SUNWEST ESCROW · SERVING NEW MEXICO SINCE 1987

The Seller's Guide to Owner Financing

Carrying the note on your own home — how it works, what it pays, what it risks, and how to tell if it's right for you.

SUNWEST ESCROW, LC
Serving New Mexico Since 1987

Written plainly

No jargon, no pressure, and no assumption you've done this before.

Real numbers

A cash sale and an owner-financed sale, side by side.

From a neutral party

We service contracts. We don't list homes or sell loans.

SUNWEST ESCROW, LC

LONG-TERM ESCROW SERVICING · ALBUQUERQUE, NEW MEXICO

FREE SELLER'S GUIDE

START HERE

There is more than one way to sell a house

Most people selling a home expect one outcome: a buyer gets a mortgage, and at closing you receive a check. That is the common path, and for many sellers it is the right one. But it is not the only one, and it is not always the one that leaves you better off.

In New Mexico you can also carry the financing yourself. Instead of the buyer borrowing from a bank, they buy from you and pay you over time, with interest, under a written contract the two of you agree to. You keep legal title as security until they've paid. They live in the home, maintain it, and pay the taxes and insurance. You receive a monthly payment.

Sellers do this for a lot of reasons. Some want steady income more than a lump sum. Some own a property banks won't finance. Some are selling to a family member. Some are looking at a large tax bill and want to spread it out. And some simply want to sell faster, to a larger pool of buyers, at a better price.

It is also not right for everyone, and this guide will be direct with you about when to take the check instead.

FOUR THINGS TO KNOW BEFORE YOU READ ANOTHER PAGE

1. This is ordinary and legal. You'll close at a title company, the buyer will get title insurance, the contract gets recorded with the county, and a licensed escrow company holds your deed and collects the payments. It is not a handshake deal.

2. You are choosing income over a lump sum. That's the real decision. If you need the money in the next few years, this probably isn't for you.

3. Who you sell to matters more than anything else. A serious down payment and a buyer who can afford the payment are what make this work. Sections 7 and 8 are the heart of the guide.

4. Get an attorney and a CPA involved before you agree to anything. Not after. The tax treatment alone can change what terms you should offer.

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Why we wrote this

Sunwest Escrow is a long-term escrow servicing company. We are not a real estate broker, a lender, or a title company, and we earn nothing when your house sells. What we do is hold the deed and the documents, collect the payments, keep the permanent record, and follow the contract exactly as written — for both you and your buyer, without taking sides. We have done this in New Mexico since 1987. That neutrality is why we can tell you plainly when carrying a note is a good idea and when it isn't.

SECTION 1

What owner financing is

In an owner-financed sale, you take the bank's place. The buyer pays you directly over time under a written agreement, and you hold the property as security until they've paid in full.

In New Mexico this is almost always done with a **Real Estate Contract** — everyone here calls it an **REC**. The REC sets out the price, the down payment, the interest rate, the monthly payment, how long the buyer has to pay, what happens if they're late, and every other term the two of you agree to.

> **WHO OWNS THE HOUSE DURING THE CONTRACT?**
>
> Both of you, in different ways. You keep **legal title** — the ownership on record — as your security, the same way a bank keeps a lien on a mortgaged home. The buyer holds **equitable title**, which is their ownership interest and their right to live in and use the property.
>
> In practice the buyer is the owner. They move in, maintain the property, pay the property taxes, carry the insurance, and can paint it any color they like. You are the lender, not the landlord. When they make the final payment, the deed is released to them and they own it outright.

Where the deed goes

At closing you sign a deed conveying the property to the buyer — but it isn't delivered to them. It goes to a licensed escrow company, which holds it in safekeeping for the life of the contract, receives the buyer's payments, records each one, and releases the deed only when the contract has been paid in full. That escrow company is the neutral party in the middle, and Section 10 explains why using one is not optional.

How it compares to a normal sale

	TRADITIONAL SALE	OWNER FINANCING
Who lends	A bank or mortgage company	You
What you receive	A lump sum at closing	A down payment, then monthly payments with interest
Who approves the buyer	An underwriter at the bank	You, with help from professionals
Time to close	Usually 30–60 days, subject to the lender	Often much faster; limited mainly by title work
Buyer pool	Only buyers a bank will approve	Considerably larger
Hard-to-finance homes	Frequently unsellable	Often the only way they sell
Your involvement after closing	None	You hold the contract, usually for years
Taxes on your gain	Generally all in the year of sale	May be spread across years — see Section 6
Your risk afterward	None	The buyer might stop paying

THE WORDS YOU'LL HEAR

REC — Real Estate Contract; the agreement that governs everything.

Down payment — the buyer's cash at closing; your single best protection.

Amortization — the schedule showing how each payment splits between interest and principal.

Impounds — extra money collected monthly to pay taxes and insurance when they come due.

Balloon — a date when the whole remaining balance comes due at once.

Default — the buyer failing to meet a term, usually by not paying.

Cure period — the time a buyer has to fix a default before you can act.

Payoff quote — the exact amount needed to close out the contract, good through a stated date.

What this is not

It is not rent-to-own, and it is not a lease-option. Sellers mix these up constantly, and the differences are legally significant. In a lease-option the buyer is a tenant who has the right to purchase later; they don't own anything yet, and landlord-tenant law governs the relationship. In an owner-financed sale the buyer is the owner from day one, holds a recorded interest in the property, and builds equity with every payment.

It is also not an informal arrangement. If someone describes a deal to you using the words "we don't need to involve anyone else," they are describing something other than what this guide covers. Ask your attorney which instrument you are actually being asked to sign — the answer determines your rights.

