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The Commercial Buyer's Guide to Owner Financing

Seller-carried deals in New Mexico — how to underwrite them, how to structure them, and how to know when the numbers actually work.

SUNWEST ESCROW, LC
Serving New Mexico Since 1987

For serious buyers

Investors, owner-occupants, developers, and 1031 exchangers.

Real numbers

DSCR, cap rate, balloon math, and a worked deal example.

Written by a neutral party

We service contracts. We don't broker deals or make loans.

SUNWEST ESCROW, LC

LONG-TERM ESCROW SERVICING · ALBUQUERQUE, NEW MEXICO

FREE BUYER'S GUIDE

START HERE

When the bank isn't the answer — and shouldn't be

In residential real estate, seller financing is usually what a buyer turns to when a lender says no. In commercial real estate it is something else entirely: a structuring tool that experienced buyers reach for on purpose, often while conventional financing is sitting right there on the table.

A commercial lender sells you a product. A seller negotiates a deal. Those are different things, and the second has considerably more room in it. A seller can carry paper at terms no bank offers, close in three weeks, accept a debt-service coverage ratio that would fail a credit committee, agree to release parcels as you develop them, and structure payments around when your business actually generates cash. In exchange, they get an above-market return secured by an asset they already know, and in many cases meaningful tax advantages from spreading the gain over time. Well-structured seller financing is not a favor. It is a trade both sides want.

FOUR THINGS TO KNOW BEFORE YOU READ ANOTHER PAGE

1. Nobody is underwriting this deal but you. There is no lender ordering an appraisal, a Phase I, or a property condition report. Every protection a bank would have forced into the transaction is now something you have to buy on purpose.

2. The terms matter more than the price. In seller-financed commercial deals, buyers routinely pay above market on price to get structure they could not buy at any price. Learn to see the whole trade.

3. Balloons are shorter here. Three to seven years is typical. Your exit — refinance, sale, or payoff — needs to be a plan with a date, not an intention.

4. Use a licensed escrow company. Commercial contracts run for decades, involve multiple parties and entities, and frequently include partial releases, impounds, and unusual disbursement instructions. A neutral servicer keeps the record that everyone will eventually rely on.

What's inside

1. Owner financing in a commercial context

2. Why commercial buyers use it — the strategic case

3. The honest side — risks and limitations

4. Is this the right tool for your deal?

5. Underwriting it yourself — NOI, cap rate, DSCR, and a worked example

6. The terms that matter — a negotiating map

7. Escrow in New Mexico — long-term servicing

8. What an escrow company does — and doesn't

9. Commercial due diligence — what nobody will force you to do

10. The process, step by step

11. Owner financing and 1031 exchanges

12. Questions to ask

13. What to expect — right, wrong, and worst case

14. Red flags and pitfalls

15. Next steps

Who this guide is for

Investors buying income property. Business owners buying the building they operate from. Developers and land buyers who need release provisions no lender will write. Buyers under a 1031 exchange clock who cannot afford a 45-day financing contingency. And anyone looking at a property — special-use, rural, vacant, environmentally complicated, or simply too small for a bank to bother with — that conventional lending has quietly abandoned.

Why we wrote it

Sunwest Escrow is a long-term escrow servicing company — not a lender, a broker, or a title company — and we earn nothing when a deal closes. We hold the documents, record payments, manage impounds and disbursements, and follow the contract exactly as written for both parties without taking sides. That neutrality is why we can be direct with you about what works and what doesn't.

SECTION 1

Owner financing in a commercial context

In a seller-financed purchase, the seller takes the lender's place. Instead of funding the purchase with borrowed money, you pay the seller directly over time under terms the two of you negotiate.

In New Mexico this is most often documented as a **Real Estate Contract** — universally called an **REC**. The REC states the price, down payment, interest rate, amortization, term, balloon date, default and cure provisions, and everything else the parties agree to. It is a negotiated instrument, not a form.

> **HOW TITLE WORKS DURING THE CONTRACT**
>
> You take possession and operate the property as its owner: you collect the rents, sign the leases, pay the taxes, carry the insurance, and make the capital decisions. The seller retains **legal title** as security — functionally similar to a lender holding a lien. You hold **equitable title**, which is a real, recordable, transferable ownership interest. The deed sits with a neutral escrow company until the contract is satisfied, at which point it is released to you.

The three structures you'll encounter

STRUCTURE	HOW IT WORKS	WHERE IT SHOWS UP
Real Estate Contract (REC)	Seller retains legal title as security; buyer holds equitable title and possession; deed held in escrow until payoff.	The New Mexico standard. Most seller-carried commercial deals in this state.
Note and mortgage / deed of trust	Title transfers at closing; the seller records a lien and forecloses on default.	Common when out-of-state parties, institutional sellers, or lenders are involved.
Seller carry-back behind bank debt	A bank takes first position; the seller carries a second for part of the gap.	Larger deals where the buyer is short of the bank's equity requirement.

Structure has real consequences for your rights on default, your ability to encumber the property, and your tax position. This is an attorney conversation, not a preference.

Why sellers agree to carry

Understanding the seller's motive is the first step in negotiating well. Commercial sellers carry for four recurring reasons:

- **Tax timing.** A cash sale can trigger the entire gain in one year, while spreading payments over time may allow the gain to be recognized as payments are received. For a seller with a low basis and a large gain, this is frequently the whole reason the deal exists.
- **Yield.** A note secured by a property they know, at 7–9%, compares favorably to what their money would earn elsewhere after taxes and fees.
- **Price.** Carrying paper expands the buyer pool and supports a stronger price. Sellers trade terms for price constantly — and so should you, in the other direction.
- **The property is hard to finance.** Special-use buildings, vacant or partially leased assets, rural property, older construction, environmental history, or small deal size all push lenders away — leaving no realistic cash buyer.

