6 additional months!

I am certain that you will be extremely happy with this offer and I look forward to making this another smooth and hassle free transaction.

Sincerely,

Joe Buyer

P.S. If you have any additional questions or concerns, please feel free to submit them to my realtor on my behalf. We'll then be sure to get an answer back to you in a timely and efficient manner.

Joe Buyer

1234 Main Ave.
Anytown ON K8R 3P6
123.456.7890
name@me.com

August XX, 20XX

Jane Seller
Anytown Ontario
K8R 3P6

Re: 123-45 Economic Fundamental Lane, Offer #1

Jane:

Attached please find my offer to purchase the above-mentioned property. I would like to submit 2 offers. Below is a summary of my **FIRST OFFER** and conditions.

Subject to:

1. Subject to buyer's lawyer's approval 14 days after contract acceptance.
2. Viewing condominium documents.
3. Subject to Financing and Inspection.

Closing Date:

September XX, 20XX

Offer #1-

Initial Deposit.	\$ 1,000.00
Additional Deposit (upon removal of conditions)	\$ 4,000.00
New Mortgage funding	\$ 160,000.00
Balance Owing (cash to close)	\$ 35,000.00
TOTAL Purchase Price	<u>\$ 200,000.00</u>

This is a very straight forward offer, If you have any questions please do not hesitate and contact me at the numbers below, or contact my Realtor directly.

Thanks in advance,

Joe Buyer
W 123.456.7890

Joe Buyer

1234 Main Ave.
Anytown ON K8R 3P6
123.456.7890
name@me.com

August XX, 20XX

Jane Seller
Anytown Ontario
K8R 3P6

Re: 123-45 Economic Fundamental Lane, Offer #2

Jane:

Attached please find my offer to purchase the above-mentioned property. I would like to submit 2 offers. Below is a summary of my **SECOND OFFER** and conditions

Subject to:

1. Subject to buyer's lawyer's approval 14 days after contract acceptance.
2. Viewing condominium documents.
3. Subject to Financing and Inspection.

Closing Date:

September XX, 20XX

Offer #2-

Initial Deposit.	\$ 1,000.00
Additional Deposit (upon removal of conditions)	\$ 4,000.00
New Mortgage funding	\$ 157,500.00
Seller Financing (10% interest only, 3 year term, annual payments of \$2,100)***	\$ 21,000.00
Balance Owing (cash to close)	\$ 26,500.00
TOTAL Purchase Price	<u>\$ 210,000.00</u>

As you can see I have offered you full list price.

*** *Seller Financing* - *** There are ways that I can show you how you can defer your taxes over the next 5 years. If you have any questions please do not hesitate and contact me at the numbers below, or contact my Realtor directly.

Thanks in advance,

Joe Buyer
W 123.456.7890

Magic Words to Use When Negotiating VTB's

- Keep things in very simple language
- Do not talk too much (diarrhea of the mouth). You do not have to give a seminar. The more you talk, the more they ask, the more they get confused.
- You ask the questions, and answer questions with questions.
- Some Key questions to ask:
 - "Do you want all your equity right now?"
 - "Will you take some of your equity in monthly installments?"
 - "Would you like to receive regular monthly cash flow with an interest rate much higher than the banks will give you?"

5 Ways to Structure VTB Mortgages:

(in ranked order of most preferred from the Mortgagor's perspective)

- No interest - no payment, balloon at end of term only
- Principle payments only
- No payments, accruing interest
- Interest payments only
- Amortizing, principle plus interest

Variables to consider when negotiating or considering a VTB mortgage

- Maximum LTV you will go to?
- Properties' break-even cash flow numbers?
- Principle amount of the VTB mortgage
- Ranking of the VTB mortgage - 1st? 2nd? 3rd?
- Principle payments only?
- Rate of interest?

- Simple interest? Principle and interest? If so, amortization period?
- Term of the mortgage?
- Amount of payments?
- Payments to be paid when? Monthly? Quarterly? Yearly? All at the end of the term?
- When does the interest start accruing? One month after? 3 months after?
- Will you want to make lump sum payments in addition to your regular payments?
- Will you offer a bonus at the end of the term? i.e. lower interest rate, with a lump sum bonus at the end of the term?
- Post dated cheques to be provided?
- Additional collateral?
- Prepayment penalties?
- **Any Other Terms?**

Once you have agreement that the seller is open and willing to accommodate you, use the following Vendor Financing schedule to determine the variables of your specific deal.

At the end of the day, the terms you and your Mortgagee come to are subject to what you both agree to and negotiate. You as the investor want to get the best terms possible, but remember this one principle. In an economic sense, the higher risk justifies the higher reward a vendor financing deal may generate.

The more risky the deal (higher the LTV), the higher the cost of the funds (higher interest rate). For more specific strategies to negotiate your specific VTB's, refer to REIN™'s "*22 Secrets to Street Smart Negotiating*". In that guide, written by Don R. Campbell, there are 22 strategies to successfully negotiate your path to success.

