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The Commercial Seller's Guide to Owner Financing

Carrying the paper on your building — the tax case, the credit risk, and how to structure a note that pays for twenty years.

SUNWEST ESCROW, LC
Serving New Mexico Since 1987

Built around the tax question

Installment sales, recapture, and the trap that catches sellers.

Real numbers

A cash sale and a carried note, after tax, side by side.

From a neutral party

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

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LONG-TERM ESCROW SERVICING · ALBUQUERQUE, NEW MEXICO

FREE SELLER'S GUIDE

START HERE

The check is not the only exit

You have owned this building a long time. The basis is low, the depreciation is largely used up, and the gain is substantial. You are ready to be done with it — and the standard advice is to list it, sell it, and write a very large check to the IRS in April.

There is another way to exit, and for a commercial owner in your position it frequently produces more money, less risk of the deal collapsing, and a considerably better tax result. You sell the building and carry the financing yourself. The buyer pays you over time, with interest, under a written contract. You hold the property as security until they've paid.

Three things make this attractive on commercial property specifically. **The tax deferral is worth real money** when the gain is large — you earn interest on tax dollars you would otherwise have paid immediately. **The buyer pool expands dramatically,** because commercial lending is narrow, slow, and cyclical, and a seller who will carry is often the only financing available for a special-use, partially leased, or rural asset. And **the yield beats what the after-tax proceeds would earn** in almost any conservative alternative.

It also puts your capital at risk with a borrower you selected. This guide will be direct about that.

FOUR THINGS TO KNOW BEFORE YOU READ ANOTHER PAGE

1. Deferral is not forgiveness. An installment sale spreads the tax; it doesn't erase it. And one significant piece — depreciation recapture — is generally due in the year of sale regardless. Section 6.

2. You are the underwriter now. No lender is checking the buyer, the leases, or the environmental condition. Everything a bank would have required is now something you require, or a risk you took without knowing it.

3. If you were planning a 1031 exchange, carrying a note complicates it badly. You generally cannot do both without careful structuring. Section 7, before you sign anything.

4. The good news: this is a business-purpose transaction. The consumer-protection rules that burden residential seller financing largely don't apply here. Your obligations are lighter and your structuring freedom is much greater.

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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 your building sells. We hold the documents, record every payment in a permanent ledger, manage impounds and split disbursements, and follow the contract exactly as written for both parties without taking sides. We have serviced New Mexico contracts since 1987, including a great many commercial ones. That neutrality is why we can be direct with you about what works and what doesn't.

PART ONE · SECTION 1

What owner financing is

You take the lender's place. Instead of the buyer arriving with borrowed money, they pay you directly over time, with interest, under terms you negotiate — and you hold the property as security until the obligation is satisfied.

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

HOW TITLE WORKS

The buyer takes possession and operates the property as its owner: they collect the rents, sign the leases, pay the taxes, carry the insurance, and make the capital decisions. You retain **legal title** as security — functionally similar to a lender holding a lien. The buyer holds **equitable title**, a real and recordable ownership interest. Your signed deed is held by a neutral escrow company and released only when the contract is satisfied.

Three structures, and why the choice matters

STRUCTURE	HOW IT WORKS	YOUR POSITION ON DEFAULT
Real Estate Contract	You retain legal title; the buyer holds equitable title and possession; the deed sits in escrow until payoff.	Contract remedies, generally faster than foreclosure. The New Mexico standard.
Note and mortgage or deed of trust	Title transfers to the buyer at closing; you record a lien.	Foreclosure — a formal process, slower, with more procedural protection for both sides.
Carry-back behind bank debt	A lender takes first position; you carry a second for part of the gap.	Subordinate. Materially riskier. Section 11.

Which structure you use changes your remedies, your buyer's ability to encumber the property, and sometimes your tax position. Decide it with your attorney early, not at document review.

Where the deed goes

At closing you sign a deed conveying the property, but it isn't delivered to the buyer. It goes to a licensed escrow company that holds it for the life of the contract, receives payments, records each one, manages impounds, disburses funds according to the contract — including to multiple payees if you have partners — and releases the deed only when the contract has been satisfied. Section 13 explains why this is not optional on a commercial contract.

THE VOCABULARY YOU'LL BE NEGOTIATING IN

DSCR — net operating income divided by annual debt service; your buyer's cushion, and your margin of safety.

ITV — investment-to-value; your note balance against the property's value.

Covenants — ongoing obligations the buyer accepts: reporting, maintenance, insurance, leasing limits.

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

Subordination — agreeing to sit behind new financing. Rarely in your interest.

Partial release — releasing defined parcels as portions of the balance are paid.

PART ONE · SECTION 2

Why commercial sellers carry

These are the reasons owners of commercial property carry paper deliberately, even when a cash buyer is available.

1. The tax deferral is worth real money on a large gain

This is usually the largest single item. An installment sale may let you recognize gain as principal payments arrive instead of all in the year of sale. On a building with two decades of appreciation and a depreciated basis, that can move a seven-figure gain out of one brutal tax year and across a decade. **And the deferred tax works for you in the meantime** — you are earning interest on dollars that would otherwise have gone to the government. Section 6 covers the mechanics and the exceptions.

2. Your yield beats the alternative, after tax

Compare honestly. A cash sale leaves you with after-tax proceeds to reinvest at whatever conservative instruments pay. Carrying at 7–8% on the full pre-tax price, secured by a building you know better than any analyst could, is a substantially different number. Section 5 works it out.

3. The buyer pool expands, and so does the price

Commercial lending is narrow and cyclical. Underwriting tightens, appraisals come in low, credit committees decline deals the asset would support. A seller who will carry reaches buyers who cannot get financed at all — and buyers who need terms pay for terms. A price premium over a cash offer is normal and rational for both sides.

4. Special-use and difficult assets finally sell

Buildings with no comparable sales. Partially leased or vacant assets. Rural commercial property. Older construction. Single-tenant buildings with an expiring lease. Anything with an environmental history. These are the properties that sit for a year with a conventional buyer pool and sell in weeks with terms.

5. Certainty and speed of closing

No lender appraisal, no credit committee, no conditions arriving in week eleven, no financing contingency that lets the buyer walk. If you have watched a commercial deal die at the lender, you know exactly what that certainty is worth — and it is negotiating capital you can spend on price.

6. You exit management completely

No tenants, no leasing, no roof, no HVAC, no property manager, no capital calls. Under an REC the buyer owns and operates. You hold paper and receive a payment.

7. You know this collateral better than any lender could

You know the roof's age, the tenants' reliability, the submarket, the parking, the neighbors, the deferred items and the hidden strengths. A bank underwrites a file. You underwrite an asset you have owned for twenty years. That informational advantage is real, and it is why sellers can accept coverage ratios lenders won't.