SECTION 2

Why sellers choose it

These are the reasons homeowners carry the note and are glad they did. You don't need all of them to apply — two or three is usually enough to make this worth a serious look.

1. Monthly income instead of a lump sum

For many sellers this is the whole point. A house that produced nothing becomes a predictable monthly payment, secured by a property you know better than any investment you'll ever buy. For someone entering retirement, replacing a paycheck matters more than seeing a large number in the bank once.

2. A better return than the money would earn elsewhere

If you sell for cash, the proceeds go into whatever a savings account, CD, or conservative investment pays. Carrying the note at 7% or 8% is often two or three points better — and it's secured by real property with a buyer who has their own money at stake. Section 5 shows the difference in dollars.

3. A larger pool of buyers, and usually a better price

A great many capable people can't get a conventional mortgage — self-employed buyers with real income and complicated tax returns, people rebuilding after a divorce or a medical event, buyers with strong savings but thin credit history. Offering terms opens your home to all of them. Buyers who need terms will pay for terms, and a price premium over a cash offer is common.

4. Homes that are difficult to sell any other way

Rural property. Manufactured homes on land. Owner-built or unusual construction. Homes needing work that won't pass a lender's condition requirements. Small-dollar properties banks won't bother with. If your house has sat on the market while conventional buyers came and went, terms may be the reason it finally sells.

5. A faster, simpler closing

No underwriter, no lender appraisal, no conditions list growing every week, no last-minute denial. The timeline depends mostly on title work and document preparation. Sellers who've had a sale collapse three days before closing tend to appreciate this one a great deal.

6. Spreading out the tax hit

If your home has appreciated substantially, taking the whole gain in one year can be expensive. An installment sale may let you recognize the gain as payments come in, over years instead of all at once. For some sellers this is worth more than everything else on this list combined. It also has exceptions — see Section 6.

7. Selling to someone you want to sell to

A tenant who's cared for the place. A niece starting out. A neighbor who's wanted the property for years. Owner financing lets you sell to a specific person on terms that work for both of you — documented properly, so the relationship survives the transaction.

8. You keep a strong position

Your contract is secured by a house you know inside and out, held by a buyer who put real money down and has every reason to protect it. If something goes wrong, the collateral is a property you already understand how to sell.

WHAT THIS USUALLY LOOKS LIKE IN PRACTICE

A seller carries the note on a house they've owned for twenty-five years. The buyer — self-employed, good income, turned down by two banks — puts fifteen percent down and moves in. Payments arrive by direct deposit on the same day each month for four years. Then the buyer refinances into a conventional loan, the contract is paid off in full, and the seller receives the remaining balance in a lump sum.

Everybody got what they wanted. The seller got four years of good income and then their money. The buyer got a house they could not otherwise have bought, and a payment history that made them bankable. This is the ordinary outcome, not the lucky one.

SECTION 3

The honest side

Here is what carrying the note costs you. Read this section twice. Most of these are manageable if you plan for them, and expensive if you discover them later.

WHAT YOU'RE GIVING UP AND TAKING ON

- ✕ **You don't get your money now.** You receive a down payment and then monthly payments. If you need the full proceeds to buy your next home, pay off debt, or fund a medical situation, this is the wrong structure.
- ✕ **The buyer might stop paying.** This is the central risk. It happens far less often with a real down payment and a properly screened buyer, but it happens.
- ✕ **Getting the property back takes time, money, and an attorney.** The contract usually gives you strong remedies, but exercising them is a legal process, not a phone call.
- ✕ **You may get back a house in worse condition** than the one you sold, with unpaid taxes and lapsed insurance attached.
- ✕ **Your payment is fixed; your costs are not.** Over twenty or thirty years, inflation quietly reduces what that payment buys.
- ✕ **You give up future appreciation.** You locked in your price. If the neighborhood doubles, that belongs to the buyer.
- ✕ **The commission is still due in cash at closing.** If you're using a broker, their fee comes out of the down payment — which can leave you with far less cash at closing than you expected. Section 5 shows exactly how this works.
- ✕ **There is paperwork and responsibility for years.** Confirming taxes are paid and insurance is in force is on your calendar annually, even with an escrow company handling collections.
- ✕ **Your money isn't easily accessible.** You can sell the note, but usually at a discount. It is not a savings account.
- ✕ **If you sell to someone who will live there, rules apply to you.** Not burdensome ones for most single-home sellers — but real ones. See Section 9.
- ✕ **It's an asset your family will inherit.** A thirty-year contract may outlive you. Section 13 covers what that means and how to prepare for it.

HOW CAREFUL SELLERS HANDLE EACH OF THESE

Require a real down payment — the number one protection against all of it. Screen the buyer properly and document how you decided. Require taxes and insurance be impounded and paid through the escrow company. Write clear default and cure terms with an attorney. Verify insurance every year. Use a licensed escrow company so there is never a dispute about what was paid. Talk to your CPA about your tax picture before you set the down payment. And put the contract into your estate plan so your family isn't sorting it out during a hard week.

SECTION 4

Is this right for you?

The honest answer depends less on the house than on your own situation. Here's how to tell.

Owner financing often works well if...

- ✓ **You don't need the lump sum.** Your next home is already handled, or you're not buying one, and your finances don't depend on this money arriving all at once.
- ✓ **You want income more than a balance.** A dependable monthly payment fits your life better than a large deposit you'd have to figure out what to do with.
- ✓ **Your property is hard to finance** — rural, unusual, manufactured, in need of work, or simply not attracting conventional buyers.
- ✓ **You're facing a significant tax bill** on the gain and your CPA sees value in spreading it out.
- ✓ **You own the home free and clear,** or nearly so. This makes everything simpler.
- ✓ **You have a specific buyer in mind** — a tenant, a family member, a neighbor — and want the arrangement documented properly.
- ✓ **You can absorb a setback.** If the buyer stopped paying for six months while you worked it out, it would be an aggravation rather than a crisis.
- ✓ **You're comfortable being organized** for a few years — keeping a file, checking taxes and insurance annually, calling your attorney if something changes.