Contract Of Purchase & Sale

Vendor Financing Schedule

Schedule To Contract Of Purchase & Sale Dated _____

Between _____ As Vendor (s) (the "Mortgagee")

And _____ As Purchaser (s) (the "Mortgagor")

This Schedule forms an integral part of the attached Contract Of Purchase & Sale. The terms of agreement regarding vendor financing (the "Mortgage") are as follows:

1. Principal Amount: \$ _____

2. Ranking Of Charge: 1st Mortgage 2nd Mortgage Other: _____

3. If other than a 1st Mortgage, list those charges that will rank ahead of the Mortgage:

4. Rate Of Interest: _____ %.

5. Amortization Period: _____, to commence: _____

6. Term: _____, to mature: _____

7. Payments of: \$ _____ to be paid:

Monthly Quarterly Semi-Annually Annually
and are:

Blended Principal & Interest Interest Only

and are to be made regularly commencing: _____

8. Interest charges are to be computed from: _____

9. Acceleration: Mortgage is to become due and payable at option of Mortgagee if
Mortgagor sells the property: Yes No

10. Mortgagor is to provide and maintain on an annual basis to the Mortgagee a
series of post-dated cheques: Yes No

11. Prepayment: The Mortgage may be prepaid at any time without notice, bonus or
penalty either in whole or in part.

12. Mortgage Terms: Prescribed Standard Mortgage Terms Other _____

13. Other Terms: _____

Witness to Purchaser's Signature (s)

Purchaser

Purchaser

Witness to Vendor's Signature (s)

Vendor

Vendor

Case Study-- Forms and Documents to complete your VTB mortgage

Vendor Takeback Mortgage

Estimated Cash Flow Analysis

123-45 Ave, Economically Fundamental Ln.

<u>PURCHASE PRICE</u>	\$170,000.00
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Financial Breakdown

Price		\$170,000.00
Down Payment	15.0%	\$25,500.00
First Mortgage (New Financing, Variable rate, 35 yr Amort.)	75.0%	\$127,500.00
Second Mortgage (10% interest only, annual payments)	<u>10.0%</u>	\$17,000.00
	100.0%	

Income

		<u>Monthly</u>	<u>Annual</u>
Market Rent		\$1,300.00	
Vacancy factor	5.0%	<u>-\$65.00</u>	
Income (1 st Year)		\$1,235.00	\$14,820.00

Expenses

Property Taxes		<u>-\$95.00</u>
Condo Fees		<u>-\$192.00</u>
Repairs and Maintenance factor	5.0%	<u>-\$65.00</u>
Property Management (% of Actual Rent)	10%	<u>-\$123.50</u>
Insurance		<u>-\$20.00</u>
Total Expenses		<u>-\$495.50</u>
		<u>-\$5,946.00</u>

Cash Flow Before Debt Payment

First Mortgage Payment *** (3.95% interest + principle)- 35 yr Amortization		<u>-\$558.27</u>	<u>-\$6,699.24</u>
Second Mortgage Payment (10%, interest only, annual payments)		<u>-\$141.67</u>	<u>-\$1,700.04</u>

Est. Cash Flow	\$39.56	\$474.72
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*** Actual mortgage rate is prime minus .6 - (\$431.61)

Monthly payment is set at 5 year fixed rate of 3.95% to maximize mortgage principal reduction.

RESIDENTIAL REAL ESTATE PURCHASE CONTRACT

This form was developed by the Alberta Real Estate Association for the use of its members and may not be altered electronically by any person. Others who use this document do so at their own risk.

THE SELLER

This Contract is between
and

THE BUYER

Name Jane SellerName Joe Buyer

Name _____

Name _____

1. THE PROPERTY

1.1 The property is the Land, Buildings, Attached Goods (unless excluded) and included Unattached Goods located at (municipal address): 123-45 Ave
Edmonton, AB

1.2 The legal description of the Property is:
Plan 123456 Block/Unit 78 Lot 10 Other _____

If Condominium Property, details as described in Condominium Property Schedule (attached)

1.3 No Unattached Goods (chattels) except for:

* Refrigerator * Electric Stove * Built-in-Dishwasher * Washer * Dryer

1.4 All Attached Goods (fixtures) except for:

1.5 Unless otherwise agreed in writing, title will be free and clear of all encumbrances, registrations and obligations except the following:
 (a) those implied by law;
 (b) non-financial obligations now on title such as easements, utility rights-of-way, covenants and conditions that are normally found registered against property of this nature and which do not affect the saleability of the Property;
 (c) homeowner association caveats, encumbrances and similar registrations; and
 (d) those items which the Buyer agreed to assume in this Contract.

2. THE TRANSACTION

2.1 The Buyer and the Seller agree to act cooperatively, reasonably, diligently and in good faith.

2.2 Other than the Deposits, the Buyer shall pay the Purchase Price by certified cheque, lawyer's trust cheque, bank draft or other agreed value as follows:

\$ 1,000.00 Initial Deposit

\$ 9,000.00 Additional Deposit

\$ _____ Assumption of Mortgage
(approximate principal balance as per attached Financing Schedule)

\$ _____

\$ 127,500.00 New Financing

\$ 17,000.00 Seller Financing (as per attached Financing Schedule)

\$ _____ Other Value

\$ 15,500.00 Balance Owing (subject to adjustments)

\$ 170,000.00 Purchase Price

Unless otherwise agreed in writing, the Purchase Price includes any applicable Goods and Services Tax (GST).