8. It can solve a partnership or estate problem

Partners who want out at different times. An estate that needs an orderly liquidation rather than a fire sale. A retiring owner-operator selling the building to the person buying the business. A structured payment stream can be split among multiple parties in fixed shares and administered by a neutral servicer for as long as it takes.

THE TRADE YOU ARE ACTUALLY MAKING

You are converting an operating asset into a fixed-income position secured by that same asset. You give up appreciation, depreciation, and control. You gain yield, tax timing, and the end of management. **For an owner ready to be finished, that is frequently the best exit available — provided the buyer is right.** Everything in Part Two is about making sure the buyer is right.

PART ONE · SECTION 3

The honest side

Every advantage in the last section exists because you accepted a risk a lender would have priced or declined. Here is that risk, without softening.

WHAT YOU ARE TAKING ON

- ✕ **You are extending credit.** If the buyer's business fails, their anchor tenant leaves, or their plan doesn't work, your income stops and your remedy is a legal process.
- ✕ **Your collateral can deteriorate in ways residential collateral doesn't.** A house sitting empty loses value slowly. A commercial building that loses its anchor tenant, falls behind on maintenance, or develops an environmental issue can lose a great deal of value quickly — while you're still holding the note.
- ✕ **Taking it back means taking back the liabilities.** Tenants, leases, service contracts, deferred capital, and — critically — environmental exposure you had successfully transferred away.
- ✕ **Depreciation recapture is generally due in the year of sale.** Even under the installment method. If you did a cost segregation study, the year-one bill can be much larger than sellers expect. Section 6.
- ✕ **Deferral is not forgiveness,** and large installment obligations can carry an additional interest charge on the deferred tax. Ask your CPA whether that applies to you.
- ✕ **You generally cannot also do a 1031 exchange** on the carried portion without careful structuring. Section 7.
- ✕ **Your money is illiquid.** Commercial notes can be sold, but the market is thinner than for residential paper and the discount is wider.
- ✕ **A fixed payment loses purchasing power** over a fifteen- or twenty-year term, and you gave up the appreciation that would have offset it.
- ✕ **The balloon is a real event for both of you.** If your buyer cannot refinance on the date — because rates moved, or NOI slipped, or the lending market closed — you have a default rather than a payoff.
- ✕ **Commission and closing costs are due in cash at closing.** They come out of the down payment before you see any of it. So does your year-one tax bill. Section 5.
- ✕ **You stay involved for years.** Reviewing annual financials, confirming insurance and taxes, watching the rent roll. Far less than operating the building — but not nothing.

HOW EXPERIENCED SELLERS NEUTRALIZE EACH OF THESE

Require a substantial down payment — 25% to 35% is common and it protects against most of the list at once. Underwrite the buyer's balance sheet and track record, not just their enthusiasm. Write covenants that require annual financials, a current rent roll, proof of insurance, and maintenance standards, so you see trouble two years out rather than two months out. Impound taxes and insurance. Get an environmental indemnity from the buyer. Push the balloon out and add extension options. Model your year-one tax against your closing cash before you set the down payment. And use a licensed escrow company so the record is unimpeachable.

PART ONE · SECTION 4

Is this right for your situation?

Carrying usually makes sense if...

- ✓ **You have a large gain and a low basis.** The tax arithmetic alone can justify the decision. This is the most common profile.
- ✓ **You own the building free and clear,** or can pay off existing debt at closing. This gives you complete structuring freedom and first position.
- ✓ **You don't need the full proceeds.** Your retirement, your next acquisition, or your estate plan doesn't depend on a lump sum arriving.
- ✓ **The property is hard to finance conventionally** — special-use, partially leased, rural, older, or too small for institutional interest.
- ✓ **You want income rather than a reinvestment problem.** A predictable payment beats deciding what to do with $1.3 million in a market you don't like.
- ✓ **You have a specific buyer** — a tenant, a competitor, a key employee, the person buying your business — whose capability you can actually assess.
- ✓ **A setback would be survivable.** If payments stopped for a year while you worked it out, your life would still function.
- ✓ **You're willing to underwrite properly** and to hold covenants that let you monitor the asset.

Take the cash — or exchange — if...

- × **You need the proceeds,** or your plan has a deadline attached to them.
- × **You intend to do a 1031 exchange into replacement property.** Carrying a note generally conflicts with that. Pick one, deliberately, with advice. Section 7.
- × **You cannot pay off existing debt at closing.** Carrying behind a lender is a different and materially riskier proposition. Section 11.
- × **The only interested buyers can't put down 20% or more.** Thin equity in a commercial deal is how sellers end up owning the building twice.
- × **The property has unresolved environmental questions.** Take the cash and let the liability go with it, or resolve them first.
- × **You're not willing to monitor the asset** for the life of the contract, and have nobody to do it for you.
- × **Your estate or partnership needs a clean, dated liquidation** rather than an obligation running fifteen years.
- × **The prospect would genuinely worry you.** That's a legitimate answer, and no yield compensates for it.

THE TEST

Three questions. **One:** at today's actual net operating income, does this property comfortably cover the payment I'm asking for — with a cushion, under a stressed case? **Two:** if I had to take this building back in year four, could I operate or re-sell it? **Three:** does my year-one tax bill fit inside my cash at closing? Three yeses and this is likely your best exit. Any no is a structuring problem to solve before you sign.

PART ONE · SECTION 5

The numbers, after tax

The comparison that matters isn't price against price. It's after-tax income against after-tax income — and that is where carrying a note on a low-basis commercial building tends to separate from a cash sale.

A multi-tenant retail and office building held twenty-two years. Market value about $1,450,000. Adjusted basis after depreciation, roughly $410,000. Owned free and clear.

	SELL FOR CASH	CARRY THE NOTE
Price	$1,450,000	$1,520,000 — a premium for terms
Commission (5%)	($72,500)	($76,000) — due in cash at closing
Closing costs	($14,500)	($15,200)
Down payment received	—	$380,000 (25%)
Gross cash at closing	$1,363,000	$288,800
Estimated tax due in year of sale	(~$300,000)	(~$115,000) — recapture plus gain on the down payment
Net cash after year-one tax	**$1,063,000**	**~$174,000**
Amount carried	—	$1,140,000 at 7.25%, 25-year amortization, 10-year balloon
Annual income	$53,150 if proceeds earn 5%	**$98,885** in contract payments
Of which is interest, year one	$53,150	About $82,100
Balance at balloon (year 10)	—	About $903,000
Total received over 10 years	$1,063,000 plus about $531,000 of earnings	About $380,000 down, $989,000 in payments, and a $903,000 balloon

Illustrative only, using assumed tax rates and an assumed reinvestment return. Your actual figures depend on your basis, your bracket, your state, depreciation history, and current law. Run this with your own CPA before relying on any of it.