THE VOCABULARY

NOI — net operating income; revenue less operating expenses, before debt service.

Cap rate — NOI divided by price; the unleveraged yield.

DSCR — NOI divided by annual debt service; the cushion.

Amortization — the payment schedule; often longer than the term.

Term / balloon — when the remaining balance comes due in full.

Partial release — a provision letting you free parcels from the contract as you pay.

Subordination — the seller agreeing to sit behind new financing.

Estoppel — a tenant's signed confirmation of their lease terms.

SECTION 2

Why commercial buyers use it

These are the strategic reasons sophisticated buyers pursue seller financing even when bank money is available. If three or four of these describe your situation, this belongs at the center of your acquisition strategy — not at the edge of it.

1. Structure you cannot buy from a lender at any price

Interest-only for the first two years while you stabilize the rent roll. Payments that step up as leases renew. A partial release schedule that frees parcels as you sell them. Seasonal payments for a business with seasonal revenue. A twenty-five-year amortization on a property a bank would amortize over fifteen. None of this exists on a term sheet. All of it is negotiable with a motivated seller.

2. Speed, and the leverage that comes with it

No credit committee, no lender appraisal, no environmental review ordered by someone else's timeline. You still do your own diligence — but you control the clock. A buyer who can close in twenty-one days with no financing contingency is worth real money to a seller, and that is negotiating capital you can spend on price or terms.

3. Properties the lending market has abandoned

Special-use buildings with no comparable sales. Vacant or half-leased assets. Rural commercial property. Older construction. Small deals where a bank's fixed underwriting cost makes the loan uneconomic. Land with no income at all. In much of New Mexico, the seller is not the alternative lender — the seller is the only lender.

4. Coverage ratios that reflect reality instead of policy

A lender declines at 1.20x DSCR because the policy says 1.25x. A seller who has owned the building for eighteen years knows the roof is new, the anchor tenant renews, and the vacancy is seasonal. Sellers underwrite the asset. Banks underwrite the file. When the asset is better than the file, seller financing wins.

5. Preserved capital and better leverage

Lower down payments, no origination fees or points, no lender-required reserve accounts, and dramatically lower transaction costs mean more of your capital stays available for tenant improvements, deferred maintenance, or the next acquisition. On a portfolio, the compounding effect of that is substantial.

6. Negotiable recourse

Commercial lenders generally require personal guarantees and rarely release them. A seller might accept an entity-only obligation, a limited guarantee, a guarantee that burns off after a payment history is established, or additional collateral in place of a signature. This is one of the most valuable terms in the entire negotiation and one of the most commonly left on the table.

7. Financing capacity that doesn't run out

Conventional lenders limit how many loans a borrower carries and how much exposure they'll take. Seller-financed acquisitions typically sit outside those limits. For an investor building a portfolio, that ceiling matters more each year.

8. A bridge with a documented exit

Many commercial buyers use seller financing as a two-to-five-year bridge: acquire, stabilize, lease up, improve the NOI, then refinance into conventional debt at a valuation the property could not have supported on day one. A professionally serviced escrow produces the verified payment history and clean records a lender will want when you get there.

PRICE VERSUS TERMS

An experienced seller will often say some version of: *you name the price, I'll name the terms*. Take that seriously. A property at $1.3 million with 25% down at 7% over a five-year balloon and a property at $1.4 million with 15% down at 6% interest-only for three years with a partial release provision are not the same deal, and the more expensive one may be worth considerably more to you. **Model both. Decide with the spreadsheet, not the headline number.**

SECTION 3

The honest side: risks and limitations

Every advantage in the previous section exists because someone accepted a risk a bank would not. Some of that risk is now yours. Here it is, without softening.

WHAT YOU ARE TAKING ON

- ✕ **Nobody is checking the property but you.** No lender-ordered appraisal, no Phase I environmental site assessment, no property condition report, no lease audit. Every one of those is now a line item you choose to pay for — or a risk you chose to accept without knowing it.
- ✕ **Environmental exposure is the big one.** Current owners can face liability for contamination they did not cause. Former dry cleaners, gas stations, auto shops, agricultural sites, and older industrial buildings all carry real risk. A bank would have required a Phase I. Nobody is going to require it here.
- ✕ **Short balloons.** Three to seven years is typical. If interest rates, your NOI, or the lending market move against you before that date, refinancing may be impossible — and a perfect payment history will not save you.
- ✕ **Higher rates.** The seller is pricing risk a lender declined. Model the total interest across the term, not the monthly payment.
- ✕ **Larger down payments.** 20–35% is common. The down payment is the seller's security and the main reason they'll agree.
- ✕ **Default remedies move faster than foreclosure.** Under a typical New Mexico REC the seller may terminate and take the property back, and payments already made may be forfeited. See Section 13.
- ✕ **You may still sign personally.** An entity purchase does not automatically mean no personal exposure. Read the guarantee language.
- ✕ **Restricted flexibility during the term.** Many RECs limit your ability to sell, assign, further encumber, or place new financing on the property without consent. If your plan involves a construction loan, a line of credit secured by the asset, or a sale before payoff, those rights have to be negotiated in.
- ✕ **The seller's own debt is your problem too.** If an underlying loan is not paid off at closing, the seller's lender may have the right to accelerate on transfer — and a seller who stops paying that loan puts your asset at risk regardless of your performance.
- ✕ **Institutional protections don't apply the same way.** Commercial transactions between sophisticated parties carry fewer consumer safeguards by design. The contract is the protection. Read it accordingly.
- ✕ **Exit complexity.** Selling or refinancing requires a payoff quote, a deed release, and county recording in the correct order. Manageable, but never instant — build the time into your closing schedule.

