

## What is a Subject To Deal? (Part 1)

**Written By: Bill and Kim Cook**

In last week's column I promised to explain a deal-structuring technique known as a "Subject To" deal. Marie Lovins from Calhoun couldn't wait and called me earlier this week. Marie had just had a conversation with her sister. They both came to the conclusion that Subject To deals were too good to be true, therefore they had to be illegal.

I told Marie to join the club. In 1997, when Kim and I were first learning about Subject To deals, we thought the same thing. But since then, we've done many Subject To deals. These days it is our favorite way to buy real estate.

For the next three weeks we'll do our best to give you the Reader's Digest version of Subject To deals. But know this: You will not be a Subject To deal expert after reading our next three columns. You will need to take several Subject To courses as well as do several Subject To deals before you will feel comfortable with this deal structuring-technique. Bottom line: Know what you are doing **before** you do it.

What is a Subject To deal? Normally when one buys real estate, one puts the property under contract, applies for a mortgage, jumps through a bunch of the mortgage company's hoops, after about thirty days goes to the closing, signs a mountain of the mortgage company's documents, pays about 3.5% or more in closing costs, and agrees to repay the mortgage company at the agreed upon terms. After this, the property finally belongs to the buyer.

This is a lot of work, headache, time, and expense to go through just to buy a property you may only own for several hours or days. What if there was a way to buy a property and avoid all of these negatives? What if you could buy a property in less than a week while spending less than a thousand dollars on closing costs (this includes title insurance – which you should always get when buying a property)? Welcome to the world of Subject To deals.

With a Subject To, deal the Investor buys the property. The property goes into the Investor's name (or one of the Investor's entity's names). But – and this is a huge but – the mortgage stays in the **seller's** name. The Investor simply agrees to make the **seller's** mortgage payment for the **seller**.

Don't confuse a Subject To deal with a Loan Assumption deal. With a Loan Assumption deal, after the closing the mortgage is no longer in the seller's name, it is in the buyer's name. With a Subject To deal, after the closing the Investor owns the property *but the mortgage remains in the **seller's** name*.

This is called a Subject To deal because the property is bought "subject to" the seller's mortgage. You will also see this deal structuring-technique referred to as a "Warranty Deed closing". It's called a Warranty Deed closing because at the closing table, the Warranty Deed – a document that shows who owns the property – is about the only document that changes hands.

Bet like Marie Lovins, you had two quick questions come to mind: First, is a Subject To deal legal? Yes, Subject To deals are legal because there is not one law in any of the fifty states that makes this deal structuring-technique illegal.

Second, what homeowner would ever agree to sell his property but leave the mortgage in his name? A *motivated* seller, that's who. A motivated seller is someone who needed to sell his house yesterday.

One other thought, if our favorite way to buy property is the Subject To method, do we ever need to get mortgages in our names? Absolutely. Sometimes the seller is \$10,000 behind on his mortgage payments; or has an interest rate of 9.5%; or won't agree to a Subject To deal, etc. In these situations often it is best to get a new mortgage in our names.

In Part 2 let's go over the benefits and risks of a Subject To deal for both the Investor and seller.