WHAT THIS EXAMPLE IS ACTUALLY SHOWING

The deferred tax is working for you. In the cash column, roughly $300,000 leaves permanently in year one. In the carry column, most of that stays inside the $1,140,000 you're earning 7.25% on. That is the real installment-sale argument, and on a low-basis building it is worth more than the rate spread.

But read the income line honestly. The $98,885 payment is not all yield — roughly $82,100 is interest and about $16,800 is your own principal coming back. The fair comparison is $82,100 of interest against $53,150 of investment income. Still a substantial difference, and it comes with credit risk the cash column doesn't have.

And note the cash-at-closing line. $288,800 sounds comfortable until roughly $115,000 of tax comes out of it. Your down payment has three jobs: protect you against default, cover commission and costs, and fund your year-one tax. Set it after you've sized all three.

WHAT ISN'T IN THE TABLE

Appreciation and depreciation go to the buyer from closing forward. **Credit risk** is real and unpriced here. **The balloon** is an event, not a certainty — if your buyer can't refinance in year ten you have a negotiation rather than a payoff. And **liquidity**: in the cash column you hold a million dollars you can deploy; in the carry column you hold paper you could sell only at a discount.

Taxes

This is the section that decides most commercial carry-back deals, and it contains the trap that catches sellers every year. None of this is tax advice. It is the agenda for a meeting with your CPA before you agree to any terms.

Installment sale treatment

When you sell property and receive payments across more than one tax year, the installment method generally allows you to recognize gain proportionally as principal payments are received, rather than all at once. Interest is ordinary income taxed as received. Each principal payment is split between return of basis and recognized gain according to your gross profit ratio.

On a building with a large gain, this can move you out of a single punishing year, potentially reduce your effective rate, and keep more capital earning for you in the meantime. That last part is the argument sellers underweight.

THE TRAP: DEPRECIATION RECAPTURE

Depreciation you claimed over the years is generally recaptured, and **that portion is typically recognized in the year of sale — even under the installment method, and even though you haven't collected the money.**

On commercial property this has two layers worth asking about specifically. Recapture attributable to the building itself is one calculation. **If you ever performed a cost segregation study** and accelerated depreciation on components and personal property, the recapture on those items can be treated less favorably and can be substantially larger — and it lands in year one.

Sellers who accelerated depreciation aggressively during ownership are sometimes startled by the year-one bill. **Get the number before you set your down payment,** not after.

OTHER ITEMS TO RAISE, SPECIFICALLY

- **The interest charge on large installment obligations.** Above a threshold, deferred tax on installment obligations can carry an additional interest charge. On a seven-figure note this is a real consideration. Ask whether it applies to you and how it changes the math.
- **Net investment income tax.** Both the gain and the interest income may be exposed. Ask how spreading the gain affects your exposure year by year.
- **Interest is ordinary income.** The yield portion of every payment is taxed at ordinary rates, not capital gains rates.
- **Imputed interest.** A rate set unusually low can cause interest to be imputed anyway. Below-market seller financing is not free, particularly in related-party deals.
- **Electing out.** The installment method is a default, not a mandate. In some years — a low-income year, an expiring loss carryforward, an anticipated rate change — recognizing everything at once is better. Ask for both calculations.
- **Dealer status.** If you develop or sell property frequently, you may be treated as a dealer holding inventory, which can disqualify installment treatment. Raise this if you own more than one.
- **Entity and state issues.** How the property is held — individually, in an LLC, in a partnership, in a trust — affects the answer, as does New Mexico treatment. Ask about both.
- **Repossession.** If the buyer defaults and you take the property back, there are specific tax consequences. Understand them before it happens.
- **Selling the note later** generally accelerates the remaining gain into that year. Factor it into any liquidity plan.
- **Death during the term.** Ask how the installment obligation is treated in your estate. The answer surprises people, and it's better handled in your plan than by your heirs.

ONE MEETING, BEFORE YOU LIST

Bring your CPA the acquisition date and price, the full depreciation schedule, any cost segregation study, records of capital improvements, how the property is titled, and the terms you're considering. Ask for three numbers: **your total tax on a cash sale, your tax in year one under an installment sale, and the down payment required to cover it.** Those three numbers will shape the entire transaction.

PART ONE · SECTION 7

Exchange or carry

If you have been considering a 1031 exchange into replacement property, this section needs to be resolved before you negotiate anything else. The two strategies pull against each other.

Why they conflict

A 1031 exchange defers gain by requiring that the proceeds go to a Qualified Intermediary and be reinvested in like-kind replacement property. **A promissory note you hold is not like-kind property.** If you carry back financing inside an exchange, the note is generally treated as boot — taxable to the extent of gain — which undoes precisely what the exchange was meant to accomplish.

THE PRACTICAL OPTIONS

- **Exchange, and don't carry.** The cleanest path if replacement property is your goal. Take cash at closing, let the intermediary hold it, and buy your replacement asset.
- **Carry, and don't exchange.** Also clean. Use the installment method to spread the gain instead. For a seller who wants income rather than another building, this is usually the better fit anyway.
- **Carry a small note and exchange the rest,** accepting that the note portion is likely taxable boot. Sometimes the right answer when a buyer needs a modest gap filled.
- **Have the intermediary hold the note** and sell or convert it within the exchange period so cash reaches the replacement purchase. This can work, and it must be structured in advance by people who do it regularly.
- **Buy the note yourself from the exchange** with outside funds, so cash flows into the replacement property and you personally hold the paper. Also workable, also technical.

TIMING IS UNFORGIVING

An exchange gives you **45 days** from closing to identify replacement property in writing and **180 days** to close, with the 45 counted inside the 180. There are no extensions for a deal that ran long. **You cannot decide to structure an exchange after closing** — once you have constructive receipt of the proceeds, the opportunity is gone permanently.

If there is any chance you'll want an exchange, engage a Qualified Intermediary before your purchase agreement is signed. It costs little and preserves the option.

How to decide

The question underneath is simple: **do you want another building, or do you want income?** An exchange is the right tool for an owner who intends to stay invested in real estate and wants to defer indefinitely, potentially until a step-up at death. Carrying is the right tool for an owner who is finished operating property and wants a yield with a tax schedule.

Sellers get into trouble when they want both and decide late. Pick early, with your CPA and your attorney, and structure toward it from the first offer.

