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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

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](http://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:

$$a) \quad \$150,000 \quad / \quad 250,000 \times 150,000 \quad = \quad \$90,000$$

VTB / Total Proceeds X Capital Gain = Deferral

$$b) \quad \$150,000 \text{ (Capital Gain)} \quad \times 80\% \quad = \quad \$120,000$$

Therefore, in year one, the vendor's deferral will be \$ 90,000 and the vendor has to report \$60,000 in capital gain (only  $\frac{1}{2}$  of this is taxable).

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

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

VTB / Total Proceeds X Capital Gain = Deferral

$$b) \quad \$150,000 \text{ (Capital Gain)} \quad \times 60\% \quad = \quad \$90,000$$

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:

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

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)*

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

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

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4. What do you like most about it?

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5. What do you like least about it?

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

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

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

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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*)

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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*)

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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*)

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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*)

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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:

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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

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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
<b>TOTAL Purchase Price</b>	<b><u>\$ 200,000.00</u></b>

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	<b><u>\$ 210,000.00</u></b>

**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 - 1<sup>st</sup>? 2<sup>nd</sup>? 3<sup>rd</sup>?
- 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: 1<sup>st</sup> Mortgage 2<sup>nd</sup> Mortgage Other: \_\_\_\_\_

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

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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: \_\_\_\_\_

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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, Economic Fundamental Lane.

<b><u>PURCHASE PRICE</u></b>	<b>\$210,000.00</b>
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### **Financial Breakdown**

Price		\$210,000.00
Down Payment	15.0%	\$31,500.00
First Mortgage (New Financing, Variable rate, 35 yr Amort.)	75.0%	\$157,500.00
Second Mortgage (10% interest only, annual payments)	<u>10.0%</u>	\$21,000.00
	100.0%	

<b><u>Income</u></b>		<b><u>Monthly</u></b>	<b><u>Annual</u></b>
Market Rent		\$1,350.00	
Vacancy factor	5.0%	<u>-\$67.50</u>	
Income (1 <sup>st</sup> Year)		\$1,282.50	\$15,390.00

### **Expenses**

Property Taxes		<b><u>-\$183.00</u></b>
Condo Fees		\$0.00
Repairs and Maintenance factor	5.0%	<u>-\$67.50</u>
Property Management (% of Actual Rent)	7.0%	<u>-\$89.78</u>
Insurance		<u>-\$40.00</u>
<b>Total Expenses</b>		<b><u>-\$380.28</u></b>
		<b><u>-\$4,563.30</u></b>

<b><u>Cash Flow Before Debt Payment</u></b>	<b><u>\$902.23</u></b>	<b><u>\$10,826.70</u></b>
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First Mortgage Payment *** (3.95% interest + principle)- 35 yr Amortization	<b><u>-\$689.63</u></b>	<b><u>-\$8,275.56</u></b>	***
Second Mortgage Payment (10%, interest only, annual payments)	<b><u>-\$175.00</u></b>	<b><u>-\$2,100.00</u></b>	

<b>Est. Cash Flow</b>	<b>\$37.60</b>	<b>\$451.14</b>
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\*\*\* Actual mortgage rate is Prime minus .6 - (\$533.16)

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

This Agreement of Purchase and Sale dated this 1st day of August 20XX.

**BUYER**, Joe Buyer....., agrees to purchase from  
 (Full legal names of all Buyers)

**SELLER**, Jane Seller....., the following  
 (Full legal names of all Sellers)

**REAL PROPERTY:**

Address 123 Main Street..... fronting on the North..... side  
 of Main..... in the City of Cambridge.....

and having a frontage of 40..... more or less by a depth of 120..... more or less  
 and legally described as Lot 20, Plan 45.....

(Legal description of land including easements not described elsewhere) (the "property").

**PURCHASE PRICE:** Dollars (CDN\$) \$210,000.00

Two Hundred Ten Thousand..... Dollars

**DEPOSIT:** Buyer submits Upon acceptance  
 (Herewith/Upon Acceptance/as otherwise described in this Agreement)

One Thousand..... Dollars (CDN\$) 1,000.00

by negotiable cheque payable to ABC Brokerage Inc..... "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A..... attached hereto form(s) part of this Agreement.**

1. **IRREVOCABILITY:** This Offer shall be irrevocable by Buyer..... until 8:00..... p.m. on

