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Seller Financing Checklist for Buyers/Borrowers

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- Recognize that seller financing is a separate transaction from the purchase and sale, subject to different considerations (loan servicing, default planning, etc.)
- As the amount of seller financing for the purchase price will rely on the value of the property securing the financing, it is critical not to overvalue the property
- Confirm that seller/lender has an equivalent interest in completing the deal
- Confirm that all parties have a clear understanding of the risks of seller financing
- It is crucial to have as clear an understanding as possible of expected conditions for commercial real estate and financing markets for future refinancing purposes
- Make certain that seller/lender has a reliable record (e.g., few or no lawsuits) in ongoing transactional relationships (long-term contracts, leases, etc.)
- Make certain that seller/lender has the necessary corporate/partnership authority to participate in a seller financing transaction
- Review the title report and other due diligence materials to determine whether there is existing financing against the property that will need to be dealt with
- If so, review the financing documents (included in the due diligence materials) to determine whether the sale will require the existing financing to be paid off at sale
- If existing financing can survive the sale, determine what priority seller financing will have and what type of security (wraparound vs. junior) will be required
- Key seller financing terms: (1) Length of term, (2) LTV ratio, (3) financing priority (if applicable), (4) type of security (if applicable), (5) personal liability
- Eliminate/mitigate personal liability if at all possible (non-recourse loan, etc.)
- Loan documents: (1) Loan agreement (terms of loan), (2) promissory note (terms of repayment), (3) deed of trust (security for repayment), (4) personal guaranty (if borrower is an entity)

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