3. DEPOSITS

- 3.1 All Deposits shall be delivered in trust to ABC Realty within 2 business days of final acceptance
Unless otherwise agreed in writing, the Initial Deposit shall accompany the offer.
- 3.2 The Initial Deposit shall be deposited no later than the third Business Day following the day that Final Signing occurred (as per clause 15.1). Additional Deposits shall be deposited no later than the third Business Day following the day the Additional Deposit is received by the brokerage.
- 3.3 Any Additional Deposits shall be delivered as follows: ABC Realty within 2 business days of condition removal
- 3.4 Unless otherwise agreed in writing, no interest on the Deposits shall be paid to the Seller or the Buyer.
- 3.5 The Deposits shall be held in trust for both the Seller and the Buyer and shall be:
- applied against the Commission and paid directly out of trust to the brokerage(s) when the Commission is earned in accordance with the terms of the Listing Contract;
 - refunded forthwith to the Buyer if this offer is not accepted;
 - refunded forthwith to the Buyer upon the Buyer's cheque clearing the brokerage's trust account if a condition is not satisfied or waived (as per clauses 8.5 and 8.6) or the Seller fails to perform this Contract; and
 - forfeited to the Seller if this offer is accepted and all conditions are satisfied or waived and the Buyer fails to perform on this Contract.
- 3.6 The brokerage holding the Deposits is further directed and authorized to pay that portion of the Deposits exceeding the Commission in trust to the Seller's lawyer no later than two (2) Business Days prior to the Completion Day.
- 3.7 If there is a dispute between the Seller and the Buyer as to entitlement to the Deposits then:
- the brokerage holding the Deposits shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposits;
 - if no reasonable conclusion can be made in regard to (a) above, the brokerage shall notify the parties to the Contract in writing and shall pay the money into a lawyer's trust account;
 - the parties agree to allow the lawyer or the brokerage to deduct from the Deposits a reasonable fee and costs incurred for dealing with the Deposits;
 - a brokerage and/or lawyer acting in good faith under this clause shall not be liable to either party for any damages associated with the handling of the Deposits, except as arising from the negligence of the brokerage or lawyer.
- 3.8 In the event that the brokerage holding the trust funds ceases to be licensed in real estate, the Buyer and Seller agree to allow the trust funds to be transferred to the brokerage representing the other party.

4. CLOSING

- 4.1 Unless otherwise agreed in writing, this Contract will be completed, the Purchase Price will be fully paid and vacant possession will be available by noon on the 30th day of September, 2010, (the "Completion Day"), subject to the rights of the existing tenants, if any.
- 4.2 When the Buyer obtains possession, the Property will be in substantially the same condition as it was in when this Contract was accepted.
- 4.3 Items which are normally adjusted for, such as real estate taxes, amortized local improvement levies, utilities, rents, security deposits, statutory interest on security deposits, mortgage interest, homeowner association fees and monthly condominium contributions, will be assumed by the Buyer and will be adjusted as of 24:00 hours on the Completion Day.
- 4.4 The Seller or the Seller's lawyer will deliver normal closing documents including, where applicable, a real property report pursuant to clause 4.11, to the Buyer or the Buyer's lawyer upon reasonable conditions consistent with the terms of this Contract. The Buyer or the Buyer's lawyer must have an opportunity to review the real property report, where applicable, prior to submitting the transfer documents to the Land Titles Office and a reasonable period of time before the Completion Day to confirm registration of documents at the Land Titles Office and to obtain the advance of proceeds for any New Financing and Other Value.
- 4.5 If the Seller fails to deliver the closing documents according to clause 4.4, then payment of the Purchase Price and late interest will be postponed until the Buyer has received the closing documents and has a reasonable period of time to register them and to obtain the advance of proceeds for any New Financing and Other Value. Notwithstanding the foregoing, if the Buyer is otherwise ready, willing and able to close in accordance with this Contract and desires to take possession of the Property, then the Seller shall give the Buyer possession upon reasonable terms which will include the payment of late interest only on the amount of mortgage being obtained by the Buyer, if any, at the interest rate of such mortgage.
- 4.6 In circumstances where the Seller has complied with clause 4.4 but the Buyer is not able to close in accordance with this Contract, then the Seller may, but is not obligated to, accept late payment of the Purchase Price and give the Buyer possession upon reasonable terms. If the Seller agrees in writing to accept late payment of the Purchase Price under this clause then, whether or not possession is granted, the Buyer will pay late interest at the prime lending rate of the Province of Alberta Treasury Branches at the Completion Day plus 3% calculated daily from and including the Completion Day to (but excluding) the day the Seller is paid in full. Payment received after noon on any day will be payment as of the next Business Day.
- 4.7 The Seller's lawyer may use the Purchase Price to pay out all mortgages, condominium contributions, registrations and other financial obligations that are the Seller's obligation to pay or discharge. Within a reasonable period of time after the Completion Day, the Seller's lawyer will provide the Buyer's lawyer with evidence of all discharges including, where required, a certified copy of the certificate of title and an estoppel certificate evidencing the payment of all condominium contributions that are the Seller's obligation to pay.

- 4.8 The Seller will pay the costs to prepare the closing documents; to prepare, register and discharge any Seller's caveat based on this Contract; and to provide the documents described in clause 4.11.
- 4.9 The Buyer will pay the costs to prepare, register and discharge any Buyer's caveat based on this Contract; and to register the transfer of land.
- 4.10 If the Property is rented and the Buyer is not assuming the tenancy, then the Seller is responsible for all costs related to ending the tenancy and to giving vacant possession to the Buyer.
- 4.11 At least ten (10) Business Days prior to the Completion Day, the Seller will provide the Buyer, regarding the matters described in clause 6.1, a real property report reflecting the current state of improvement on the Property, according to the Alberta Land Surveyors' Manual of Standard Practice, with evidence of municipal compliance or non-conformance. This obligation will not apply to condominium units that do not create a lot nor to any transaction where there are no structures on the land.
- 4.12 Notwithstanding the closing provisions in this Contract, the parties instruct their lawyers to follow, if appropriate, the Law Society of Alberta Conveyancing Protocol in the closing of this transaction.