HOW DISCIPLINED BUYERS NEUTRALIZE EACH OF THESE

Order the Phase I and the property condition report yourself. Get an ALTA survey. Buy an owner's title policy with the endorsements your attorney recommends. Negotiate the balloon out as far as the seller will go, and start the refinance conversation in year one. Get the guarantee limited or burned off in writing. Negotiate assignment, subordination, and partial release rights *before* you need them. Confirm in writing how the seller's existing debt is handled. Record your interest. Use a neutral escrow servicer. Have an attorney draft or review the REC. Every item on that list is cheap relative to the asset.

SECTION 4

Is this the right tool for your deal?

Seller financing is a structuring tool, not a universal solution. Here is where it genuinely outperforms conventional debt — and where you should take the bank loan instead.

Strong fit

- ✔ **Owner-occupants buying their own building.** A profitable business with a short operating history, uneven tax returns, or an industry lenders dislike. The building is worth more to you than to anyone else, and the seller can see that.
- ✔ **Value-add investors.** The property doesn't support conventional debt at today's NOI but will after lease-up, renovation, or repositioning. Seller financing bridges the gap between what it is and what it will be.
- ✔ **Land buyers and developers.** Raw land rarely qualifies for institutional debt. A seller who will carry with partial release provisions makes phased development possible.
- ✔ **1031 exchange buyers under deadline.** When 45 and 180 days are running, a seller who can close without a lender's timeline is worth a premium. See Section 11.
- ✔ **Buyers of special-use or rural property.** Churches, self-storage, medical, hospitality, agricultural, industrial with limited comps — assets where lenders see only the exit problem.
- ✔ **Portfolio investors at their lending ceiling** who have capital and experience but no more room at the bank.
- ✔ **Buyers who need speed or certainty of close** in a competitive situation, an estate sale, or a partnership dissolution.

Take the bank loan — or wait — if

- ✕ **You qualify conventionally at better terms with no balloon.** Long-term fixed institutional debt is a genuinely good product. If you can get it, take it.
- ✕ **The deal only works if rates fall or NOI grows sharply.** Underwrite the property as it is today, not as you hope it will be. If it doesn't cover today, it isn't a deal.
- ✕ **You have no exit plan for the balloon.** "We'll refinance" is not a plan without a target LTV, a target NOI, and a date.
- ✕ **You can't fund reserves.** Roof, HVAC, parking lot, a vacancy, tenant improvements, leasing commissions. Commercial capital events are large and they do not wait.
- ✕ **The environmental history is uncertain and the seller won't allow a Phase I.** That is a walk-away, not a negotiation.
- ✕ **The seller refuses a title company, an escrow company, or attorney review.** Also a walk-away.
- ✕ **You don't fully understand the contract.** Not the summary. The contract.

THE TEST

Ask two questions. **First:** at today's actual NOI — not pro forma, not stabilized, today's — does this property service the debt with a real cushion? **Second:** if I could not refinance or sell on the balloon date, could I pay it or extend it? If both answers are yes, you have a deal worth pursuing. If either is no, you have a hope.

SECTION 5

Underwriting it yourself

This is the section that separates commercial seller financing from residential. When a bank finances a property, an underwriter verifies the income, discounts the expenses, and refuses the deal if the numbers don't work. In a seller-financed purchase, that job is yours — and no one will tell you if you skip it.

The four numbers that decide everything

METRIC	HOW IT'S CALCULATED	WHAT IT TELLS YOU
NOI	Effective gross income minus operating expenses, before debt service	What the property actually earns. Everything else is derived from this, so verify it obsessively.
Cap rate	NOI ÷ purchase price	Your unleveraged yield, and the basis for comparing this deal to alternatives and to market.
DSCR	NOI ÷ annual debt service	Your cushion. 1.00 means the property exactly covers the payment. Below 1.00 you are funding the property from other income.
Break-even occupancy	(Operating expenses + debt service) ÷ gross potential income	How empty the building can get before you are writing checks. The number that keeps owners awake.

VERIFY THE INCOME — DON'T ACCEPT IT

A seller's pro forma is a marketing document. Ask for and reconcile: the rent roll against the actual leases, two to three years of operating statements, tax returns or Schedule E for the property, bank deposits, the current tax bill, the actual insurance policy and premium, utility bills for a full year, and every service contract. Then verify tenant terms directly through signed estoppel certificates.

Then adjust. Add a realistic vacancy and credit-loss factor even if the building is full. Add management at market rate even if you plan to self-manage. Add annual reserves for roof, HVAC, paving, and tenant improvements even if nothing is due this year. A pro forma without those three adjustments is not an underwriting — it is an advertisement.

A worked example

A multi-tenant retail and office building in New Mexico. The seller will carry. Here is the entire analysis:

LINE	AMOUNT	NOTE
Gross scheduled rent	$156,000	Per rent roll, verified to leases
Less vacancy & credit loss @ 7%	($10,920)	Applied even though currently full
Effective gross income	$145,080	
Less operating expenses	($52,000)	Taxes, insurance, utilities, maintenance, management, reserves
Net operating income (NOI)	**$93,080**	
Purchase price	$1,200,000	Cap rate **7.8%**

LINE	AMOUNT	NOTE
Down payment (25%)	$300,000	
Seller-carried balance	$900,000	7.0%, 25-year amortization, 7-year balloon
Annual debt service	($76,332)	About $6,361 per month
DSCR	**1.22x**	NOI covers the payment 1.22 times
Cash flow before tax	**$16,748**	5.6% cash-on-cash on the down payment
Year-one principal paydown	$13,700	Total year-one return roughly 10%
Balance at balloon (year 7)	**~$780,000**	Refinancing at 70% LTV requires value of about $1,114,000

WHAT THIS EXAMPLE ACTUALLY TEACHES

A bank would likely have declined this at 1.22x against a 1.25x policy minimum. The seller accepted it because they have owned the building for years and know the tenants. That gap — between what the asset supports and what a credit policy permits — is exactly where seller financing lives.