Take the cash instead if...

- × **You need the proceeds.** For your next home, a health situation, debt, or anything else with a deadline. This is the most important line in the section.
- × **Your home still has a mortgage you can't pay off at closing.** This can be worked around in limited situations, but it adds real risk for both sides and requires legal help. Most sellers in this position should not carry.
- × **The stress would cost you sleep.** Some people are genuinely uncomfortable with a stranger owing them money against their old house. That's a legitimate reason to decline, and no financial argument outweighs it.
- × **You won't be able to stay involved** for health, age, or capacity reasons, and you have no one to help manage it.
- × **You're only doing it because a buyer asked** and you feel awkward saying no. That's not a reason.
- × **The only buyers interested can't put meaningful money down.** A buyer with almost nothing at stake is renting with extra steps.
- × **You'd have to skip the attorney, the title company, or the escrow company** to make the deal work. Then it isn't a deal.

THE TEST

Two questions. **First:** if this payment stopped arriving for a year, would my life still work? **Second:** am I choosing income on purpose, or just trying to get the house sold? If the answers are yes and on purpose, this is likely a strong option for you. If not, take the check — and there is nothing wrong with taking the check.

SECTION 5

What you'll actually receive

This is the comparison most sellers never get to see. The same house, sold two ways, with the real costs included in both.

A home worth about $285,000, owned free and clear. The seller is retiring and doesn't need to buy another house.

	TRADITIONAL CASH SALE	OWNER FINANCING
Sale price	$285,000	$297,000 — a premium for offering terms
Down payment	—	$35,640 (12%)
Broker commission (6%)	($17,100)	($17,820) — still due in cash at closing
Seller closing costs	($4,275)	($4,455)
Cash to you at closing	**$263,625**	**$13,365**
Amount carried	—	$261,360 at 7.5%, amortized over 30 years
Monthly income	About $989 if the proceeds earn 4.5%	**$1,828** in contract payments
Annual income	About $11,863	**$21,933**
Do you still have the principal?	Yes — $263,625 available	Not readily; it returns gradually inside the payments
Total received over 30 years	$263,625 plus whatever it earned	About $693,600 including the down payment

THE LINE MOST SELLERS ARE SURPRISED BY

Look at cash at closing. In the owner-financed column it's **$13,365, not $35,640** — because the broker commission and closing costs are due in cash at closing whether or not you're receiving the sale price in cash. The down payment pays them first.

This is exactly why the down payment matters on both ends. Too small a down payment can leave you writing a check at your own closing. **Before you agree to a down payment, calculate what's left after commission and costs.** If it's uncomfortably thin, negotiate a larger one.

READING THE COMPARISON FAIRLY

The owner-financed column shows nearly double the monthly income. That's real — but part of each payment is your own principal coming back to you, not earnings. In the first year, roughly $19,500 of the $21,933 is interest and about $2,400 is principal returned.

So the fair comparison is **about $19,500 a year in interest against about $11,900 from invested proceeds.** That's still a substantial difference, and it's secured by a property you know. It's just a smaller difference than the headline suggests, and anyone who shows you this comparison without saying so is selling rather than advising.

The other side of the ledger: in the cash column you still have $263,625 available for anything you want. In the owner-financed column you don't. That flexibility has value that no interest rate captures.

What if you need money later?

You aren't permanently locked in. A well-documented contract with a record of on-time payments can be sold — either the whole thing, or a **partial**, which sells a set number of future payments and then returns the contract to you. Expect a discount from face value; that discount is the buyer's return, and it's smaller when your contract is well written, well documented, and professionally serviced. Section 13 covers this.

SECTION 6

Taxes

For many sellers, taxes are the strongest argument for carrying the note — and for a few, they're the reason not to bother. None of what follows is tax advice. It's the list of questions to take to your CPA before you agree to terms.

Installment sales

When you sell property and receive payments over more than one tax year, the installment method generally lets you recognize your gain as principal payments come in, instead of all in the year of sale. Interest you receive is ordinary income taxed as received. For a seller with a large gain, spreading it across years can keep you out of higher brackets and reduce what you owe overall.

IF THIS WAS YOUR PRIMARY RESIDENCE, ASK ABOUT THIS FIRST

Federal law generally allows a substantial amount of gain on the sale of a main home to be excluded from tax, provided you meet ownership and use requirements — and the exclusion amount is larger for married couples filing jointly.

If your entire gain would already be excluded, **spreading it out may accomplish nothing tax-wise.** That doesn't mean owner financing is a bad idea — the income and the price premium may still be excellent reasons — but it removes what many sellers assume is the main benefit. Find out which situation you're in before it shapes your decision.

IF THE HOME WAS A RENTAL, ASK ABOUT DEPRECIATION RECAPTURE

If you rented the property and claimed depreciation, the portion of your gain attributable to that depreciation is generally **recognized in the year of sale** — even under the installment method, and even though you haven't received the money yet.