SUNWEST 1031, LLC

Our sister company provides Qualified Intermediary services for forward, reverse, and improvement exchanges in New Mexico. If an exchange is even a possibility on your sale, bring the QI into the conversation before the purchase agreement is signed rather than after — the options above are only available in advance.
www.Sunwest1031.com · docs@Sunwest1031.com · 505-938-3812

PART TWO · SECTION 8

Underwriting your buyer

You are now the credit committee. On commercial property this means underwriting three separate things: the property's ability to service the debt, the buyer's ability to operate it, and the buyer's ability to survive a bad year.

First: does the property cover the payment?

Before you evaluate the buyer at all, confirm the asset supports the note. Calculate net operating income from **verified** figures — leases, estoppels, actual operating statements, your own tax returns for the property — not from a pro forma. Then apply a realistic vacancy factor, market-rate management, and annual capital reserves even if you never charged yourself for them.

Divide that NOI by the annual payment you're proposing. A bank would generally want 1.25 or better. You can accept less because you know the asset — but know exactly how much less, and why. **A payment the building cannot cover is a default with a delay built in,** regardless of how capable the buyer seems.

THEN: WHAT TO COLLECT FROM THE BUYER

- ✔ Personal financial statement for every principal
- ✔ Two to three years of personal and business tax returns
- ✔ Business financial statements, if they'll operate from the building
- ✔ A schedule of real estate owned, with performance
- ✔ Liquidity verification — bank and brokerage statements
- ✔ Credit report and background check on the principals
- ✔ Entity documents, ownership percentages, and signing authority
- ✔ Their written business plan for the property
- ✔ Proof the down payment is theirs and seasoned
- ✔ Banking and lender references
- ✔ References from sellers or landlords they've dealt with
- ✔ Litigation, bankruptcy, and judgment history

What you're actually looking for

- **Experience with this asset class.** A capable apartment operator is not automatically a capable retail operator. Ask what they've owned, for how long, and how it performed. Then verify it.
- **Liquidity after closing.** The single best predictor in commercial credit. A buyer who has nothing left after the down payment cannot survive a vacancy, a roof, or a tenant improvement package. Ask for a number and verify it.
- **A plan that makes sense.** If their model requires rents twenty percent above market or a lease-up timeline no one has achieved in this submarket, the plan is the risk. Have them walk you through it.
- **Their refinance path.** If there's a balloon, ask now what they intend to do about it and which lenders they've already spoken to. Vagueness here is the most common cause of trouble in year seven.
- **Character evidence.** How did they behave in a prior deal that went badly? References who have seen them under stress are worth more than references who have seen them at closing.
- **Who is actually signing.** An entity with no assets is not a borrower. Understand exactly whose balance sheet stands behind this obligation.

IF YOUR BUYER IS YOUR TENANT, YOUR EMPLOYEE, OR THE PERSON BUYING YOUR BUSINESS

These are often excellent transactions, because you have years of direct evidence about how the person performs. Use it — a tenant who has paid on time through a recession tells you more than any financial statement.

Then underwrite them anyway. Collect the same documents, verify the same figures, and document your decision. Familiarity is powerful evidence, not a substitute for the file. And if the transaction ever goes wrong, you will be very glad the paperwork was done at arm's length.

PART TWO · SECTION 9

Structuring the note

You have far more freedom here than a lender does, and every line is worth deciding deliberately. Settle these in the letter of intent, not at document review.

TERM	HOW TO THINK ABOUT IT
Price	Terms justify a premium, but the price should remain defensible against value. A note written well above value is hard for the buyer to refinance, hard for you to sell, and the first thing a struggling buyer walks away from.
Down payment	Your central protection. 25–35% is common on commercial. It must also cover commission, closing costs, and your year-one tax. Size it against all four jobs.
Interest rate	Priced for the risk you're accepting and the market. Commercial transactions between businesses generally have more latitude than consumer loans, but confirm applicable limits with counsel.
Amortization	Twenty to twenty-five years is typical. Longer amortization improves the buyer's coverage; shorter returns your capital faster. This is a genuine trade, not a giveaway.
Term and balloon	Five to fifteen years. Shorter returns your money sooner and increases refinance risk; longer defers your capital and reduces it. Consider extension options with a fee and a rate adjustment — they give both sides a release valve.
Interest-only period	Sometimes justified on a value-add purchase. Understand it delays your principal return and weakens your position if things go badly early.
Personal guarantee	Ask for it. Full, capped, or burning off after a defined performance period with objective triggers. An entity-only obligation on a thin entity means your only remedy is the building.
Additional collateral	Other real estate, a pledge of entity interests, a letter of credit, or a cash reserve held by the escrow company. Particularly useful when the down payment is lighter than you'd like.
Prepayment	Most sellers allow it. If you want yield protection, a declining prepayment fee is cleaner than a lockout — but remember an early payoff accelerates your remaining gain into that year.
Assignment and assumption	You underwrote this buyer. Require your consent, with defined standards, before the contract can be assigned or the property transferred.
Subordination	Agreeing to sit behind new financing gives away your position. If you allow it at all, cap the senior amount, require a combined loan-to-value limit, and require notice and cure rights.
Further encumbrance	Decide whether the buyer may place any other lien on the property. Silence is not prohibition — say so explicitly.
Partial release	Only if the asset genuinely warrants it. Define release prices, order, and the effect on the remaining balance precisely — vague release language destroys collateral value.
Default and cure	Separate monetary from non-monetary defaults, define notice delivery, and set cure periods you can actually live with. Include covenant breaches as events of default.
Default rate and late fees	Meaningful enough to matter, not so punitive they accelerate a failure you'd rather work out.
Impounds	Taxes and insurance collected monthly by the escrow company. On commercial property this is basic collateral protection, not a convenience.
Escrow servicing	Required. Name the company, allocate the fee, and build any split disbursement or structured schedule into the contract.

A term sheet, sketched

What a conservative, well-protected commercial carry-back commonly looks like. Yours will differ — this is a starting point for the conversation with your attorney, not a recommendation.

Down payment	25–35%, sourced and seasoned
Rate	Fixed, priced above prevailing commercial mortgage rates for the risk accepted
Amortization / term	20–25 year amortization; 7–15 year term, with one or two paid extension options
Guarantee	Personal, from every principal; burns off after a defined performance period if at all
Position	First. No subordination without a capped senior amount, a combined LTV limit, and notice and cure rights
Impounds	Taxes and insurance monthly; capital reserve monthly on older assets
Covenants	Annual operating statements, rent roll, insurance certificate, guarantor financials; notice of material events
Leasing control	Consent required above a defined size, term, or below a defined rate
Environmental	Indemnity from buyer and guarantors, surviving termination; baseline condition documented at closing
Transfer	No assignment or sale without consent, against defined standards
Servicing	Licensed escrow company named in the contract; fee allocated

> **STRUCTURE IT TO BE SELLABLE, EVEN IF YOU NEVER SELL IT**
>
> Note investors pay most for paper that is uncomplicated: fixed rate, fully amortizing, a real down payment, clean documentation, a recorded contract, title insurance, guarantees in place, and a professionally serviced payment history. Writing it that way costs nothing today and preserves a liquidity option that an exotic structure simply does not have.