5. INSURANCE

- 5.1 The risk of loss or damage to the Property shall lie with the Seller until the Purchase Price is paid according to the terms of this Contract. If loss or damage to the Property occurs before the Seller is paid the Purchase Price, then any insurance proceeds shall be held in trust for the Buyer and the Seller according to their interests in the Property.

6. WARRANTIES AND REPRESENTATIONS

- 6.1 The Seller represents and warrants to the Buyer that:
 - (a) the Seller has the legal right to sell the Property;
 - (b) the Attached Goods and included Unattached Goods are in normal working order and are free and clear of all encumbrances;
 - (c) the Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada);
 - (d) the current use of the Land and Buildings complies with the existing municipal land use bylaw;
 - (e) the Buildings and other improvements on the Land are not placed partly or wholly on any easement or utility right-of-way and are entirely on the Land and do not encroach on neighbouring lands, except where an encroachment agreement is registered on title;
 - (f) the location of Buildings and other improvements on the Land complies with all relevant municipal bylaws, regulations or relaxations granted by the appropriate municipality prior to the Completion Day, or the Buildings and other improvements on the Land are "non-conforming buildings" as that term is defined in the *Municipal Government Act* (Alberta);
 - (g) \$ 192.00 is the current monthly condominium contribution payable (fee for administrative and other expenses); and
 - (h) except as otherwise disclosed, the Seller is not aware of any defects that are not visible and that may render the Property dangerous or potentially dangerous to occupants or unfit for habitation.
- 6.2 All of the warranties contained in this Contract and any attached Schedules are made as of and will be true at the Completion Day, unless otherwise agreed in writing.
- 6.3 The representations and warranties in this Contract may be enforced after the Completion Day, provided that any legal action is commenced within the time limits prescribed by the *Limitations Act* (Alberta).
- 6.4 The Seller and the Buyer each acknowledge that, except as otherwise described in this Contract, there are no other warranties, representations or collateral agreements made by or with the other party, the Seller's brokerage and the Buyer's brokerage about the Property, any neighbouring lands, and this transaction, including any warranty, representation or collateral agreement relating to the size/measurements of the Land and Buildings or the existence or non-existence of any environmental condition or problem.

7. ADDITIONAL TERMS

- 7.1 All time periods, deadlines and dates in this Contract shall be strictly followed and enforced. All times will be Alberta time unless otherwise stated.
- 7.2 This Contract is for the benefit of and shall be binding upon the heirs, executors, administrators and assigns of the individual parties and the successors and assigns of corporate parties.
- 7.3 All changes of number and gender shall be made where required.
- 7.4 This Contract will be governed by the laws of the Province of Alberta. The parties submit to the exclusive jurisdiction of the Courts in the Province of Alberta regarding any dispute that may arise out of this transaction.
- 7.5 In addition to any Schedules required in Section 8, the following Schedules form part of this Contract:
 - Financing Schedule
 - Addendum
 - Property Schedule
 - Condominium Property Schedule
- 7.6 Additional terms of sale (if any):

* Seller to allow access to Buyer or Buyers representative upon condition removal and 48hrs notice to show prospective tenants and/or contractors.

8. CONDITIONS**8.1 The Buyer's Conditions are:****(a) Financing Condition**

The Buyer will apply and be approved for New Financing as follows:

- as per clause 2.2 (plus applicable mortgage insurance fee, if any)
- interest rate not to exceed 3.95 percent a year calculated semi-annually not in advance
- a term of not less than 35 years

Monthly payment of principal and interest not to exceed \$ 675.00 (including mortgage insurance fee, if applicable) for an amortization of 25 years.

The Buyer will pay for all costs associated with the New Financing.

Before 9 p.m. on August 15, 2010 (the "Condition Day").

(b) Property Inspection Condition

As per attached Property Inspection Schedule, this Contract is subject to the Buyer's approval of a property inspection.

Yes No

Before 9 p.m. on _____ (the "Condition Day").

(c) Condominium Documents Condition

This Contract is subject to the Buyer's Condition regarding Condominium Documents, as per attached Condominium Property Schedule.

Yes No

Before 9 p.m. on August 15, 2010 (the "Condition Day").

(d) Sale of Buyer's Home Condition

This Contract is subject to the sale of the Buyer's home, as per attached Sale of Buyer's Home Schedule. Yes No

Before 9 p.m. on _____ (the "Condition Day").

(e) Additional Buyer's Conditions:

* Subject to a Professional Property Inspection to Buyers satisfaction only.

Before 9 p.m. on August 15, 2010 (the "Condition Day").

8.2 The Seller's Conditions are:

Before 9 p.m. on _____ (the "Condition Day").

8.3 If this Contract contemplates an assumption of mortgage, then it is subject to the lender confirming the assumability of the mortgage by the Buyer.

Before 9 p.m. on _____ (the "Condition Day").

This Condition is for the mutual benefit of both the Buyer and the Seller and cannot be waived unilaterally.