And the balloon is already solved. At the seven-year mark you need the property to be worth roughly what you paid for it. Amortization has done most of the work; you don't need appreciation, only the absence of decline. That is what a defensible exit looks like. Run this same calculation on your deal before you sign anything — if the balloon math requires heroic assumptions, the structure is wrong, not the property.

Stress it before you commit

- **Lose your largest tenant.** Recalculate NOI and DSCR with that space vacant for twelve months, plus turnover cost, tenant improvements, and leasing commissions. Can you still make the payment?
- **Add 15% to operating expenses.** Insurance and property taxes have both moved sharply in recent years. Assume they move again.
- **Refinance at a higher rate.** Model the balloon refinance two or three points above today. Does the property still support the debt?
- **Assume flat value at the balloon.** Never underwrite an exit that requires appreciation.
- **Count your reserves in months, not dollars.** How many months of full debt service can you cover with zero income from the property?

SECTION 6

The terms that matter

This is your negotiating map. Every line below is genuinely negotiable in a seller-financed transaction, and every line has cost money to buyers who left it unaddressed. Work through it before you write the letter of intent, not after.

Economic terms

TERM	WHAT TO NEGOTIATE FOR, AND WHY IT MATTERS
Interest rate	Negotiate it against the price. One point on $900,000 is roughly $9,000 a year — often more than the price concession you were fighting for.
Amortization period	Longer amortization means lower payments and better DSCR. Ask for 25 or 30 years even on a short term — frequently the cheapest concession a seller can give.
Term / balloon date	Push it out. Every extra year lets NOI grow, principal amortize, and the lending market change. Ask for extension options, even paid ones.
Interest-only period	An initial 12–36 months interest-only can be the difference between a workable value-add deal and a failed one.
Down payment	Lower preserves capital for improvements; higher buys rate, term, and goodwill. Decide which you need first.
Prepayment	Confirm you can prepay in whole or in part without penalty. If the seller wants a lockout or yield maintenance, negotiate a declining schedule that expires before your intended refinance.

Rights, protections, and mechanics

TERM	WHAT TO NEGOTIATE FOR, AND WHY IT MATTERS
Personal guarantee	Push for entity-only, a capped guarantee, or one that burns off after 24–36 months of on-time payments, with objective triggers in writing.
Assignment / assumption	Can you assign to an affiliated entity, and can a future buyer assume? An assumable contract at a below-market rate is a real asset when you sell.
Partial release	Essential for land and multi-parcel deals. Define release price per parcel, order of releases, and treatment of the remaining balance. Vague language is worse than none.
Subordination	Will the seller subordinate to a future construction loan or first mortgage? If your plan needs new debt, negotiate now — it is nearly impossible to get later.
Right to encumber	Can you place a line of credit or equipment financing against the property? Silence in the contract is not permission.
Default and cure	How many days late triggers a notice, and how long to cure monetary versus non-monetary defaults? Negotiate meaningful cure periods.
Late fees / default rate	Cap them. A default rate that jumps several points turns a temporary cash-flow problem into a permanent one.
Impounds	Whether taxes and insurance are collected monthly by the escrow company and paid when billed. Protects both parties and smooths cash flow.
Seller's existing debt	Paid off at closing or left in place? If it remains, get written notice rights, the right to cure the seller's default, and clarity on acceleration risk.

TERM	WHAT TO NEGOTIATE FOR, AND WHY IT MATTERS
Insurance & casualty	Coverage levels, who is named, and — critically — who controls proceeds after a casualty and whether they must fund rebuilding.
Condemnation	How proceeds are split if part of the property is taken. Rare, and expensive when it's missing.
Reporting	What financials the seller can require, and how often. Reasonable is normal; open-ended is not.
Escrow servicing	Which company services the contract, and who pays the setup and monthly fees. Settle it in the LOI.

PUT IT IN THE LETTER OF INTENT

Nearly every dispute in these deals traces back to a term that was assumed during negotiation and discovered at document review. Address rate, amortization, term, balloon, guarantee, prepayment, assignment, release, and subordination in the LOI. It costs nothing, and it prevents learning in week six that the seller never intended to subordinate.

SECTION 7

Escrow in New Mexico

In most states "escrow" means a short-term account that exists for a few weeks around a closing. New Mexico also has something else: a long-term escrow industry built specifically to service Real Estate Contracts for the entire life of the agreement.

When a commercial property sells on an REC, a licensed escrow company holds the signed deed and contract documents — often for twenty or thirty years — while receiving payments, recording each one in a permanent ledger, managing impounds, and disbursing funds per the contract.

> **WHY THIS MATTERS MORE ON COMMERCIAL DEALS, NOT LESS**
>
> Commercial contracts outlive people. Entities are sold, partners exit, interests pass to heirs and trusts, property managers change, and lenders eventually ask for documentation of everything. A neutral licensed servicer means one authoritative record everyone relies on — not a spreadsheet on somebody's laptop and a memory of what was agreed in 2019.
>
> It also means neither party can quietly change the deal. The contract is serviced as written. Amendments require signatures from everyone with an interest.

How the money moves

BUYER — You make your payment — online, by ACH draft, by phone, by mail, or in person at the lobby or drive-through.

ESCROW — The payment is recorded, the servicing fee is deducted per the contract, and any impound portion is set aside for taxes, insurance, or assessments.

DISBURSE — Remaining funds go to the seller — or to multiple payees in the proportions the contract specifies — by check or direct deposit.

RECORD — Your balance, payment history, and document file remain available to you throughout the term, and for six years after the account closes.