Protecting your collateral

This is what separates a commercial carry-back from a residential one. A house you might take back is a house. A commercial building you take back can arrive with lost tenants, deferred capital, below-market leases, and environmental exposure. Covenants are how you prevent that — and how you see it coming.

Reporting covenants: your early warning system

Require, in the contract, that the buyer deliver on a schedule:

- ✓ **Annual operating statements** for the property, within a defined number of days after year end
- ✓ **A current rent roll** annually, and on request
- ✓ **Copies of new leases** above a defined size or term
- ✓ **Annual proof of insurance,** with you named and entitled to notice of cancellation
- ✓ **Evidence property taxes were paid,** if not impounded
- ✓ **Personal and entity financial statements** from any guarantor, annually
- ✓ **Prompt notice** of any material event: loss of a major tenant, casualty, litigation, environmental notice, or default under any other obligation

Then actually read them. A rent roll that arrives every February and goes into a drawer protects nobody. Two hours a year reviewing these documents is how sellers spot trouble in year three instead of year seven.

Operating covenants

- **Maintenance and no waste.** Require the property be kept in good condition and repair. Reserve a right to inspect on reasonable notice — and exercise it occasionally.
- **Insurance requirements.** Specify coverage types and minimums, require you be named as an additional insured or loss payee as appropriate, require notice of cancellation, and specify who controls proceeds after a casualty and whether they must fund rebuilding. This last point is frequently omitted and occasionally catastrophic.
- **Leasing standards.** On a multi-tenant building, consider requiring your consent for leases above a defined size, term, or below a defined rate. A buyer in trouble can sign a twenty-year below-market lease that permanently impairs your collateral.
- **No alterations or demolition** beyond a threshold without consent.
- **Compliance with law,** including zoning, permits, and accessibility requirements.
- **Capital reserves.** On an older building, consider requiring a reserve funded monthly through the escrow company for roof, HVAC, and paving. It protects the asset and it protects you.

ENVIRONMENTAL: THE EXPOSURE SELLERS FORGET

Two distinct issues, and both belong in your documents.

Disclosure. Disclose what you know about prior uses, tanks, spills, and any reports in your possession. Concealment is the fastest route to a lawsuit that outlives the note.

Re-acquisition. If you take the building back, **you take back the environmental liability you had successfully transferred.** Worse, contamination may have occurred during the buyer's ownership. Require an environmental indemnity from the buyer and any guarantor that survives termination of the contract, prohibit hazardous uses without consent, and require prompt notice of any regulatory contact. If the property has any history at all, consider a baseline assessment at closing so you can document its condition on the day you handed it over.

PART TWO · SECTION 11

Carrying behind a bank

Sometimes a buyer can get institutional financing for most of the price and asks you to carry the gap. It is a legitimate structure and it is materially riskier than first position. Understand exactly what you're accepting.

WHAT SUBORDINATE POSITION ACTUALLY MEANS

- ✕ **The senior lender gets paid first,** in every scenario, including a foreclosure sale that doesn't cover both loans.
- ✕ **You may be blocked from acting.** Most intercreditor agreements restrict a junior lender's ability to declare default, accelerate, or foreclose while the senior loan is outstanding.
- ✕ **Your payments can be cut off.** Many agreements permit the senior lender to block payments to you if the borrower defaults on the senior loan — while your obligation to stand still continues.
- ✕ **You inherit the senior loan's problems.** If the buyer defaults to the bank, you may face a choice between curing that loan out of your own pocket or watching your position get wiped out.
- ✕ **The equity cushion beneath you is thin.** With a senior loan at 65–70% and your note filling to 90%, a fifteen percent decline in value erases you entirely.

If you do it anyway

- ▶ **Read the intercreditor or subordination agreement yourself, with your attorney.** That document, not your contract, determines what you can actually do. Negotiate it as hard as you negotiate price.
- ▶ **Insist on notice and cure rights.** You need the right to learn about a senior default and the right to cure it before the bank acts.
- ▶ **Cap the senior debt** at a stated dollar amount and prohibit increases, additional advances, or extensions without your consent.
- ▶ **Require a combined loan-to-value limit** and real equity from the buyer beneath both loans. Ten percent buyer equity is not a cushion.
- ▶ **Get personal guarantees** and, where possible, additional collateral outside the property.
- ▶ **Price for the risk.** A subordinate position should carry a meaningfully higher rate than a first-position note. If the buyer won't pay it, they are telling you what they think of the risk.
- ▶ **Keep your reporting covenants,** including notice of any default under the senior loan.

THE HONEST RECOMMENDATION

If you can pay off existing debt and carry in first position, do that. First position on a building you know, with 25–30% buyer equity beneath you, is a genuinely strong credit. A junior position behind a bank, filling the gap between the buyer's equity and the price, is a different asset class with a different risk profile — **and sellers frequently accept it at first-position pricing.** If you take it, take it knowingly and get paid for it.

PART TWO · SECTION 12

The rules that apply

This is the shortest compliance section in our library, and that is the point. Selling commercial property to a business buyer is treated very differently from financing a home for a consumer.

THE GOOD NEWS

The federal consumer-credit framework that governs residential seller financing — loan originator licensing, ability-to-repay requirements, consumer disclosure rules — is generally aimed at credit extended to consumers for personal, family, or household purposes, secured by a dwelling. **A commercial building sold to a business or investor for business purposes generally falls outside it.**

That means substantially more freedom to structure: balloons, interest-only periods, adjustable features, covenants, and guarantees are matters of negotiation rather than compliance.

WHERE IT STOPS BEING SIMPLE

- **Mixed-use property with dwelling units.** An apartment building, or a storefront with apartments above, may pull consumer rules into play depending on the facts. Do not assume "commercial" based on how you describe the property. Ask.
- **A buyer who will live there.** Live-work space, a caretaker unit, or an owner who occupies a residential portion changes the analysis. Get the buyer's use representation in writing.
- **Selling fractional interests in your note.** Dividing a note among multiple investors can raise securities law questions. This is a real trap for sellers who want liquidity and think they're simply selling part of an asset. Get advice first.
- **Interest rate limits.** Commercial transactions typically have more latitude than consumer loans, but limits and exceptions vary. Confirm the applicable ceiling.
- **Volume.** Financing many sales can raise licensing questions even outside the consumer context, particularly if you are also developing or brokering.
- **Anti-discrimination law** applies to commercial credit as well. Apply consistent criteria and document your decisions.
- **Disclosure obligations** about the property's condition, environmental history, and known defects exist independently of financing rules.