A landlord who owned a house for fifteen years can face a real tax bill in year one while holding only a down payment. That doesn't make installment sales a bad idea; it makes the down payment a planning number as much as a protection number. **Model your year-one tax against your year-one cash before you set it.**

Other things to raise with your CPA

- **Interest is ordinary income.** The interest portion of each payment is taxed as received and doesn't get capital-gains treatment.
- **Imputed interest.** If you set the rate unusually low — a real temptation when selling to family — the IRS may treat the transaction as though a market rate had been charged anyway. A below-market rate is not free.
- **Selling to a relative** can raise gift-tax and related-party questions, particularly with a below-market price or rate. Get this reviewed before you agree to anything.
- **Electing out.** The installment method is a default, not a requirement. In some situations recognizing the gain all at once is better. Ask your CPA to run both.
- **If you sell the note later,** remaining gain generally accelerates into that year. Factor it in before you liquidate.
- **If the buyer defaults and you take the property back,** there are specific tax consequences to repossession. Better to understand them in advance.
- **New Mexico treatment** may differ from federal in places. Ask.

ONE MEETING, BEFORE YOU LIST

An hour with your CPA before you decide on terms is the highest-value hour in this entire process. Bring them your purchase date, your basis, your improvement records, whether it was ever a rental, and the terms you're considering. What they tell you may change your down payment, your interest rate, or whether you carry at all.

SECTION 7

Choosing your buyer

Nothing else you do matters as much as this. A well-chosen buyer makes owner financing quietly successful for twenty years. A poorly chosen one turns it into the hardest thing you've done.

The down payment tells you the most

More than a credit score, more than income documents, more than how much you like them: **how much of their own money is the buyer putting in?** A buyer with 15% down has something real to lose that they cannot easily replace, and they will protect it through a bad year. A buyer with almost nothing down has a lease with extra paperwork.

Most experienced sellers won't go below 10%. On a weaker file, 15–20% is reasonable. And the money should be the buyer's own and already in their account — not borrowed the week before closing.

WHAT TO COLLECT AND VERIFY — FROM EVERY BUYER, EVERY TIME

- ✔ A complete written application
- ✔ A credit report
- ✔ Two years of tax returns
- ✔ Recent pay stubs, or twelve months of bank statements if self-employed
- ✔ Employment or income verification
- ✔ Twelve months of rent or mortgage payment history
- ✔ A reference from the previous landlord, not just the current one
- ✔ Proof the down payment is theirs and has been in the account
- ✔ A written explanation of any bankruptcy or collection
- ✔ Photo identification

You do not have to do this yourself. A licensed mortgage loan originator will collect and verify all of it for a modest fee, often paid by the buyer at closing. Most sellers should use one — see Section 9.

What the credit report is really telling you

The score by itself isn't very useful here. Look at the pattern. Medical collections are a different story than charged-off credit cards. One bankruptcy four years ago with clean credit since is a different risk than a thin file with three recent late car payments. What you want to see is **a history of paying for housing on time** — because that's the payment people protect first.

Can they actually afford it?

- **The payment against their income.** Including taxes and insurance, lenders generally want the housing payment under about a third of gross monthly income. You can flex on a strong down payment, but not far.
- **Everything else they owe.** Two car payments and student loans leave much less room than income alone suggests.
- **What's left to live on** after every obligation. This is the number that predicts whether a broken furnace becomes a missed payment.
- **Reserves after closing.** A buyer who empties their account to close has no margin at all.
- **Payment shock.** Compare the new payment to what they pay now. A large jump is a warning even when the ratios look fine.

TWO RULES THAT WILL PROTECT YOU

Don't lower your standards because you like someone. This is the most common mistake sellers make, and it hurts the buyer as much as you — they're the one who loses their down payment when it fails.

Apply the same standards to everyone. Fair housing and fair lending laws apply to you as a seller offering financing. Write down your criteria before you meet anyone, apply them the same way to every applicant, keep the file, and never make a decision based on race, color, religion, national origin, sex, familial status, disability, or any other protected characteristic. This is both the law and, almost always, better judgment.

SECTION 8

Setting your terms

You're designing an agreement you may live with for decades. Every line below is worth deciding on purpose rather than accepting whatever appears in a draft.

TERM	HOW TO THINK ABOUT IT
Price	Terms justify a premium, but the price should still be defensible against what the home is worth. A price well above value is the first thing a struggling buyer walks away from — and it makes the contract harder to sell later.
Down payment	Your primary protection and your best predictor. 10% at minimum in most cases. Remember it also has to cover your commission and closing costs.
Interest rate	Above what a bank would charge, because you're taking risk a bank wouldn't. But New Mexico limits interest rates in some contexts, and federal rules add limits on consumer loans. Set it with your attorney's input.
Length and amortization	Fully amortizing over 20 or 30 years is the cleanest and most common structure. It's also the easiest contract to sell if you ever need to.
Balloon payment	A date when the whole balance comes due, forcing the buyer to refinance. It shortens your wait — but it also raises regulatory questions on consumer loans, and a balloon your buyer can't meet becomes your problem too. Many sellers are better off without one.
Impounds	Collect taxes and insurance monthly through the escrow company. **This is the highest-value term you can include.** Unpaid taxes can put your security at risk and a lapsed policy leaves your collateral uninsured.
Insurance	Require specific coverage, require that you be named, and require notice if the policy is cancelled. Then verify it every year.
Late fees	Reasonable and clearly stated. Fees harsh enough to push a struggling buyer under don't help you.
Default and cure	Define exactly how many days late triggers a notice, how the notice is delivered, and how long the buyer has to fix it. Precision here is what makes your remedies work if you ever need them.
Prepayment	Most sellers allow the buyer to pay off early without penalty. Restricting it can raise consumer-protection questions and discourages refinancing, which is usually your best outcome.
Selling or transferring	Decide whether the buyer may sell the home or transfer the contract, and on what conditions. You approved this buyer, not the next one.
Upkeep	Require that the property be maintained and not substantially altered without your consent. It's still your security.
Escrow servicing	Required, not optional. Name the company in the contract and decide who pays the fee.