Commercial deals are rarely simple — and that's the point

Long-term escrow servicing handles the structures commercial buyers actually negotiate:

- **Split disbursements** to multiple sellers, partners, trusts, or estates in fixed percentages.
- **Impound accounts** for property taxes, insurance premiums, and assessments, paid when clients submit the bills.
- **Payment structures that change over time** — interest-only periods, step-ups, seasonal schedules, scheduled rate adjustments.
- **Partial releases,** where documents are released as defined portions of the balance are paid.
- **Balloon administration** and payoff quotes good through a stated date.
- **Wrapped or underlying obligations,** where a portion of each payment services senior debt before the remainder reaches the seller.

WHO SHOULD USE A LONG-TERM ESCROW COMPANY

Every party to a seller-financed commercial transaction. The servicing cost is trivial against the asset value, it eliminates the largest source of disputes in these deals — disagreement about what was paid, when, and how it was applied — and it produces exactly the documentation a future lender, buyer, appraiser, or court will ask for.

If a seller resists escrow servicing, treat it as a material warning sign. See Section 14.

SECTION 8

What an escrow company does — and doesn't

New Mexico law requires an escrow company to remain strictly neutral. We do not take sides between buyer and seller, and we do not interpret the contract for either of you. Understanding that boundary up front prevents frustration later — and it is precisely what makes the record trustworthy.

WHAT WE DO

- ✔ Receive payments by ACH draft, online, phone, mail, lobby, or drive-through
- ✔ Record every payment in a permanent, detailed ledger
- ✔ Apply payments and disburse funds exactly as the contract directs
- ✔ Handle split disbursements to multiple payees
- ✔ Hold the General or Special Warranty Deed and other critical documents
- ✔ Hold and pay impounds for taxes, insurance, and assessments when bills are submitted
- ✔ Service structured payment schedules, including step-ups and interest-only periods
- ✔ Administer partial releases as defined in the contract
- ✔ Provide payoff quotes good through a stated date
- ✔ Give you online access to your full payment history
- ✔ Confirm contract terms are satisfied before funds and documents are released
- ✔ Offer account monitoring and reminders to both parties
- ✔ Offer mediation services for disputes
- ✔ Retain records for six years after the account closes

WHAT WE DON'T DO

- ✕ Give legal advice or interpret what a contract term means for you
- ✕ Draft the REC, the deed, or any binding document
- ✕ Negotiate or modify terms — those belong to the parties
- ✕ Amend a contract; only the parties or their attorneys can do that
- ✕ Represent either side in a dispute or legal proceeding
- ✕ Advise on tax consequences, capital gains, installment sale treatment, or 1031 matters
- ✕ Underwrite, appraise, or evaluate whether your deal is a good one
- ✕ Enforce the contract — enforcement requires legal action by a party
- ✕ Sign documents or make decisions on your behalf
- ✕ Prepare or send default notices on a seller's behalf
- ✕ Chase you for payments; timely submission is your responsibility
- ✕ Pay a tax or insurance bill from impounds until someone sends us the bill

WHY NEUTRALITY PROTECTS YOU

An escrow company that would bend a term for a seller would bend one against a buyer. Our refusal to interpret, advise, or take sides is exactly why the ledger is reliable and why lenders, auditors, and courts accept it. It also means one thing for you: **the contract is what governs.** We will service it precisely as written — so make sure it says what you think it says before you sign it.

SECTION 9

Commercial due diligence

Every item below is something a commercial lender would have required. Without a lender, each one is now optional — which is another way of saying each one is now your decision and your risk. Negotiate a due diligence period long enough to complete them.

Title and survey

- **Full title commitment** reviewed by your attorney, including every exception document — not just the schedule.
- **Owner's title insurance policy** at full purchase price, with the endorsements your counsel recommends.
- **ALTA/NSPS survey** showing boundaries, easements, encroachments, access, utilities, and setbacks. On commercial property this is not optional.
- **Access and easements** confirmed as legal, recorded, and adequate for your intended use — including truck, emergency, and utility access.
- **Record your interest** — the REC or a memorandum of it — with the county clerk.

Environmental and physical condition

- **Phase I Environmental Site Assessment.** Order it. If it recommends a Phase II, get the Phase II. This is the single most consequential line item in commercial diligence and the one most often skipped in seller-financed deals.
- **Property Condition Assessment** covering roof, structure, envelope, HVAC, electrical, plumbing, paving, and life-safety systems, with remaining useful life and replacement cost estimates.
- **Environmental hazards** — asbestos, lead paint, mold, underground storage tanks, radon — particularly in pre-1980 construction.
- **Water rights, wells, and septic** on rural New Mexico property. Confirm what conveys, what is permitted, and what a future buyer or lender will require.

Zoning, entitlements, and compliance

- **Zoning verification letter** confirming current zoning permits your intended use, plus parking ratios and any conditional-use conditions.
- **Legal non-conforming status** — if the use is grandfathered, understand exactly what happens after a vacancy or a casualty.
- **Certificate of occupancy, permits, and open code violations.** Ask the municipality directly rather than the seller.
- **ADA accessibility** exposure, especially if you plan renovations that trigger upgrade requirements.

Income, leases, and operations

- **Read every lease in full,** including amendments, side letters, and exhibits. Note expirations, renewal options, rent escalations, exclusivity clauses, co-tenancy provisions, and early termination rights.
- **Tenant estoppel certificates** signed by each tenant confirming rent, term, deposits, and that no landlord defaults exist. The lease says what was agreed; the estoppel says what is true today.
- **CAM reconciliations** for prior years, and confirmation that recoverable expenses were actually billed and collected.
- **Security deposits** accounted for and transferred at closing.
- **Rent roll reconciled to leases and to bank deposits** — all three, not one.
- **Service contracts** and which survive closing. Vendor agreements have a way of outliving their usefulness.
- **Tenant credit.** A rent roll is only as good as the tenants paying it.

