

TIPS FOR LENDERS IN REVERSE EXCHANGES

These tips are intended to alert lenders to issues unique to Reverse Exchanges. A Reverse Exchange occurs when the purchase of the new property must be closed **before** the closing of sale of the old property.

An Exchangor cannot exchange into a property already owned by the Exchangor.

In a Reverse Exchange, someone other than the Exchangor, or someone other than a party related to or controlled by the Exchangor, must hold title to the new property until the old property sale closes. Normally a Facilitator Company will hold title to the new property ('warehouse the new property') until the old property sale closes.

Issue #1: The Loan will be made to the Facilitator not to the Exchangor.

Because the Exchangor cannot come into title on the new property until the old property sale closes, the loan must be closed in the name of the title holder, the Facilitator Company.

The Lender must be willing to loan to essentially a "shell company" which will often be a single member and single purpose L.L.C. created for the exchange. This L.L.C. will have little or no assets other than funds loaned to it by the Exchangor.

Issue #2: Ideally, the loan will be non-recourse to the Facilitator.

Because the Facilitator is merely performing a service in facilitating the exchange, and has no economic interest in the transaction, other than its fee, the Facilitator will not be willing to be liable on the Note.

The Lender may rely on the creditworthiness of the Exchangor and obtain a guarantee of the Note and Deed of Trust from the Exchangor. The Lender can have full recourse against the Exchangor on the transaction.

Issue #3: The Facilitator will need the Lender to waive its due on sale clause for a transfer of the new property (or transfer of the units in the limited liability company owned by Facilitator) from the Facilitator to the Exchangor.

The Facilitator is required to deed the new property to the Exchangor after closing of the sale of the old property or no later than 180 days from taking title to the new property. The Lender must be willing to waive its due on sale or due on transfer clause for any transfer of the property to the Exchangor or the units in a single member L.L.C.



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The due on sale or due on transfer clause can apply to any transfers other than to the Exchangor or to a single member L.L.C. owned by the Exchangor.

Issue #4: Ideally, the Facilitator will not be required to sign any loan documents containing any warranties or representations concerning the new property.

Because the Facilitator is merely performing a service in facilitating the exchange, the Facilitator is not in a position to make any warranties or representations regarding the new property.

The Lender can obtain such warranties and representations from the Exchangor.

Issue #5: The Facilitator will need the Lender to allow junior or subordinate financing on the new property.

All of the cash to make the down payment on the new property will be loaned from the Exchangor to the Facilitator. The Facilitator will normally execute a Note and Deed of Trust on the new property to secure such loan. The Lender needs to allow the Exchangor to have a junior or subordinate lien on the property to secure the loan to the Facilitator. If subordinate financing is not permitted by the lender, the Facilitator may pledge all of the membership units in the limited liability company to secure repayment of the note to the Exchangor.

The Lender can require that the only junior financing on the new property will be the loan from the Exchangor to the Facilitator.

The above listing of unique Reverse Exchange issues is not exhaustive but does cover the majority of issues. With advance planning, these issues can be resolved. The result will be a loan that will meet the Lender's, Facilitator's, and Exchangor's needs.



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