(Seller/Buyer) the 2nd..... day of August 20XX, after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 30..... day

of September....., 20XX. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. 204-555-5555..... (For delivery of notices to Seller) FAX No. 204-222-2222..... (For delivery of notices to Buyer)

**INITIALS OF BUYER(S):**

**INITIALS OF SELLER(S):**



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**4. CHATTELS INCLUDED:**

Fridge, Stove, Washer, Dryer, Dishwasher, all Curtains and Blinds and Water Softener

**5. FIXTURES EXCLUDED:**

**6. RENTAL ITEMS:** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable: Hot Water Heater.....

**7. GST/HST:** If the sale of the property (Real Property as described above) is subject to Goods and Services Tax (GST) or Harmonized Sales Tax (HST) then such tax shall be..... included in..... the Purchase Price. If the sale of the property is not subject to GST or HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to GST or HST. Any HST on chattels, if applicable, is not included in the purchase price.

**8. TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 16..... day of September....., 20XX, (Requisition Date) to examine the title to the Property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding work orders or deficiency notices affecting the Property, and that its present use (Residential.....) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

**9. FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

**10. TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

**11. CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registered documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

**12. DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada),

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 



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Form 100 Rev. 03/2010 Page 2 of 6

WEBForms™ Mar/2010

Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.**
14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.
18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
20. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless Seller's spouse has executed the consent hereinafter provided.
23. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
25. **CONSUMER REPORTS:** **The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**
26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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Form 100 Rev. 03/2010 Page 3 of 6

WEBForms™ Mar/2010

**28. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

[Witness] ..... [Buyer] ..... (Seal) DATE.....  
[Witness] ..... [Buyer] ..... (Seal) DATE.....

I, the Undersigned Seller, agree to the above Offer. I hereby irrevocably instruct my lawyer to pay directly to the Listing Brokerage the unpaid balance of the commission together with applicable Goods and Services Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the Listing Brokerage to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

[Witness] ..... [Seller] ..... (Seal) DATE.....  
[Witness] ..... [Seller] ..... (Seal) DATE.....

**SPOUSAL CONSENT:** The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

[Witness] ..... [Spouse] ..... (Seal) DATE.....

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at.....a.m./p.m. this.....day of....., 20.....

[Signature of Seller or Buyer]

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage.....	Tel.No.....
.....	.....
Co-op/Buyer Brokerage.....	Tel.No.....
.....	.....

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

[Seller] ..... DATE.....

[Seller] ..... DATE.....

Address for Service..... Tel.No.....

Seller's Lawyer.....

Address.....

Tel.No. FAX No.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Agent to forward a copy to my lawyer.

[Buyer] ..... DATE.....

[Buyer] ..... DATE.....

Address for Service..... Tel.No.....

Buyer's Lawyer.....

Address.....

Tel.No. FAX No.

**FOR OFFICE USE ONLY**

**COMMISSION TRUST AGREEMENT**

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:  
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

..... (Authorized to bind the Listing Brokerage)

..... (Authorized to bind the Co-operating Brokerage)



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Form 100 Rev. 03/2010 Page 4 of 6

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# Schedule A

## Agreement of Purchase and Sale

Form 100  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER**, Joe Buyer....., and

**SELLER**, Jane Seller.....

for the purchase and sale of 123 Main Street.....

Cambridge..... dated the 1st..... day of August....., 20XX ..

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

This offer is conditional upon the Buyer arranging at the Buyer's own expense, a New First Mortgage sufficient to complete this agreement by 7 Business days from date of acceptance of this offer , failing which, upon completion of a properly executed mutual release, the deposit held in trust will be returned to the Buyer without interest or deduction. This condition is included for the sole benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller or the Seller's Agent within the time period stated herein.

This offer is conditional upon the Buyer at his expense, obtaining a physical inspection report of the subject property from a QUALIFIED HOME INSPECTOR by 7 Business days from date of acceptance of this offer. If the Buyer is unable to obtain HOME INSURANCE and/or if said report reveals any defect of the subject property, which the Seller is unwilling to rectify and the Buyer is unwilling to accept, the parties hereby direct the agent(s) to forward the deposit to the Buyer without interest or deduction upon the completion of a properly executed Mutual Release. The buyer has the right to waive this condition at his sole option. The seller agrees to cooperate in providing access to the property for the purpose of this inspection.

The Seller agrees to take back a second Mortgage for 10% of the Purchase price OR in the amount of Twenty one thousand dollars \$21,000.00 bearing interest at the rate of 10 % per annum, repayable interest only monthly and maturing 3 years from date of closing.