IMPORTANT

Nothing here is legal advice. Whether a specific transaction falls inside or outside the consumer framework is a facts-and-circumstances question, and the answer matters enormously. Before you agree to carry financing, confirm your situation with a New Mexico commercial real estate attorney — particularly if the property has any residential component or if the buyer's use is anything other than plainly commercial.

PART THREE · SECTION 13

Escrow servicing

New Mexico has a long-term escrow industry built to service these contracts for their entire life. On a commercial note running fifteen or twenty years, through partnership changes and estates and eventual refinancing, that record is the asset.

WHAT SERVICING DOES FOR YOU AS THE NOTE HOLDER

- ✔ **Creates the authoritative record.** A permanent ledger a lender, an appraiser, a note buyer, a court, your CPA, or your heirs will accept without argument.
- ✔ **Removes you from collections.** Payments go to a neutral third party, not to you — which matters when your buyer is your former tenant, your employee, or the person who bought your business.
- ✔ **Holds the deed securely** for a term that may outlast your entity, your partnership, or you.
- ✔ **Manages impounds,** paying taxes and insurance when bills are submitted — protecting your collateral from the two most common quiet failures.
- ✔ **Splits disbursements** among partners, entities, trusts, or estates in fixed proportions, automatically, every month.
- ✔ **Services structured schedules** — interest-only periods, step-ups, seasonal payments, scheduled rate adjustments — exactly as written.
- ✔ **Administers partial releases** as defined portions of the balance are paid.
- ✔ **Prevents informal modification.** The contract is serviced as written; changes require signatures from everyone with an interest.
- ✔ **Preserves the note's value.** If you ever sell it, a professionally serviced history is the single largest factor in what you're offered.

What we do and don't do

WE DO

- ✔ Receive payments by ACH, online, phone, mail, lobby, or drive-through
- ✔ Record every payment in a permanent ledger
- ✔ Apply payments and disburse per the contract, including split payees
- ✔ Hold the deed and other critical documents
- ✔ Hold and pay impounds and reserves when bills are submitted
- ✔ Service structured and changing payment schedules
- ✔ Administer partial releases per the contract
- ✔ Provide payoff quotes good through a stated date
- ✔ Give you online access to the full history
- ✔ Offer account monitoring, reminders, and mediation
- ✔ Retain records six years after the account closes

WE DON'T

- ✕ Give legal or tax advice, or interpret your contract
- ✕ Draft the contract, the deed, or any binding document
- ✕ Negotiate, modify, or amend terms
- ✕ Underwrite your buyer or evaluate your deal
- ✕ Collect or review your reporting covenants for you
- ✕ Represent either party in a dispute
- ✕ Enforce the contract — that requires legal action by you
- ✕ Prepare or send default notices on your behalf
- ✕ Chase a buyer for payment
- ✕ Take sides among partners or co-owners
- ✕ Pay a tax or insurance bill until someone sends us the bill

WHY NEUTRALITY IS YOUR PROTECTION

New Mexico law requires us to remain neutral. A servicer who would bend a term for a buyer would bend one against you. Our refusal to interpret, advise, or take sides is exactly why the ledger is credible to everyone who will eventually rely on it — including the lender your buyer refinances with in year ten.

The process, step by step

Most of the consequential work happens before you have an offer.

1. **Meet with your CPA**
   Bring the depreciation schedule, any cost segregation study, improvement records, and how the property is titled. Get your cash-sale tax, your year-one installment tax, and the down payment required to cover it. This shapes everything.

2. **Decide: exchange or carry**
   Section 7. If there's any chance you'll want an exchange, engage a Qualified Intermediary now. This option disappears at closing.

3. **Engage a commercial real estate attorney**
   Confirm the structure, who drafts the contract, what covenants you'll require, and what your remedies would be on default. Ask them to be available when an offer arrives.

4. **Get your own valuation**
   An appraisal or broker opinion. You are setting terms against this number and a buyer will eventually refinance against it.

5. **Put your file together**
   Leases, estoppels, operating statements, tax bills, insurance policy, service contracts, capital history, environmental reports, surveys, permits, and certificates of occupancy. A clean file speeds diligence and strengthens your negotiating position.

6. **Decide your terms and buyer criteria in advance**
   Price, minimum down, rate, amortization, balloon, guarantee requirements, covenants, and the minimum coverage ratio you'll accept. Write it down before you meet anyone.

7. **Align partners or co-owners**
   Who has authority to sign, who receives what percentage, who speaks for the group, and what happens if one of you dies during the term. In writing.

8. **Market it, including the terms**
   A broker who has closed seller-financed commercial deals will know which buyers to reach and how to present the structure.

9. **Underwrite the buyer**
   Section 8. Property coverage first, then the buyer's balance sheet, experience, liquidity, plan, and references. Document your decision.

10. **Negotiate structure in the letter of intent**
    Rate, amortization, balloon, guarantee, covenants, subordination, assignment, prepayment, and servicing. All of it, before documents are drafted.

11. **Documents and diligence**
    Your attorney drafts the contract; the title company confirms clear title and prepares closing. The buyer does their diligence; you respond honestly and completely, including on environmental matters.

12. **Closing**
    Sign at the title company. The down payment is paid, commission and costs come out, title insurance is issued, prorations and deposits settle, the contract is recorded, and your signed deed goes into escrow.

Escrow setup Documents go to the servicer, the account opens, and a Welcome Package issues with account number, balance, and payment instructions. Confirm split disbursements and impounds are set up correctly, and verify the first payment posts as expected.

Calendar your covenants Set annual reminders for financials, rent roll, insurance certificate, and tax verification. Section 15.

PART THREE · SECTION 15

The years after

A few hours a year. Done properly, it is the difference between spotting a problem while it's still solvable and discovering it when the payments stop.