IF YOU'RE SELLING TO FAMILY

Family sales are common and often work beautifully. They fail in predictable ways, and all of them come from informality. **Do it exactly the way you'd do it with a stranger:** a real written contract drafted by an attorney, closing at a title company, title insurance, the contract recorded, a market interest rate, and payments through an escrow company.

That last one matters most. When a neutral company collects the payment, nobody has to ask a family member for money, nobody's memory of what was paid differs, and the arrangement survives Thanksgiving. Handling it informally is how families end up in court — and how the IRS ends up interested in whether part of the deal was a gift.

SECTION 9

The rules that apply to you

Selling a home on owner financing to someone who will live in it is a regulated activity. For most one-property sellers the requirements are manageable, but they are real, and they're easier to satisfy up front than to fix afterward.

THE QUESTION THAT DETERMINES EVERYTHING

Will your buyer live in the home? If yes, federal consumer-credit rules are in play. If your buyer is purchasing as an investment or business property, the analysis is different and considerably lighter. Almost everything below turns on that distinction.

The good news for most home sellers

After the Dodd-Frank Act, federal regulations generally treat someone who offers or negotiates residential mortgage terms as a loan originator, with licensing obligations attached. Regulation Z contains narrow exclusions, and the one most single-home sellers rely on is **a one-property exclusion** generally available to individuals, estates, and trusts financing the sale of a single property they own within a twelve-month period.

That exclusion carries conditions, which have historically included that the financing not have negative amortization and that the rate be fixed, or adjustable only after a period of years with reasonable caps. There is also a separate, somewhat broader exclusion for a small number of properties in twelve months, with additional conditions including a good-faith determination of the buyer's ability to repay.

IMPORTANT

These thresholds and conditions are technical, they apply differently to different situations, and they change. **Nothing here is legal advice.** Before you agree to carry financing, confirm the current requirements with a New Mexico real estate attorney who handles seller financing. If you are selling more than one property this way, get that advice before the second one.

WHAT MOST SELLERS ACTUALLY DO

Hire a licensed residential mortgage loan originator to underwrite and document the sale. They pull credit, verify income, document ability to repay, and prepare the required disclosures. The fee is modest and often paid by the buyer at closing. Pair that with an attorney-drafted contract, a title company closing, and a licensed escrow company, and you have covered essentially everything in this section without becoming an expert in any of it.

What else applies

AREA	WHAT IT MEANS FOR YOU
Ability to repay	Documenting that your buyer can afford the payment is both a compliance concept and simply good sense. Keep the file showing how you decided.
State licensing	New Mexico has its own mortgage originator licensing framework. One sale is different from several. Confirm where you stand.
Disclosures	Consumer-purpose financing can trigger federal requirements about disclosing rate, terms, and total cost.
High-cost thresholds	Rates and fees above certain limits can turn the loan into a high-cost mortgage with substantial extra obligations. Price with advice.

AREA	WHAT IT MEANS FOR YOU
Interest rate limits	New Mexico caps interest in certain contexts. Confirm the ceiling before you set your rate.
Fair housing and fair lending	Applies fully. Consistent written criteria, applied the same way to everyone, documented and kept.
How you advertise	Marketing specific rates or payments in a consumer transaction is itself regulated. Let your broker handle the wording.
Keeping records	Keep the complete file — application, verifications, credit report, your decision, and the contract — for as long as your attorney advises.

IF YOUR BUYER IS AN INVESTOR

If the buyer is purchasing the property as a rental or other business investment rather than as their home, most of the consumer-protection framework above does not apply in the same way, and the transaction is treated more like an arm's-length deal between two businesspeople. That makes things simpler — but confirm it rather than assume it. **A buyer's stated intent is not the same as the truth,** and a buyer who tells you it's an investment and then moves in has changed your legal position, not theirs. Put their representation in writing and let your attorney advise on how much weight it carries.

SECTION 10

Escrow: your safety net

In most states "escrow" means an account that exists for a few weeks around a closing. New Mexico has something else as well: a long-term escrow industry built specifically to service these contracts for their entire life — often thirty years.

A licensed escrow company holds your signed deed and the contract documents, receives the buyer's payments, records each one in a permanent ledger, sets aside and pays impounds for taxes and insurance, sends you your money, and releases the deed to the buyer only when the contract has been satisfied.

WHAT THIS DOES FOR YOU SPECIFICALLY

- ✔ **You're never the bill collector.** Payments go to a neutral company, not to your mailbox. That distance is worth more than it sounds when a payment is late — especially if the buyer is family.
- ✔ **There's no argument about what was paid.** An independent, permanent ledger, available to you online, that a lender, a court, your CPA, or your heirs will accept.
- ✔ **Your deed is held safely** for a contract that may outlast your involvement — not in a drawer at home.
- ✔ **Taxes and insurance get paid.** With impounds, the two most common ways your security quietly deteriorates are handled every year.
- ✔ **Nobody can rewrite the deal.** The contract is serviced exactly as written; changes require signatures from everyone involved.
- ✔ **Your family has somewhere to turn.** If something happens to you, the records exist in one place with a licensed company, not scattered through your files.
- ✔ **Your contract is worth more.** If you ever sell it, a professionally serviced payment history is the single biggest factor in what you'll be offered.