The Seller agrees to provide the Buyer with a copy of the existing survey for the subject property, as well as a properly executed OREA Seller Property Information Statement within 24 hours of acceptance of this offer, which shall form part of this agreement of purchase and sale.

This form must be initialed by all parties to the Agreement of Purchase and Sale..

**INITIALS OF BUYER(S):** 

**INITIALS OF SELLER(S):** 



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Form 100 Rev. 03/2010 Page 5 of 6

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# Schedule A

## Agreement of Purchase and Sale

Form 100  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER**, Joe Buyer....., and

**SELLER**, Jane Seller.....

for the purchase and sale of 123 Main Street.....

Cambridge..... dated the 1st..... day of August....., 20XX.....

It is agreed and understood that all existing flooring & floor coverings, drapery tracks, ceiling fans & fixtures, built-in appliances, heating-ventilating - air conditioning equipment, and all other items secured by means of nails, screws, plumbing, wiring, ducting and related accessories, thereto now on the real property are to be included in the purchase price except items which are leased or rented and those specifically listed herein.

The Buyer shall have the right to 3 visits prior to completion. The said visits are to be a mutually agreed upon following the verbal request for such visits.

The Seller represents and warrants that the chattels and fixtures as included in this Agreement of Purchase and Sale will be in good working order and free from all liens and encumbrances on completion. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

This form must be initialed by all parties to the Agreement of Purchase and Sale..