Your annual review

- [ ] Operating statements received, read, and compared to prior years — is NOI trending up or down?
- [ ] Current rent roll received — occupancy, upcoming expirations, tenant concentration, any below-market renewals
- [ ] Certificate of insurance received, coverage adequate, you still named, notice provision intact
- [ ] Property taxes confirmed paid — through the escrow company if impounded, or verified with the county
- [ ] Guarantor financial statements received, if required
- [ ] Payment history reviewed for lateness or a developing pattern
- [ ] Coverage ratio recalculated against current NOI
- [ ] Drive the property, or have someone do it, and look at the condition
- [ ] Balance, remaining term, and balloon date confirmed — and the buyer's refinance plan discussed as the date approaches
- [ ] CPA provided with the year's interest and principal figures
- [ ] Estate and entity documents still reflect the contract correctly

The signals that matter

- **Payments drifting later each month.** The most reliable early warning in any credit. A buyer sliding from the 1st to the 15th over two quarters is telling you something before they miss anything.
- **Reporting arriving late, or not at all.** A buyer who stops sending financials has usually stopped liking what the financials say. Enforce the covenant while it's still a paperwork issue.
- **Occupancy or NOI declining year over year,** especially with a balloon approaching. Declining NOI plus a refinance date is the classic path to a workout.
- **Tenant concentration increasing,** or the anchor's lease approaching expiration with no renewal discussion.
- **Reduced insurance coverage.** A buyer under pressure trims insurance early, and it directly exposes your collateral.
- **Deferred maintenance visible from the street.** Parking, roof edges, signage, landscaping. What you can see usually reflects what you can't.
- **Requests to modify.** Sometimes reasonable. Always a signal. And always in writing, signed by everyone.

YOUR NOTE, YOUR ENTITY, AND YOUR ESTATE

The contract is an asset that may outlive your involvement. Ask your attorney how it should be held — many sellers place it in an LLC or a trust so it passes without probate and so partners' interests are clearly defined. Ask your CPA specifically how an installment obligation is treated in your estate; the answer is not what most people assume and it is far better addressed in your plan than by your heirs.

Then do the simple thing: **keep one file and tell someone where it is.** The contract, the recorded copy, the deed information, the escrow account number, title policy, guarantees, your underwriting file, covenant reports, and your attorney's and CPA's contact information.

PART THREE · SECTION 16

If the buyer defaults

When it goes right, which is most of the time

It is uneventful. The payment drafts on schedule. The servicer records it, deducts the fee, sets aside impounds and reserves, and disburses to you — or to you and your partners in the agreed shares. Financials and a rent roll arrive each spring and you spend an hour with them. Somewhere between year five and year fifteen the buyer refinances or sells, a payoff quote issues, the deed releases, and you receive the balance. A well-underwritten buyer with 25% equity behaves this way the large majority of the time.

When payments slow

- **Move early.** The strongest predictor of a workable outcome is a seller who engages at the first missed reporting deadline rather than the third missed payment.
- **Diagnose before you decide.** A lost tenant, a capital surprise, or a partner dispute is a different problem than a buyer whose plan never worked. The first is often worth restructuring around.
- **Consider a written modification.** A deferral, a re-amortization, a temporary interest-only period, or a balloon extension can preserve a performing note and the buyer's equity. If all parties sign an amendment, we service it exactly as amended.
- **Never accept partial payments informally.** A pattern of accepting less than the contract requires can undermine your position. Every accommodation in writing.
- **Protect the collateral immediately.** Confirm insurance is in force and taxes are current. These are the two things that turn a recoverable situation into a loss.
- **Involve your attorney at the first notice.** Notice requirements and cure periods are technical, and a defective notice can restart the clock.

WORST CASE, HONESTLY

If the default isn't cured, the typical remedy under a New Mexico Real Estate Contract is that you may terminate, take the property back, and retain payments already made. On paper that can look favorable — the building plus several years of payments and a 25% down payment.

In practice you are re-acquiring an operating business. You may take back a property with vacancies created during the buyer's ownership, below-market leases you didn't approve, deferred capital, unpaid taxes, lapsed insurance, tenants in dispute, and service contracts you didn't sign. You may need a receiver appointed to collect rents during the process. **And you re-acquire environmental liability** you had successfully transferred — including for anything that happened on the buyer's watch. There are attorney's fees, and there are tax consequences to repossession.

Your exact rights, notice requirements, and cure periods depend on your contract and on New Mexico law. If you are approaching a default, involve your attorney immediately. Your escrow company cannot advise you and cannot act for you.

HOW TO MAKE THIS UNLIKELY

Require 25% or more down. Underwrite the property's coverage and the buyer's liquidity. Get guarantees. Write reporting covenants and read what arrives. Impound taxes and insurance. Take an environmental indemnity that survives termination. Control leasing on multi-tenant assets. Push the balloon out and discuss the refinance plan years ahead. Use a licensed servicer so the record is beyond dispute. Every item is cheap relative to the asset, and together they are why most of these contracts simply pay.

PART THREE · SECTION 17

Selling the note

You are not permanently locked in. A seasoned commercial note can be sold — in whole or in part — and knowing what determines its value should shape how you write it today.

FACTOR	WHAT A NOTE BUYER LOOKS FOR
Seasoning	Documented on-time payments. Twelve months is a common threshold, twenty-four materially better. Unseasoned paper sells at steep discounts or not at all.
Servicing history	Third-party serviced records carry far more weight than your own spreadsheet. This is the clearest financial argument for professional servicing.
Equity position	Note balance against current value. Real buyer equity beneath the note is the primary protection a purchaser is buying.
Property performance	Current rent roll, occupancy, coverage ratio, tenant credit, and lease terms. This is where your reporting covenants pay for themselves — you can prove the asset is performing.
Guarantees	Personal guarantees with a verifiable balance sheet behind them add real value.
Terms	Fixed rate, fully amortizing, a distant balloon or none. Exotic structures shrink the buyer pool sharply.
Documentation	Recorded contract, title insurance, clean underwriting file, executed covenants. Gaps become price adjustments.
Asset type	Multi-tenant in a known submarket prices better than single-tenant special-use in a rural market.

EXPECT A DISCOUNT, AND UNDERSTAND IT

Commercial notes trade below face value, and the market is thinner than for residential paper — fewer buyers, wider spreads, more diligence. The discount is the purchaser's return, set by risk rather than negotiation. **Every choice you made at closing shows up in that number.**

Full sale, partial, or hypothecation

You don't have to sell the whole obligation. A **partial** sells a defined number of future payments — the next sixty, for example — after which the note reverts to you. It raises cash while keeping the long tail, and often prices better than a full sale because the purchaser's exposure window is shorter. Some sellers instead **borrow against** the note, pledging it as collateral rather than selling it, which avoids triggering gain. Each has different tax consequences.

TWO CAUTIONS BEFORE YOU SELL ANY PORTION

Selling generally accelerates your remaining deferred gain into the year of sale — which can undo much of the tax benefit that motivated the structure in the first place. Model it with your CPA before you commit.

