

VENDOR FINANCING

With banks paying almost nothing on deposits while they charge five or six per cent or more on their mortgages, there are always going to be private vendors who will consider vendor financing an attractive option. This is particularly so for those vendors who are selling investment properties.

Consider the case of the vendor who is selling a second home. What is he going to do with his cash windfall (assuming he doesn't want to buy another property)? If he puts it in the bank he'll only get minimal interest. Why not vendor financing? After all, the vendor is already familiar with the property that will form the security for the loan and he can charge a lot more for interest than the bank is likely to pay.

When dealing with a vendor take-back mortgage, the contract of purchase and sale should contain as much detail as possible regarding the financing particulars. A deficiency, however, will not necessarily be fatal as the courts, in enforcing such a contract, will look to the intention of the parties as expressed in the contract.

On the other hand, if you don't want to wait five or ten years for the courts to determine whether or not you have an enforceable contract you will probably want to include in the contract of purchase and sale all details regarding the amount to be financed, the term, the rate of interest and frequency of compounding, the monthly payments and the amortization period.

Special financing terms must be specified in the purchase contract. Thus, the vendor should consider the following terms when negotiating a vendor take-back mortgage:

1. a "due on sale" clause requiring the purchaser to pay the full amount of the mortgage upon sale of the property by the purchaser, at the option of the vendor;
2. a clause giving the vendor the right to cure any defaults under any prior mortgage in order to "gross up" the principal secured under its mortgage; and,
3. a "prior mortgage" clause giving the vendor the right to foreclose if payments under the prior mortgage are in default even if payments for the vendor's mortgage are in good standing.

Conversely, the purchaser should consider including the following terms:

1. a clause giving the purchaser the right to pay off part or all of the mortgage prior to the expiry date of the mortgage term, without notice or penalty; and
2. a clause allowing the purchaser to obtain future financing from a lender, in priority to the vendor take-back mortgage, if the property is currently charged with a first mortgage of a lesser term than that of the vendor take-back mortgage.

Agreements for sale are very similar to vendor financing with one major difference. In a mortgage back deal the title is transferred to the purchaser who then grants a mortgage back to the vendor. Under an agreement for sale the property is not transferred into the purchaser's name until all the payments have been made and no further monies are owing.

In times of tight money or in times when vendors have to give a little in order to sell their properties, vendor financing can be a sensible option. Even in times when all you have to do is put a "for sale" sign up to get a crowd at your door, it never hurts to ask.

Of course, it certainly helps to get a little legal advice before you make any such deal. Afterwards, there is very little, if anything, that can be done to change things as changes require an amendment to the contract to be made in writing and that requires agreement between both parties.

Consult your legal professional if you have any doubts or don't understand what you're getting into. Remember, lawyers are much better at keeping you out of trouble than they are at getting you out of trouble and it is usually a lot cheaper and easier, too.