8.4 Unless otherwise agreed in writing, the Buyer's Conditions are for the sole benefit of the Buyer and the Seller's Conditions are for the sole benefit of the Seller. The Buyer and Seller must use reasonable efforts to satisfy their respective Conditions.**8.5 The Buyer and the Seller may unilaterally waive or acknowledge satisfaction of their Conditions by giving a written notice to the other party on or before the stated Condition Day. If that notice is not given, then this Contract is ended immediately following that Condition Day.****8.6 Subject to clause 8.4, the Buyer and the Seller may give written notice to the other party on or before the stated Condition Day advising that a Condition will not be waived, has not been satisfied and will not be satisfied on or before the Condition Day. If that notice is given, then this Contract is ended upon the giving of that notice.****9. REMEDIES/DISPUTES****9.1 If the Seller or the Buyer fails or refuses to complete this Contract according to its terms, then the other party may pursue all available remedies. The Seller's remedies include keeping the Deposits and claiming additional damages. Both the Seller and the Buyer can claim reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.****9.2 If the Seller must restore title to the Property, enforce a lien against the Property or regain possession of the Property due to the Buyer's default, then the Buyer will pay the Seller's reasonable costs including legal fees and disbursements on a solicitor/client full indemnity basis.****10. ADVICE/DISCLOSURE****10.1 This Contract is intended to create binding legal obligations. The Seller and the Buyer should read this Contract carefully and are encouraged to obtain legal advice before signing.****10.2 Any representations as to the measurements of the Buildings are only approximations and may not be accurate. The Buyer may wish to obtain an independent property inspection and verify the measurements of the Land and Buildings.**

- 10.3 Unless there is written consent for alternate representation, the Seller's brokerage represents the Seller as Seller's Agent and does not have a fiduciary relationship with the Buyer, and the Buyer's brokerage represents the Buyer as Buyer's Agent and does not have a fiduciary relationship with the Seller.
- 10.4 The Seller and the Seller's brokerage have signed a Listing Contract. The Seller directs the Seller's lawyer to honour the terms of the Listing Contract and in particular to close the transaction according to the irrevocable assignment of the Purchase Price contained in the Listing Contract.
- 10.5 The Buyer and Seller agree that the sale and other related information regarding this transaction may be retained and disclosed by the brokerage and/or the real estate boards(s) as required for closing and for reporting, appraisal and statistical purposes.
- 10.6 This Contract may be signed and sent by fax and this procedure will be as effective as signing and delivering an original copy.
- 10.7 Dower consent may be required for this Purchase Contract to be binding if title is in only one name and the registered owner is legally married.

11. DEFINITIONS

- 11.1 In this Contract:
- Business Day* means a day when the Land Titles Office is open for business.
 - Buyer's Agent* means the licensed brokerage (including its broker, all associate brokers and associates) that represents the Buyer.
 - Commission* means the sum owing from the Seller for services rendered under the Listing Contract plus GST.
 - Completion Day* is the day described in clause 4.1.
 - Deposits* mean the Initial Deposit plus all Additional Deposits.
 - Listing Contract* means any written service or commission agreement obligating the Seller to pay remuneration.
 - Seller's Agent* means the licensed brokerage (including its broker, all associate brokers and associates) that represents the Seller.
 - Unless otherwise agreed in writing* means either changes made to the terms of this Contract that are agreed to by both the Seller and the Buyer, or a written agreement by letter or otherwise between the Seller or the Seller's lawyer and the Buyer or the Buyer's lawyer.

12. REPRESENTATIVES/NOTICE

Note: The Representative information must be completed in full at the offer stage prior to the Contract being signed in order to permit communication on the Representatives.

- 12.1 The Representatives identified in clause 12.2 represent the Seller and the Buyer.
- 12.2 For the purposes of giving and receiving any notice referred to in this Contract, and for acceptance of an offer to purchase, communication must be in writing and must be delivered to the address or faxed to the number described below.
- A notice sent or received by a Representative is proper notice for the purposes of this Contract.

Seller's Information:

Seller's Address _____
 _____ Phone _____ Fax _____
 _____ (postal code)

Seller's Representative:

"Typically don't understand why you would write an offer like this Realtor"

 _____ Broker, associate broker or associate registered to the brokerage

Brokerage Name Hot Dog Realty
 Address Cold Beer Road
Edmonton, AB LOL 777 Phone 1-800-WIN-LOTTO Fax _____
 _____ (postal code)

Buyer's Information:

Buyer's Address _____
 _____ Phone _____ Fax _____
 _____ (postal code)

Buyer's Representative:

Investment Realtor

 _____ Broker, associate broker or associate registered to the brokerage

Brokerage Name ABC REALTY
 Address John Deere Road
Edmonton, AB RAW R0X Phone 780-111-2222 Fax 780-111-3333
 _____ (postal code)

13. OFFER

13.1 The Buyer offers to buy the Property for the Purchase Price according to the terms of this Contract.

13.2 This offer/counter offer shall be open for acceptance in writing until 12 p.m. on August, 3, 2010.

SIGNED AND DATED at Edmonton, Alberta at 12 p.m. on the 1st day of August, 2010.

Signature of Buyer

Joe Buyer

Print Name of Buyer

Signature of Witness

Jason Mattern

Print Name of Witness

Signature of Buyer

Signature of Witness

Print Name of Buyer

Print Name of Witness

14. ACCEPTANCE

14.1 The Seller accepts the Buyer's offer and agrees to sell the Property for the Purchase Price according to the terms of this Contract.

SIGNED AND DATED at _____, Alberta at _____ .m. on the _____ day of _____, _____.