What we do and don't do

WE DO

- ✔ Receive payments online, by phone, by mail, by bank draft, in the lobby, or at the drive-through
- ✔ Record every payment in a permanent ledger
- ✔ Deduct our fee and send your money by check or direct deposit
- ✔ Split payments among multiple parties if the contract says so
- ✔ Hold your deed and other critical documents
- ✔ Hold impounds and pay taxes and insurance when bills are submitted
- ✔ Give you online access to the full history
- ✔ Issue payoff quotes when the buyer is ready to pay off
- ✔ Offer account monitoring and reminders
- ✔ Offer mediation if a dispute arises
- ✔ Keep records six years after the account closes

WE DON'T

- ✕ Give legal or tax advice, or explain what your contract means
- ✕ Draft the contract, the deed, or any binding document
- ✕ Negotiate or change terms
- ✕ Amend the contract — only you and the buyer can do that
- ✕ Screen or approve your buyer
- ✕ Take sides in a disagreement
- ✕ Enforce the contract — that requires legal action by you
- ✕ Prepare or send default notices on your behalf
- ✕ Chase your buyer for a payment
- ✕ Report payments to credit bureaus
- ✕ Pay a tax or insurance bill until someone sends us the bill

WHY OUR NEUTRALITY IS YOUR PROTECTION

New Mexico law requires us to remain neutral. A company that would bend a rule for a buyer would bend one against you. Our refusal to interpret, advise, or take sides is exactly what makes the record credible to everyone who will ever need to rely on it — including you.

SECTION 11

The process, step by step

From deciding to sell to the day the deed is released. Most of the work happens before you ever meet a buyer.

1. **Talk to your CPA**
   Bring your purchase date, your basis, improvement records, whether the home was ever a rental, and the terms you're considering. What they tell you may change your down payment or whether you carry at all.

2. **Talk to a real estate attorney**
   Confirm which rules apply to your situation, who will draft the contract, and what your remedies would be if the buyer stopped paying. Ask them to review anything before you sign it.

3. **Find a broker who understands owner financing**
   Not every broker does, and some will discourage it simply because it's unfamiliar. Ask directly how many they've closed. A broker who knows this territory will know which title companies, attorneys, and escrow companies handle it well.

4. **Decide your terms in advance**
   Price, minimum down payment, interest rate, length, whether there's a balloon, impounds, late fees. Write them down before you meet anyone. Decisions made in advance are better than decisions made across a kitchen table.

5. **Write down your buyer criteria**
   Minimum down payment, credit standards, income documentation, ratio limits. The same standards for everyone, every time.

6. **Market the property**
   Your broker lists it, shows it, and brings you offers. Let them handle how the terms are advertised.

7. **Screen the buyer**
   Application, credit, income, housing history, sourced down payment. Use a licensed originator. Write down your decision and keep the file.

8. **Documents**
   Your attorney drafts the Real Estate Contract; the title company prepares the closing and confirms clear title. Read the contract yourself, all of it, and ask about anything you don't understand.

9. **Closing**
   You and the buyer sign at the title company. The down payment is paid, commission and costs come out, title insurance is issued, the contract is recorded with the county, and your signed deed goes into escrow.

10. **Escrow setup**
    The title company sends the documents to the escrow company. An account is opened and a Welcome Package goes to both of you with the account number, balance, payment instructions, and due date. Read yours the day it arrives, and set up direct deposit.

11. **The years in between**
    Payments arrive, your balance drops, and you confirm annually that taxes and insurance are current. Section 12 is your checklist for this part.

12. **Payoff and deed release**
    Eventually the buyer refinances, sells, or makes the last payment. They request a payoff quote, the contract is satisfied, and the deed is released to them to record. Your obligation ends there.

SECTION 12

Protecting yourself over the years

Once the contract is set up, your job is small but not zero. Fifteen minutes a year prevents nearly every problem sellers actually encounter.

Your annual checklist

- [ ] Confirm the property taxes were paid — check the county treasurer's records yourself, or confirm with your escrow company if you impound
- [ ] Confirm the homeowner's insurance is in force, that coverage is still adequate, and that you're still named on the policy
- [ ] Review your payment history for late payments or a developing pattern
- [ ] Confirm your contact and deposit information with the escrow company is current
- [ ] Drive by the property once a year, from the street
- [ ] Give your CPA the year's interest and principal figures at tax time
- [ ] Check that your estate documents still reflect the contract correctly

What to watch for

- **Payments arriving a few days later each month.** The most reliable early warning there is. A buyer sliding from the 1st to the 12th over six months is telling you something before they miss anything.
- **A lapsed or reduced insurance policy.** A struggling buyer often cuts insurance first. If your collateral burns uninsured, you have a contract and a vacant lot.
- **Unpaid property taxes.** These can eventually threaten the property regardless of the contract. Impounds prevent this almost entirely.
- **Visible neglect.** A yard going to ruin usually reflects something happening inside the household.
- **Requests to change the deal.** Sometimes reasonable, sometimes an early symptom. Either way, nothing changes without a written amendment signed by everyone.
- **Silence.** A buyer who stops answering is a different problem than a buyer who calls to explain.

> **KEEP A FILE**
>
> One folder, physical or digital, containing: the Real Estate Contract, the recorded copy, the deed information, your escrow account number, the title policy, the buyer's application and your screening documents, your attorney's and CPA's contact information, and the amortization schedule. **Tell someone in your family where it is.** That single step solves most of what goes wrong in Section 13.

SECTION 13

Your contract and your estate

A thirty-year contract signed at sixty-eight may well outlive you. This section is the one most sellers never think about, and the one their families most wish they had.