Financial and tax

- **Two to three years of operating statements,** reconciled to tax filings and deposits.
- **Current property tax bill** and an understanding of how the sale may affect future assessed value.
- **Actual insurance policy and premium** — and a quote for your own coverage, which may differ substantially.
- **Utility bills for a full twelve months,** covering seasonal swings.
- **Ask your CPA about New Mexico gross receipts tax** as it applies to commercial rents, and about the tax treatment of interest and depreciation under your structure.
- **HOA, POA, or owners' association** dues, assessments, reserves, and pending special assessments.

> **THE ONE-SENTENCE VERSION**
>
> If you would be uncomfortable explaining to a partner why you skipped a particular item, don't skip it.

SECTION 10

The process, step by step

From identifying a target to recording your deed. The commercial path has more moving parts than a residential one, and the sequence matters.

1. **Preparation**
   Define your acquisition criteria, your capital, and your hold strategy. Assemble your team before you need it: a broker who handles seller-financed commercial deals, a commercial real estate attorney, a CPA, an environmental consultant, and a title company. Talk to a lender now — even if you don't intend to borrow — so you know what refinancing will require later.

2. **Identify and analyze**
   Underwrite the property before you make an offer. NOI, cap rate, DSCR, break-even occupancy, and a stressed case. If the deal only works on the seller's pro forma, it doesn't work.

3. **Letter of intent**
   Negotiate the full financing structure here, not later: price, down payment, rate, amortization, term, balloon, interest-only period, guarantee, prepayment, assignment, subordination, partial release, and who services the escrow. Also set your due diligence period and deposit terms.

4. **Purchase agreement and REC drafting**
   Your attorney drafts or reviews the purchase agreement and the Real Estate Contract. Commercial RECs are heavily negotiated documents. This is not the place to rely on someone else's form.

5. **Due diligence period**
   Everything in Section 9, on a calendar with deadlines. Title and survey review, Phase I, property condition assessment, zoning verification, lease review, estoppels, financial verification. Extend the period rather than shorten the work.

6. **Final negotiation**
   Diligence findings are leverage. Deferred maintenance, an environmental recommendation, or a lease problem becomes a price adjustment, a seller credit, an escrow holdback, or a structural change to the contract.

7. **Closing**
   You and the seller sign at the title company. Funds are disbursed, title insurance is issued, prorations and security deposits are settled, and your interest — the REC or a memorandum of it — is recorded with the county.

8. **Transition**
   Notify tenants of the new ownership and payment instructions. Transfer utilities, service contracts, and insurance. Confirm security deposits were actually transferred. Take over management from day one.

9. **Escrow setup**
   The title company forwards the executed documents to the escrow company. An account is created, an account number is assigned, and a Welcome Package is sent with payment instructions, your balance, and your due date. Set up automatic payment immediately and confirm the first payment posts correctly.

10. **Servicing**
    Payments are received and recorded, fees deducted per the contract, impounds set aside, and funds disbursed. Your history stays available online. Submit tax and insurance bills promptly if you have impounds.

11. **Managing to the balloon**
    Start the refinance conversation two years out, not two months. Keep clean financials, a documented payment history, and a current rent roll. Lenders want the story to be boring.

12. **Payoff, deed release, and recording**
    Request a payoff quote well in advance; quotes are good only through a stated date. On payoff, the deed is released to you. **Record it with the county clerk where the property sits.** This step is your responsibility and it is the one people forget.

SECTION 11

Owner financing and 1031 exchanges

If you are buying with exchange proceeds, or if your seller is trying to complete an exchange of their own, seller financing interacts with the 1031 rules in ways that are worth understanding before terms are set.

When you are the exchange buyer

A 1031 exchange lets an investor defer capital gains taxes by reinvesting the proceeds of one investment property into another like-kind property. The timeline is unforgiving: **45 days** from the sale of the relinquished property to identify replacement properties in writing, and **180 days** to close — with the 45 days counted inside the 180.

WHY SELLER FINANCING AND EXCHANGES FIT TOGETHER

The most common way an exchange fails is a financing delay on the replacement property. A seller who will carry removes the lender from your critical path entirely — no appraisal queue, no credit committee, no underwriting conditions arriving in week eleven. For a buyer with a clock running, certainty of closing is worth real money, and it is a legitimate reason to accept terms slightly less favorable than you'd otherwise push for.

Seller financing also helps you satisfy the reinvestment requirement. To fully defer, you generally need to acquire property of equal or greater value and reinvest all the proceeds, replacing the debt that was on the relinquished property with new debt or additional cash. A seller-carried note can serve as that replacement debt — but the structure has to be right, so confirm it with your Qualified Intermediary and your CPA *before* the terms are locked.

Requirements that don't bend

- **You cannot take possession of the sale proceeds.** A Qualified Intermediary must hold and transfer the funds. Touching the money disqualifies the exchange.
- **Both properties must be held for investment or business use.** Not personal use, not inventory held for resale.
- **Identification must be in writing within 45 days,** following the three-property rule or the 200% rule.
- **Closing must occur within 180 days.** There are no extensions for a deal that ran long.
- **Cash or non-like-kind property you receive is "boot"** and may be taxable.
- **Report the exchange** on your tax return using the appropriate IRS form.

When the seller is the one exchanging

A seller completing their own exchange may be under exactly the same 180-day clock — which makes them highly motivated on timing and often flexible on terms. It can also make them *unable* to carry paper in certain structures, because an installment note may not qualify as reinvested proceeds. Ask early. A seller who says "I'd carry, but my exchange won't allow it" is telling you something you need to know before you spend money on diligence.