Signature of Seller

Signature of Witness

Jane Seller

Print Name of Witness

Print Name of Seller

Signature of Witness

Signature of Seller

Print Name of Witness

Print Name of Seller

Print Name of Witness

15. FINAL SIGNING

15.1 Final Signing of this Contract occurred at _____ .m. on _____, _____.

Initials of the person(s) who signed last _____

CONVEYANCING

Seller's Lawyer _____

Lawyer's Address _____
 _____ (postal code)

Lawyer's Phone _____ Fax _____

Buyer's Lawyer 123 Law Offices

Lawyer's Address Edmonton, AB
 _____ (postal code)

Lawyer's Phone 780-123-4567 Fax 780-321-7654

FINANCING SCHEDULE

This Schedule is attached to and forms part of the Real Estate Purchase Contract # 2022659Apr14

1. ASSUMPTION OF MORTGAGE(S)

If the Buyer is to assume a mortgage(s), then the Seller warrants the following to the Buyer:

- Name of lender _____
- Address of lender _____
- Approximate principal balance \$ _____
- Interest rate _____
- Payments include taxes? Yes No
- Maturity date _____
- Payments of \$ _____
- Other terms _____
- Is this a cash-back mortgage? Yes No
- Assumed second or other mortgage details _____

Where the covenant for payment in the mortgage(s) being assumed is enforceable against the Seller, the Seller must approve any assignment of this Contract by the Buyer.

The Buyer will pay the costs to process and document any approvals to assume a mortgage(s).

2. OTHER VALUE

The Buyer will provide the following to the Seller as part of the Purchase Price: (Describe the value by detailed description, serial number, etc. If the Other Value is a mortgage, then use the same information/details as under New Financing)

The Buyer will pay for preparing and registering any security documents regarding the Other Value.

3. SELLER FINANCING

If the Seller is to provide financing to the Buyer, then the details are as follows:

- Principal sum of \$ 17,000.00
- Interest rate at 10 percent, calculated Annually not in advance.
- Payments of \$ 1,700.00
- Amortization of _____ years.
- Subject to adjustments? Yes No
- Payments to include taxes? Yes No
- Term of 3 year(s)/months commencing from the Completion Day.
- Interest adjustment day _____
- Security (mortgage, general security agreement, assignment of rents, etc.) _____
- * Seller to be registered on title as a Lender
- Prepayment? Closed Open

If open, what prepayment privileges? _____

At any time, the borrower can repay all or any portion of the mortgage and the next yearly interest payment will reflect the reduction of the principal amount.

- Assumable? Yes No
- Special conditions _____

Interest only payments of \$1700 to be made yearly commencing on August 1, 2011 until the expiry of the term and/or early payout of the mortgage.

- The Buyer will pay for the reasonable costs to prepare the Seller Financing security.
- The Buyer will pay for registering the Seller Financing security.
- Where there is Seller Financing, the Seller must approve any assignment of this Contract by the Buyer

Date _____

Seller's Signature _____

Seller's Signature _____

August 1, 2010
Date _____

Witness _____

Witness _____

Buyer's Signature _____

Buyer's Signature _____

Witness _____

Witness _____

CONDOMINIUM PROPERTY SCHEDULE

This Schedule is attached to and forms part of the Real Estate Purchase Contract # 2022659Apr14

Name of project	Cash Flow Pointe
Municipal address (including suite #)	<u>123-45Ave</u> Edmonton, AB
Condominium plan(s)	<u>123456</u> Condominium plan(s) of redivision, if applicable
Legal unit #(s)	<u>77</u> Parking stall(s) owned <u>1</u> leased <u>1</u> assigned
Legal parking unit(s)	<u>12+13</u> Stall #(s) <u>12+13</u>
Storage unit(s) owned	<u>1</u> leased _____ assigned _____
Legal storage unit(s)	<u>76</u> Locker #(s) _____
Condominium type:	Conventional <u> </u> Townhouse <u> </u> Bare land (creating a lot) <u> </u>

The Buyer's Condition applies only to condominium units for resale [that is, they are not covered by sections 12 and 13 of the *Condominium Property Act (Alberta)* (the "Act")]. All terms have the same meaning as in the Act.

BUYER'S CONDITION

- ◆ The Contract is subject to the Buyer's satisfaction with the condominium documents (the "Documents") listed below.
- ◆ The Seller will deliver original or true copies of the Documents to the Buyer at least five (5) Business Days before the Condition Day. The Documents are:
 - a copy of the registered condominium plan
 - a copy of the current bylaws of the corporation
 - a copy of the most recent financial statements, if any, of the corporation
 - a copy of the budget of the corporation
 - a statement setting out the amount of the monthly contributions (condominium fees) and the basis on which that amount was determined
 - a copy of any minutes of proceedings of a general meeting of the corporation or of the board for the past 12 months
 - a copy of any special resolutions
 - a copy of the insurance certificate
 - a copy of any lease agreement or exclusive use agreement with respect to the possession of a portion of the common property, including a parking stall or storage unit
 - the particulars of, or a copy of, any subsisting management agreement
 - the particulars of, or a copy of, any subsisting recreational agreement
 - a statement setting out structural deficiencies that the corporation has knowledge of at the time of the request in any of the buildings that are included in the condominium plan
 - a statement setting out the amount of the capital replacement reserve fund
 - a copy of the most recent reserve fund report
 - a copy of the most recent reserve fund plan
 - the particulars of any post tensioned cables located anywhere on or within the Property
 - a statement setting out the amount of any contributions due and payable in respect of a unit
 - the particulars of any action commenced against the corporation and served on the corporation
 - the particulars of any unsatisfied judgment or order for which the corporation is liable
 - the particulars of any written demand made on the corporation for an amount in excess of \$5,000 that, if not met, may result in an action being brought against the corporation
- ◆ If the Seller fails or refuses to deliver the Documents by the agreed time, the Buyer may obtain the Documents through other sources. All reasonable costs incurred by the Buyer to obtain the Documents will be paid by the Seller including solicitor/client legal fees and disbursements. The Buyer may set off these costs against the Purchase Price at the Completion Day. The Buyer will have no other remedy against the Seller for failing or refusing to deliver the Documents.