What happens to the contract

Your interest in the contract is an asset, like a savings account or a stock certificate. It passes according to your estate plan — through your will, your trust, or by operation of law. It does not disappear, and the buyer's obligation does not end. Whoever inherits it steps into your position: they receive the payments and, eventually, release the deed.

> **WHAT GOES WRONG**
>
> Almost always the same thing: **the family didn't know the contract existed,** or didn't know where the documents were, or didn't know which company was servicing it. Payments continue arriving at an account nobody is watching. Nobody notifies the escrow company. Nobody knows who has authority to act. What should be a simple transition becomes months of untangling during an already difficult time.
>
> All of it is preventable with one conversation and one folder.

What to do now

1. **Tell your family the contract exists**
   Who the buyer is, roughly what's owed, which escrow company services it, and where the file lives. This costs you one conversation.

2. **Ask your attorney how it should be titled**
   Many sellers hold the contract in a revocable trust so it passes without probate. Others use an entity or specific provisions in a will. There is a right answer for your situation and it's worth asking for.

3. **Decide what should happen to the payments**
   A contract can be structured to disburse to more than one person in fixed shares. If you want three children to share it, that can be set up — and it's much simpler to arrange while you're here.

4. **Think about whether your heirs will want it**
   Some families are happy to receive a monthly payment for twenty years. Others would rather have cash and no involvement. Your heirs can sell the contract — and it will be worth considerably more if it has been properly documented and professionally serviced. That's another reason not to handle collections yourself.

5. **Keep the escrow company's records current**
   Your address, your deposit instructions, and who they should contact. It takes a phone call.

If you need money before the contract is paid

You aren't locked in permanently. A seasoned contract — one with a documented history of on-time payments — can be sold to investors who buy this kind of paper. You can sell the whole thing, or sell a **partial:** a set number of future payments, after which the contract returns to you. A partial raises cash now while keeping the long tail of the asset, and it often prices better than a full sale.

Expect a discount from the balance owed; that discount is the buyer's return. It's smaller when the contract is fixed-rate, fully amortizing, recorded, title-insured, backed by a real down payment, and serviced by a licensed company with a clean ledger. Every one of those choices was made back at closing.

> **THE SHORT VERSION**
>
> Write the contract well, service it professionally, keep one folder, tell your family where it is, and ask your attorney how it should be titled. Five things, none of them difficult, and together they mean the contract you created becomes a straightforward inheritance rather than a problem your family has to solve.

SECTION 14

What to expect

When it goes right — which is most of the time

It's uneventful, and that's the goal. A week or two after closing, a Welcome Package arrives with your account number, the balance, and the payment schedule. You set up direct deposit. On the same day each month the money appears in your account, less the servicing fee.

Once a year you confirm the taxes were paid and the insurance is current. At tax time your CPA gets a clean summary of interest and principal. You drive past the house occasionally and see that someone is living in it and taking care of it.

Somewhere between year three and year fifteen the buyer refinances into a bank loan, or sells the house, or simply keeps paying until the last payment. They request a payoff quote, the contract is satisfied, the deed is released, and you're done. A well-screened buyer with real money down behaves this way the overwhelming majority of the time.

When a payment doesn't come

- **Find out why before you decide anything.** A layoff, a hospital stay, or a divorce is a different situation than a buyer who has given up. The first one is usually fixable and usually worth fixing.
- **Call your attorney early.** Notice requirements and cure periods are technical, and a defective notice can send you back to the start. This is not a do-it-yourself moment.
- **Consider a written change.** Deferring a payment, re-amortizing, or a short pause can save a contract that would otherwise fail, and it preserves the buyer's equity too. If everyone signs an amendment, we service it exactly as amended.
- **Never accept partial payments casually.** A pattern of taking less than the contract requires can weaken your position later. Put any accommodation in writing.
- **Watch taxes and insurance immediately.** A buyer in trouble stops paying those first, and both threaten the property directly.
- **Your escrow company can't collect for you.** We record what arrives and follow the contract. Reaching the buyer is yours or your attorney's job.

WORST CASE

If the buyer defaults and doesn't cure it, the typical remedy under a New Mexico Real Estate Contract is that you may terminate the contract, take the property back, and keep the payments already made. That sounds favorable, and sometimes it is — you may end up with the house plus several years of payments.

But it is rarely as clean as it sounds. You may take back a home that has been neglected, with unpaid taxes and a lapsed insurance policy, occupied by someone who no longer has equity to protect and may not leave quickly. You will have attorney's fees. You may have repairs. There are tax consequences to repossession. And you'll be selling the house again, at whatever the market is that year.

Your exact rights, the notice you must give, and the time the buyer has to cure all depend on your specific contract and on New Mexico law. If you're heading toward a default, involve your attorney immediately. Your escrow company cannot advise you and cannot act for you.

HOW TO MAKE THE WORST CASE UNLIKELY

Require a real down payment. Screen the buyer properly and keep the file. Impound taxes and insurance. Verify insurance every year. Use a licensed escrow company so the record is beyond dispute. Write clear default and cure terms with an attorney. Pay attention to payments arriving later each month. None of this is expensive, and together it is the difference between a quiet twenty years and the hardest chapter of this guide.

SECTION 15

Red flags and pitfalls

Any one of these is a reason to slow down. Slowing down has never cost a seller anything.

WARNING SIGNS IN A BUYER

- **A down payment that isn't theirs** or can't be traced. Borrowed money at closing means they have nothing at stake.
- **Reluctance to provide documents.** If they won't produce a pay stub now, they won't return your call in year three.
- **A story that keeps changing** about income, employment, or credit history.
- **Pressure to skip the paperwork** — no originator, no attorney, "let's keep it simple between us."
- **A payment that's a big jump** from what they pay for housing now.
- **Nothing left after closing.** No reserves means the first repair becomes a missed payment.
- **Wanting to close unusually fast** without a clear reason.
- **Asking you to hold a second contract** or finance the down payment. If they can't fund the down payment, the answer is no.