SUNWEST 1031, LLC

Our sister company provides Qualified Intermediary services for forward, reverse, and improvement exchanges in New Mexico. If your acquisition involves exchange proceeds — on either side of the transaction — bring the QI into the conversation before the letter of intent is signed rather than after.

www.Sunwest1031.com · docs@Sunwest1031.com · 505-938-3812

Exchange rules are technical and the consequences of getting them wrong are expensive. Nothing in this section is tax advice. Work with a Qualified Intermediary and your own CPA on every exchange.

SECTION 12

Questions to ask

Print this section and work through it. A capable broker and a serious seller will answer all of it without hesitation — and anyone who won't has already told you something useful.

Ask yourself first

1. Does this property service the debt at today's actual NOI, with a cushion, under a stressed case?
2. What is my exact plan for the balloon — refinance, sale, or payoff — and what does the property need to look like by then?
3. How many months of full debt service can I cover with zero income from this property?
4. What happens to my numbers if my largest tenant leaves?
5. Am I buying this because the deal is good, or because the financing is available?

Ask the seller

1. Do you own the property free and clear? If not, what debt exists, and will it be paid off at closing?
2. Why are you willing to carry? (There are excellent answers. Listen for one.)
3. Are you completing a 1031 exchange, and does it affect your ability to carry a note?
4. What down payment, rate, amortization, and term do you have in mind — and where is there flexibility?
5. Is there a balloon, and on what date? Would you consider extension options?
6. Will you accept an entity-only obligation, or a guarantee that burns off after a payment history?
7. Can I prepay in whole or in part without penalty?
8. Will you allow assignment to an affiliated entity, and assumption by a future buyer?
9. Will you subordinate to future financing? Under what conditions?
10. Will you agree to partial releases, and at what release price per parcel?
11. What are the default and cure provisions, and what is the default interest rate?
12. Will you allow a full due diligence period including a Phase I and a property condition assessment?
13. Will you provide leases, estoppels, operating statements, tax returns, and service contracts?
14. What capital work has been done, what is deferred, and what do you know about this building that isn't in the file?
15. Are there environmental reports, prior uses, or tank removals I should know about?
16. Will you agree to a licensed escrow company servicing the contract?

Ask your broker

1. How many seller-financed commercial transactions have you closed, and how recently?
2. What are comparable cap rates and rents for this asset type and submarket?
3. What is your independent read on this rent roll and the tenants' credit?
4. Which commercial attorneys, title companies, and environmental consultants do you work with?
5. Where is this seller genuinely motivated — price, timing, or structure?
6. What would a conventional lender flag about this property?

Ask your attorney, CPA, and lender

1. *Attorney:* what does this contract actually allow and prohibit — and what are my remedies and exposures on default?
2. *Attorney:* is my entity structure appropriate, and what personal exposure remains?
3. *CPA:* how are interest, depreciation, and gross receipts tax treated under this structure?
4. *Lender:* what would you need to see in three to five years to refinance this, and at what LTV and DSCR?

Ask the escrow company

1. What are your setup and monthly servicing fees, and who pays them under this contract?
2. Can you service split disbursements, impounds, step-up payments, and partial releases?
3. How do I set up ACH, and what online access will I have?
4. How do I request a payoff quote, and how long is it valid?
5. What happens procedurally if a payment is late?

SECTION 13

What to expect

When it goes right — which is most of the time

Most seller-financed commercial contracts are uneventful, and "uneventful" is the goal. You close, the documents reach the escrow company, and a Welcome Package arrives with your account number, balance, and payment instructions. You set up an ACH draft. The payment clears on the same day every month.

You operate the building. Leases renew, rents step up, NOI improves. You check the balance occasionally and watch it amortize. Once a year you confirm taxes are paid and coverage is in force — or you send us the bills and we pay them from impounds. When you need documentation for a lender, an appraiser, a partner, or your CPA, it exists and it is accurate.

Somewhere in year three or four you take a clean payment history, improved financials, and a stronger rent roll to a lender and refinance into conventional debt — or you sell to a buyer who assumes the contract at a rate they can't get anywhere else. Either way, a payoff quote is issued, the deed is released, you record it, and the asset is yours free and clear.

When it goes wrong

A tenant leaves. A roof fails. A partner exits. Rates move. What actually helps:

- **Move early.** The strongest predictor of a workable outcome is a buyer who calls before missing a payment rather than after missing three. A seller still receiving communication is a seller still willing to negotiate.
- **Negotiate directly with the seller.** Your escrow company cannot modify terms or advocate for you. The seller can agree to a deferral, a re-amortization, or an extension — and if all parties sign a written amendment, we will service it exactly as amended.
- **Get every change in writing, signed by everyone with an interest.** A verbal accommodation does not exist. Only a signed amendment does.
- **Know your cure period before you need it.** Find that language today.
- **Consider mediation.** Many disputes are disagreements about what the contract says, and they resolve faster and cheaper outside of litigation.
- **Sell while you still have options.** If you have equity and can't hold the asset, selling and paying off the contract protects your position. This only works if you act before you are deep in default.

WORST CASE — READ THIS CAREFULLY

If you default and do not cure, the typical remedy under a New Mexico Real Estate Contract is that the seller may terminate the contract, take the property back, and retain the payments already made. Your equitable interest ends. The escrow company then delivers documents according to the contract's instructions.

This is generally faster than a bank foreclosure, and there is often no equity returned to you. A buyer four years into a contract, with a substantial down payment and years of principal paydown behind them, can lose all of it. If you signed a personal guarantee, exposure may extend beyond the property to you individually.

Exact rights, notice requirements, and cure periods depend on your specific contract and on New Mexico law. If you receive a default notice, contact your attorney immediately — not next week. Your escrow company cannot advise you and cannot intervene on your behalf.