Date	Seller's Signature	Seller's Signature
	Witness	Witness
<u>August 1</u> , <u>2010</u>		
Date	Buyer's Signature	Buyer's Signature
	Witness	Witness

Agreement For Substitution Of Collateral

The undersigned mortgagee (lender) and mortgagor (borrower), in consideration of \$10.00, the receipt of which is hereby acknowledged, do hereby agree to a substitution of collateral. For the purposes of this agreement substitution means replacing that mortgage currently registered as # 123456789 on property legally described as:

Plan

Block (or unit if a condominium)

Lot

with substituted collateral, in this agreement a new mortgage exactly mirroring every detail of mortgage #123456789, to be registered against property legally described as

Plan

Block (or unit if a condominium)

Lot

The mortgagee will provide a Discharge of Mortgage #123456789, to be registered at the Alberta Land Titles Office concurrently with the registration of the new mortgage.

IN WITNESS WHEREOF, We have set our hands and seals on the _____ day of _____, 20____.

Signed and sealed in our presence as witnesses:

Mortgagee (Lender)

Witness

Mortgagor (Borrower)

Witness

AFFIDAVIT OF EXECUTION FOR WITNESS

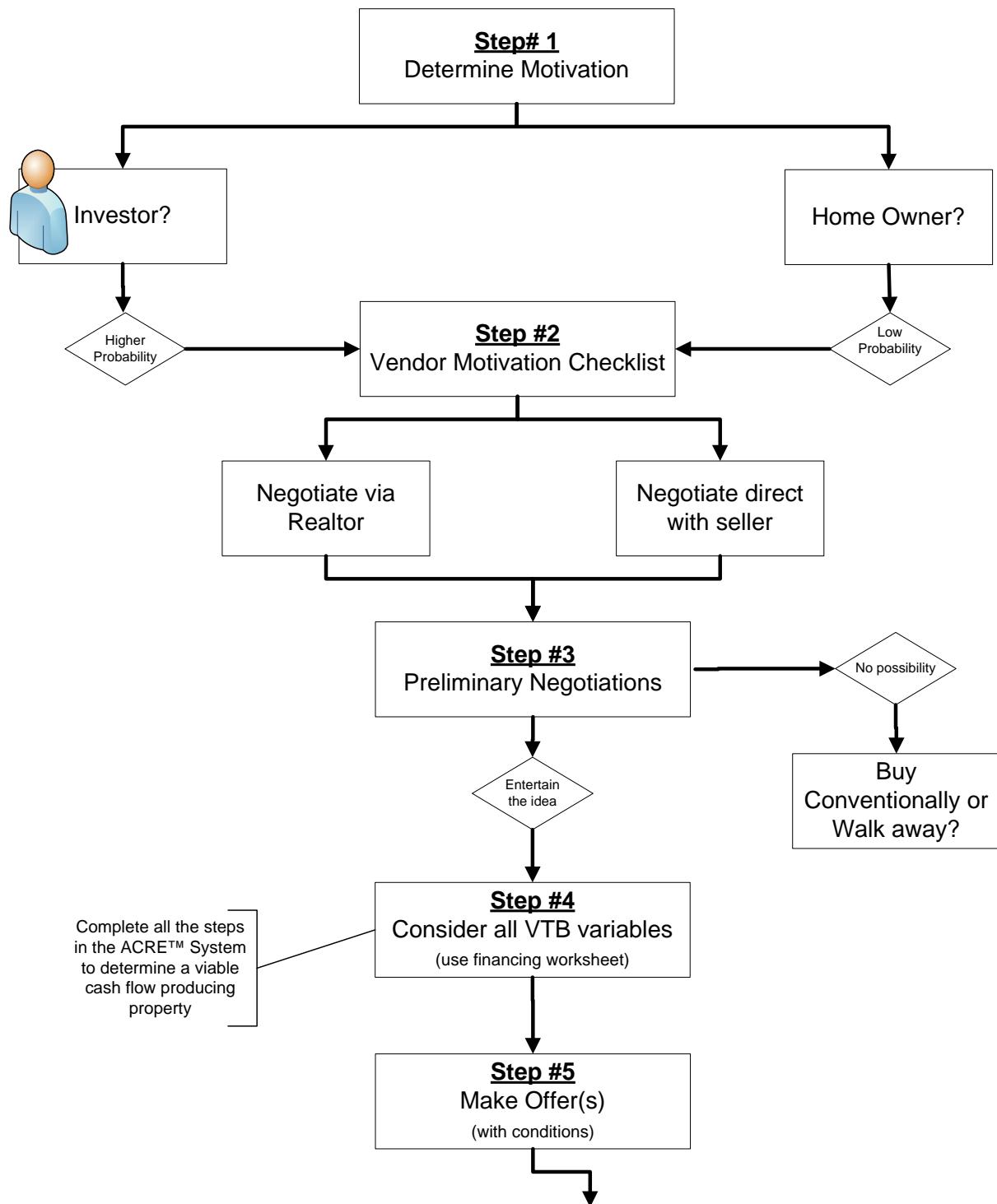
CANADA) I,
PROVINCE OF ALBERTA) of _____, in the Province of
TO WIT:) Alberta **MAKE OATH AND SAY:**

1. I was personally present and did see _____ named in the within instrument, who is (are) personally known to me to be the person(s) named therein, duly sign and execute the same for the purposes named therein.
2. That the same was executed at _____, in the Province of Alberta, and that I am the subscribing witness thereto.
3. That I know the said person(s) and he (she, each) is in my belief of the full age of eighteen years.