WARNING SIGNS IN HOW THE DEAL IS BEING HANDLED

- **Anyone suggesting you skip the title company.** There is no legitimate reason.
- **Anyone suggesting you skip an escrow company** and take payments directly. This is the one that costs sellers the most.
- **Being told you don't need an attorney,** or handed a form contract you're discouraged from marking up.
- **A broker who dismisses owner financing without explaining why,** or who won't answer questions about how it works.
- **Being rushed.** Urgency is a tactic, not a market condition.
- **Anything you don't understand** that someone is reluctant to explain twice.

Mistakes sellers make

- **Accepting too little down** because you like the buyer or you're tired of the house being on the market.
- **Not calculating cash at closing** after commission and costs, and being blindsided at the closing table.
- **Skipping impounds,** then discovering four years later that the taxes haven't been paid.
- **Collecting payments yourself.** It saves a small fee and costs you the payment record, the neutrality, and — if you ever sell the contract — real money.
- **Treating a family sale casually.** The relationship is the reason to be more formal, not less.
- **Setting a below-market interest rate** without asking your CPA about imputed interest and gift-tax questions.
- **Never telling anyone the contract exists.**
- **Assuming the contract says what you were told it says.** Read it. All of it. Twice.

SECTION 16

Questions to ask

Print this section and take it with you. Anyone worth working with will welcome all of it.

Ask yourself first

1. If this payment stopped for a year, would my life still work?
2. Do I need any of these proceeds in the next five years?
3. Am I choosing income on purpose, or just trying to get the house sold?
4. Am I willing to stay organized about this for years, and is there someone who could step in if I couldn't?
5. Could I take this house back and sell it again if I had to?

Ask your CPA

1. What is my gain, and how much of it would be taxable if I sold for cash?
2. Does the primary residence exclusion apply to me, and for how much?
3. If the home was ever a rental, what is my depreciation recapture, and when is it owed?
4. What down payment do I need to cover my year-one tax bill?
5. Should I elect out of installment treatment?
6. What interest rate keeps me clear of imputed-interest problems, especially if I'm selling to family?

Ask your attorney

1. Which rules apply to me for this sale, and what's my compliance path?
2. Do I need a licensed loan originator, and can you recommend one?
3. Who will draft the Real Estate Contract, and will you review it for me?
4. What exactly are my remedies if the buyer stops paying, and how long would that take?
5. Are my default and cure provisions clear enough to actually enforce?
6. What interest rate limits apply in New Mexico?
7. How should this contract be titled so it passes cleanly to my family?

Ask your broker

1. How many owner-financed sales have you closed, and how recently?
2. What price premium is realistic for offering terms in this market?
3. Which title companies, attorneys, and escrow companies do you work with on these?
4. How will the terms be advertised, and who handles that wording?
5. What will my total closing costs and commission be, and how do they come out of the down payment?

Ask your buyer

1. How much are you putting down, where did it come from, and how long has it been in your account?
2. Will you be living in the home?
3. What is your monthly income and how is it documented?
4. What do you pay for housing now, and may I contact your previous landlord?
5. What other monthly payments do you have?
6. What will you have left in savings after closing?
7. Is there anything in your credit history you'd like to tell me about first?
8. What's your plan if the water heater goes out in the first year?

Ask the escrow company

1. What are your setup and monthly fees, and who pays them under this contract?
2. How will I receive my money, and how quickly after the buyer pays?
3. How do impounds work, and what do I need to send you?
4. What can I see online, and what will you send me at tax time?
5. What happens if a payment is late, and how will I know?
6. What would my family need to do if something happened to me?

SECTION 17

Next steps

If you've read this far you understand this better than most people who do it. Here's the order to work in.

1. **Get your numbers**
   What is the home worth today, and what would you net from a cash sale after commission and costs? That's your baseline. Everything else gets compared to it.

2. **See your CPA**
   Before anything else. Your tax picture may change your terms, your down payment, or your decision.

3. **See a real estate attorney**
   Confirm which rules apply, who drafts the contract, and what your remedies would be. Ask them to be available when an offer arrives.

4. **Choose a broker who knows this territory**
   Ask how many owner-financed sales they've closed. Their experience will shape everything from pricing to which professionals you end up working with.

5. **Write down your terms and your buyer criteria**
   Price, minimum down, rate, length, balloon or not, impounds, and exactly what you'll require from a buyer. Before you meet anyone.

6. **Choose your escrow company early**
   Ask about fees, payment methods, impounds, online access, and what your family would need to do someday. Building servicing into the contract is easier than adding it afterward.

7. **Use the checklists**
   Sections 12, 15, and 16 are meant to be printed and carried. Work through them rather than trusting your memory in a moment when you're being agreeable.

8. **Take your time**
   There is no version of this where moving faster protects you.

THE BOTTOM LINE

Carrying the note on your own home is a legitimate, long-established way to sell in New Mexico. It can produce better income than the proceeds would earn anywhere else, sell a property that wouldn't otherwise sell, and spread a tax bill across years instead of one painful April.

It asks something in return: that you choose the buyer carefully, get the paperwork right, and stay organized for a while. **Require a real down payment. Screen the buyer honestly. Impound the taxes and insurance. Use an attorney, a title company, and a licensed escrow company. Tell your family it exists.** Sellers who do those five things are very likely to look back on this as one of the better financial decisions they made.

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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