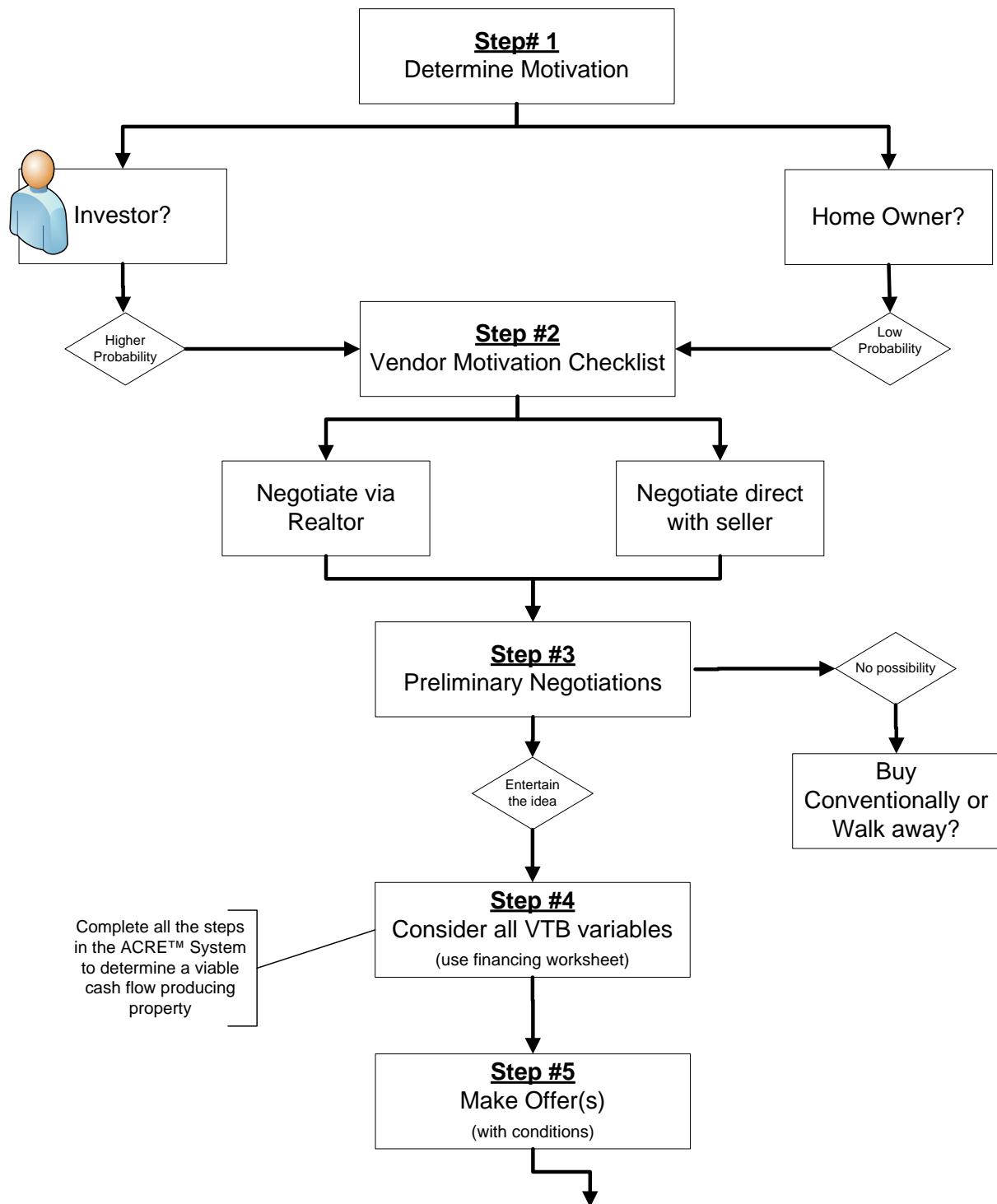
**INITIALS OF BUYER(S):** 

**INITIALS OF SELLER(S):** 



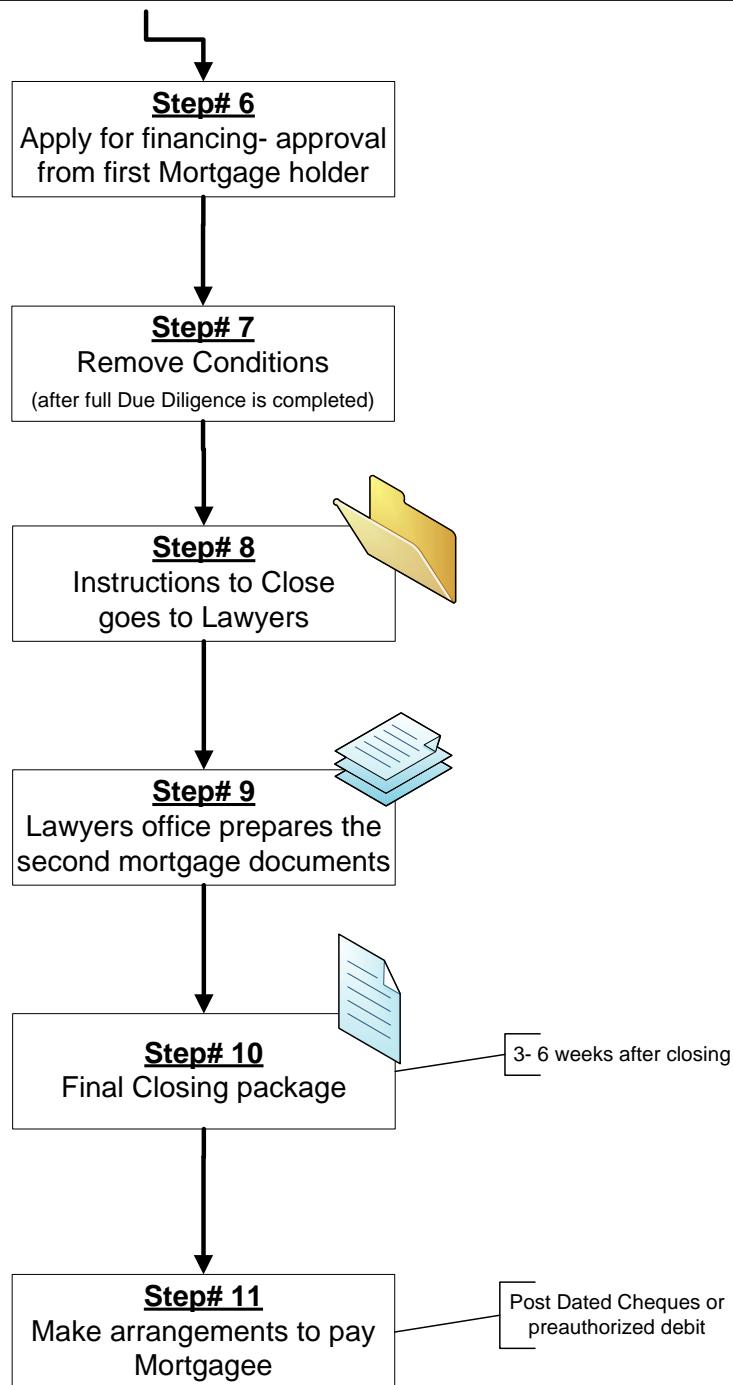
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## Vendor Take Back Strategy Flow Chart



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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