HOW TO MAKE THE WORST CASE NEARLY IMPOSSIBLE

Underwrite conservatively and buy at a DSCR with real cushion. Hold six to twelve months of debt service in reserve. Fund capital reserves annually rather than reactively. Negotiate meaningful cure periods and a capped default rate. Solve the balloon years before it arrives. Set up automatic payment so a default can never happen through inattention. Communicate at the first sign of stress. None of these are expensive, and together they eliminate nearly all of the risk described above.

SECTION 14

Red flags and pitfalls

Seller financing is a legitimate and widely used commercial tool. It also attracts a small number of people who prefer transactions with less scrutiny. Any single item below is reason to slow down.

WARNING SIGNS

- **Resistance to a Phase I environmental assessment.** On commercial property this is close to disqualifying on its own.
- **No title company, or pressure to close without title insurance.** There is no legitimate reason for this.
- **Refusal to use a neutral escrow servicer,** with payments going directly to the seller instead.
- **A due diligence period too short to complete real diligence,** or refusal to extend when third-party reports run long.
- **Leases, estoppels, or operating statements that are "not available."** They exist. Their absence is the answer.
- **A rent roll that won't reconcile to the leases or the bank deposits.**
- **Tenants who won't sign estoppels,** or who describe terms that differ from the leases you were given.
- **Evasiveness about existing debt on the property** or about whether it will be paid off at closing.
- **Above-market seller financing paired with an above-market price.** Check whether the structure is disguising a valuation problem — get your own appraisal.
- **Vague partial release or subordination language.** If it isn't specific enough to administer, it isn't a provision.
- **A default interest rate or late-fee structure that is punitive rather than protective.**
- **Pressure to skip attorney review,** or a "standard form" the seller won't let you mark up.
- **Manufactured urgency.** A competing offer that materializes the moment you ask for diligence time.
- **Wire instructions arriving by email,** or funds directed anywhere other than a title company's escrow account. Always verify by calling a number you looked up independently.

Pre-closing checklist

- [ ] Independent underwriting completed, including a stressed case
- [ ] Title commitment and all exception documents reviewed by counsel
- [ ] ALTA survey obtained and reviewed
- [ ] Owner's title policy at full purchase price, with endorsements
- [ ] Phase I completed; Phase II obtained if recommended
- [ ] Property condition assessment completed
- [ ] Zoning verification and certificate of occupancy confirmed
- [ ] All leases read in full; estoppels signed by every tenant
- [ ] Rent roll reconciled to leases and to bank deposits
- [ ] Operating statements reconciled to tax filings
- [ ] Security deposits accounted for and transferred at closing
- [ ] Seller's existing debt confirmed in writing as paid off or documented
- [ ] Guarantee, prepayment, assignment, subordination, and release terms in writing
- [ ] Default and cure provisions read and understood
- [ ] REC drafted or reviewed by a commercial real estate attorney
- [ ] REC or memorandum recorded with the county clerk
- [ ] Licensed escrow company engaged; first payment scheduled
- [ ] Reserves funded — operating, capital, and debt service
- [ ] Balloon date calendared with a written exit plan

SECTION 15

Next steps

If you've read this far, you're better prepared than most buyers who complete these transactions. Here is how to move from analysis to acquisition.

1. **Define the box**
   Asset type, submarket, price range, target cap rate, minimum DSCR, and hold period. A written acquisition criteria sheet prevents the deal that is available from becoming the deal you wanted.

2. **Assemble the team before you need it**
   A commercial attorney, a CPA, a broker who works seller-financed deals, an environmental consultant, a title company, and an escrow servicer. Sourcing professionals under a due diligence deadline produces bad choices.

3. **Talk to a lender now, even if you won't borrow**
   Find out what they would require to refinance this asset class in three to five years, at what LTV and DSCR. That conversation defines your balloon exit before you have a balloon.

4. **Underwrite before you offer**
   Build the model — NOI, cap rate, DSCR, break-even occupancy, balloon balance, refinance value required — on every property you consider seriously. Run the stress cases. The spreadsheet decides.

5. **Negotiate structure in the letter of intent**
   Rate, amortization, term, balloon, interest-only period, guarantee, prepayment, assignment, subordination, partial release, escrow servicing. All of it, up front.

6. **Buy the diligence**
   Phase I, PCA, ALTA survey, full title review, lease and estoppel review. Budget for it as a cost of doing business rather than an expense to be minimized.

7. **Set up servicing correctly on day one**
   Engage the escrow company before closing so that impounds, disbursement instructions, and structured payment schedules are built into the documents rather than added afterward.

8. **Manage to the exit from month one**
   Clean books, current rent roll, documented payment history, and a calendared balloon date with a written plan. Refinancing is won in the twenty-four months before you apply.

THE BOTTOM LINE

Seller financing is not a lesser form of commercial real estate finance. It is a negotiated instrument that can deliver structure, speed, and flexibility no institutional lender will offer — on assets many lenders will not touch at all.

It rewards buyers who underwrite honestly, negotiate the terms that matter, buy the diligence, and plan the exit before they need it. **Model the deal. Read the contract. Order the Phase I. Solve the balloon. Use a neutral servicer.** Do those five things and you are very likely to be one of the many buyers for whom this works exactly as intended.

Have questions about escrow?

We're happy to explain how long-term escrow servicing works — before you're a client, and without a sales pitch.

Sunwest Escrow, LC has served New Mexico since 1987. We specialize in long-term escrow servicing for Real Estate Contracts and other seller-financing instruments, acting as a neutral third party for buyers and sellers across the state. We hold deeds and documents, receive and record payments, manage impounds, and maintain the permanent record of every transaction we service.

We can explain how servicing works, what our fees are, how payments and impounds are handled, and what to expect once your account is open. What we can't do — by law and by principle — is give you legal or tax advice, interpret your contract, or tell you whether a particular deal is a good one. For those questions, please talk to an attorney and a tax professional.

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