SWORN before me at _____)
in the Province of Alberta, this _____ day)
of _____, 20_____)

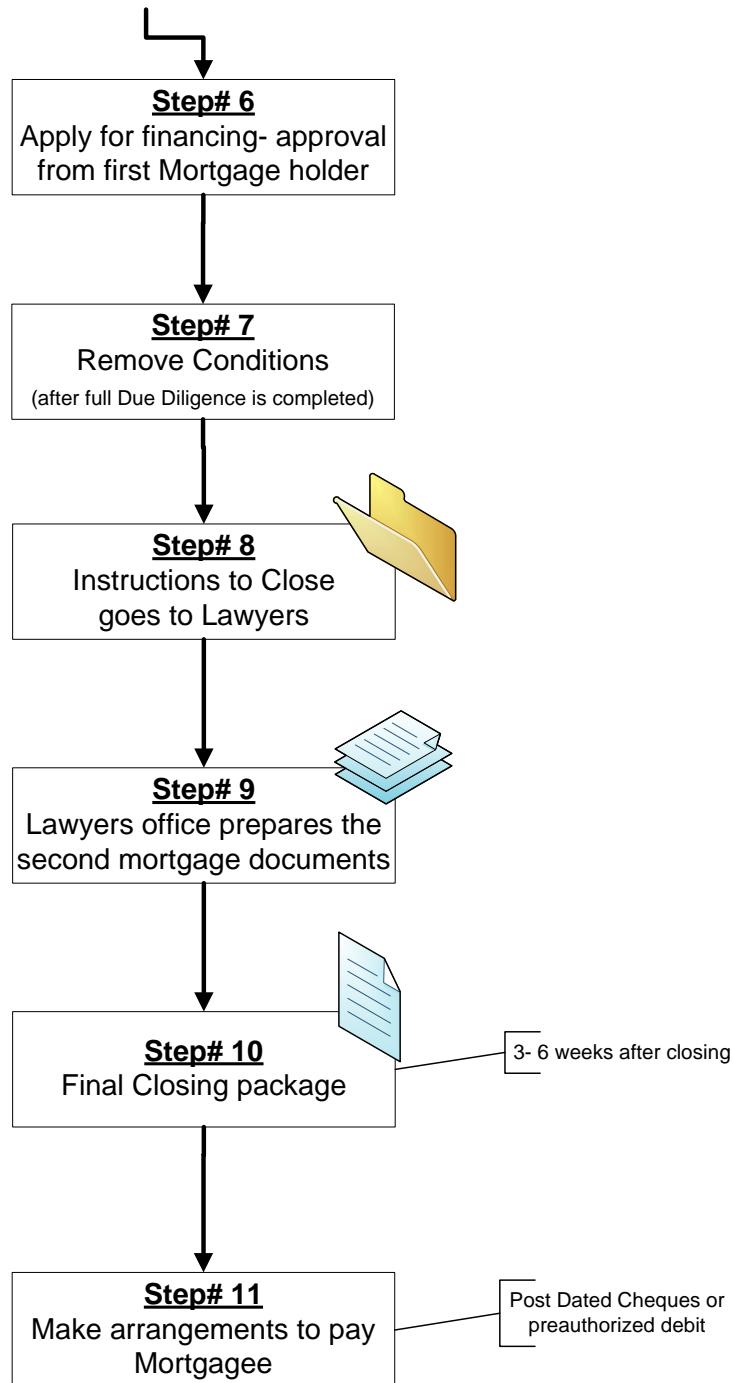
A COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA

Vendor Take Back Strategy Flow Chart



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Vendor Take Back Strategy Flow Chart



A Final Word:

Vendor take back mortgages are instruments in which the rights and responsibilities of each party need to be spelled out.

Vendor financing deals are best left to the wordsmithing of lawyers who know the field. Protect a deal in which tens of thousands to hundreds of thousands of dollars will be at stake. Having these assets adequately protected is worth the legal fees, perhaps a few hundred or a few thousand dollars, depending on the value of the deal and the jurisdiction.

It certainly helps to get a little legal advice before you make any such deal. Afterwards, there is very little, if anything, that can be done to change things as changes require an amendment to the contract to be made in writing and that requires agreement between both parties.

Consult your legal professional if you have any doubts or don't understand what you're getting into. Remember, lawyers are much better at *keeping* you out of trouble than they are at *getting* you out of trouble, and it is usually a lot cheaper and easier, too.

As you have learned in this handout, there is no one way to structure your VTB mortgages, but there are some simple rules of engagement that if you follow and create win/win transactions with your sellers, you will soon find securing VTB mortgages a staple in your Real Estate Investing Tool kit.

Securing financing from your seller is just another tool that you can use as a sophisticated Real Estate investor. Use all the tools and support you have as a REIN™ member, because the more you learn, the more you earn.

If you have any further questions, please call our office at 1-888-824-7346 and one of the member support specialists will personally be able to help you.

Russell Westcott
REIN™ Canada