Dividing your note among multiple investors can raise securities law questions. Selling a whole note or a defined partial to a single institutional purchaser is ordinary. Fractionalizing it among several individuals is a different activity. Get advice first.

Red flags and pitfalls

WARNING SIGNS IN A BUYER

- **A down payment that isn't theirs** or can't be sourced. Borrowed equity means no equity.
- **No liquidity after closing.** The most common cause of commercial default. Ask for the number and verify it.
- **Reluctance to provide financials, tax returns, or references.** If they won't produce documents during courtship, they won't produce a rent roll in year four.
- **Refusal to sign any personal guarantee,** paired with a thinly capitalized entity.
- **A business plan requiring rents or lease-up no one has achieved** in this submarket.
- **No refinance path** and no lender relationships, with a balloon in the structure.
- **Resistance to reporting covenants.** An operator with nothing to hide finds annual financials unremarkable.
- **Pressure to skip the environmental assessment,** or objection to an environmental indemnity.
- **A track record they won't let you verify,** or references who only knew them at closings.
- **Requests for subordination rights, release rights, or assignment freedom** that seem disproportionate to the deal.

WARNING SIGNS IN HOW THE DEAL IS HANDLED

- **Anyone suggesting you skip the title company** or close without title insurance.
- **Anyone suggesting you take payments directly** rather than through a licensed servicer.
- **A form contract you're discouraged from marking up,** or being told an attorney will "complicate" it.
- **A diligence period too short to underwrite properly** — yours, not just theirs.
- **Manufactured urgency** or a competing buyer who appears the moment you ask for documents.
- **Wire instructions arriving by email,** ever. Verify by phone using a number you looked up yourself.

Mistakes commercial sellers make

- **Setting the down payment before knowing the year-one tax bill.** The most common and most expensive planning error in this entire guide.
- **Deciding about a 1031 exchange after the purchase agreement is signed.** By then the option is usually gone.
- **Forgetting the cost segregation study** done six years ago, and the recapture attached to it.
- **Writing no reporting covenants,** then having no idea the building lost two tenants until the payment stops.
- **Not reading the reports that do arrive.** A covenant you don't enforce is a paragraph, not a protection.
- **Agreeing to subordination casually,** or accepting a junior position at first-position pricing.
- **Skipping impounds,** then discovering unpaid taxes years later.
- **No environmental indemnity,** and no baseline record of the property's condition at closing.
- **No control over leasing** on a multi-tenant asset, and a twenty-year below-market lease signed by a desperate owner.
- **Servicing the note yourself.** It saves a small fee and costs you the record, the neutrality, and real money if you ever sell.
- **No plan for the note in your estate or partnership documents.**

Questions to ask

Ask yourself first

1. Do I want another building, or do I want income? That answer decides exchange versus carry.
2. Does the property cover the payment I'm proposing, at verified NOI, under a stressed case?
3. Does my year-one tax bill fit inside my cash at closing?
4. If I had to take this building back in year four, could I operate it or re-sell it?
5. Am I willing to read financials once a year for fifteen years, or is there someone who will?

Ask your CPA

1. What is my total tax on a cash sale, and what is it in year one under an installment sale?
2. What is my depreciation recapture, and does a prior cost segregation study change it?
3. What down payment do I need to cover the year-one liability?
4. Does the interest charge on large installment obligations apply to me?
5. Should I elect out of installment treatment given this year's picture?
6. How is an installment obligation treated in my estate?
7. What happens tax-wise if I later sell the note, or if I have to repossess?

Ask your attorney

1. Real Estate Contract, note and mortgage, or something else — and why, for this property?
2. Does any part of this transaction pull consumer-credit rules into play?
3. What covenants should I require, and are they enforceable as drafted?
4. What exactly are my remedies on default, and how long would each take?
5. What environmental protections should survive termination of the contract?
6. If I'm asked to subordinate, what must the intercreditor agreement contain?
7. How should the note be held for my partnership and my estate?

Ask your buyer

1. What is your liquidity after closing, and can you document it?
2. What comparable properties have you owned or operated, and how did they perform?
3. Walk me through your plan for this building and the assumptions behind it.
4. Who signs personally, and what does that balance sheet look like?
5. How do you intend to handle the balloon, and which lenders have you spoken to?
6. Where is the down payment coming from, and how long has it been yours?
7. Will you accept annual reporting covenants and an environmental indemnity?
8. Who else can tell me how you performed when a deal went badly?

Ask the escrow company

1. What are setup and monthly servicing fees, and who pays them under this contract?
2. Can you handle impounds, capital reserves, split disbursements, and structured schedules?
3. How do partners receive their shares, and what documentation do you need?
4. What online access and year-end reporting will I have?
5. How do payoff quotes work when my buyer refinances?
6. What would my partners or my family need to do if something happened to me?

Next steps

The order matters here more than in most transactions, because two of these steps close doors if you take them late.

1. **See your CPA first**
   Before you list, before you talk to a buyer. Three numbers: cash-sale tax, year-one installment tax, and the down payment that covers it. Everything else is built on those.

2. **Decide exchange or carry, and lock the option**
   If an exchange is even possible, engage a Qualified Intermediary before a purchase agreement exists. This door closes at closing and does not reopen.

3. **Engage a commercial real estate attorney**
   Structure, covenants, remedies, and environmental protections. Get them involved while you're still deciding, not when documents are due.

4. **Value the asset and assemble the file**
   Appraisal or broker opinion, plus leases, estoppels, operating statements, insurance, environmental reports, survey, and capital history. A clean file shortens diligence and strengthens your position.

5. **Write down your terms and your buyer standards**
   Minimum down, rate, amortization, balloon, guarantee requirements, covenants, and the minimum coverage ratio you'll accept. Decide these before anyone makes you an offer.

6. **Align your partners**
   Authority, percentages, spokesperson, and succession. In writing, before an offer forces the conversation.

7. **Choose a broker who has closed these**
   Ask directly how many seller-financed commercial transactions and how recently. It affects who sees the property and how the terms are presented.

8. **Line up your escrow company early**
   Fees, impounds, reserves, split disbursements, and reporting. Building servicing into the contract is far easier than adding it later.

THE BOTTOM LINE

For an owner with a low basis, a large gain, and no need for a lump sum, carrying the paper is frequently the best exit available on a commercial building. The tax timing is worth real money, the yield beats the conservative alternatives, the buyer pool widens, and the management ends.

What it asks in return is that you act like a lender rather than a seller. **Get the tax numbers first. Choose exchange or carry deliberately. Require real equity. Underwrite the buyer and the building. Write covenants and read what arrives. Protect against environmental exposure. Use a licensed servicer.** Sellers who do those seven things generally spend the next fifteen years depositing a check and thinking about something else.

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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