

Unusual Transactions in a Down Market

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Wholesaler Definition

Wholesale real estate is a way to buy and sell real estate contracts. Wholesalers act as intermediaries between sellers and buyers, who are usually investors. A wholesaler will usually contact owners of distressed properties and convince them to open a wholesale contract with them.

Assignment of purchases interest in a purchase and sale agreement

Real estate wholesaling is done by a wholesaler, who enters a negotiation process with a seller, gets a property under contract, and then markets that property at a higher purchase price to a real estate investor. An investor is still willing to pay the marked-up property price, since the wholesale property is under fair market value.

This typically means that the home is in disrepair, needs an expensive upgrade, or has been neglected. Real estate wholesalers are the matchmakers between investors and undervalued properties. They aren't agents or brokers and often don't carry a professional license.

Issues and Red Flags with Assignments of Purchases Interest

1. The use of custom-made purchase and sale agreements.
2. Generally, the parties have not sought out legal counsel.
3. The initial purchaser does not want the purchaser's assignment disclosed to the seller.
4. The seller may have been misled as to the value of their property by an unlicensed purchaser.
5. Escrow is asked to disburse the "finders fee" at closing.

What Can Be Done To Limit Risk

1. Reject the custom purchase and sale agreement and require that they use the MLS forms or get underwriters' approval.
2. Suggest that the parties seek legal representation for the answers to any questions that Title and Escrow cannot provide.
3. Require full disclosure to all parties of the transaction by way of a signed affidavit. The affidavit should disclose the terms of both transactions.

Requiring Full Disclosure

Escrow Agent: _____ (“Agent”)

Property Description: _____ (“Property”)

Transaction 1:

Transaction 2:

Seller 1: _____

Seller 2: _____

Buyer 1: _____

Buyer 2: _____

Escrow No. _____

Escrow No. _____

The undersigned, being the parties to the above transactions, hereby acknowledge the following facts, consent to the closing of the above-referenced transactions and agree to indemnify and hold Agent harmless from and against any and all liability resulting from said facts or the closing of said transactions:

1. Seller 1 has entered into a purchase and sale agreement to sell the Property to Buyer 1.
1. Buyer 1 (who is also Seller 2) has entered into a purchase and sale agreement to re-sell the Property to Buyer 2.
1. The purchase price being paid for the Property by Buyer 1 is below the purchase price being paid for the Property by Buyer 2.
1. The parties have instructed Agent to handle the escrow for both Transaction 1 and Transaction 2.
1. The parties acknowledge that Transaction 1 and Transaction 2 will close simultaneously.
1. Agent’s willingness to close the transactions is contingent upon the parties’ execution of this Acknowledgment.
1. The parties to this agreement shall hold harmless, protect, defend and indemnify Escrow Agent and Stewart Title Guaranty from and against any and all claims, costs, liabilities, losses, damages, expenses and charges including, but not limited to, attorney's fees and expenses of litigation and attorney's fees and expenses to enforce this Agreement, for which the Escrow Agent or Stewart Title Guaranty may in its sole discretion become liable or sustain, arising out of or any way connected closing this transaction.

IN WITNESS WHEREOF, the parties hereto acknowledge and agree to the above.

Seller 1

Buyer 1/Seller 2

Buyer 2

House Flipping Insuring the initial Purchase.

1. Flipping homes has many of the same issues as purchaser assignments and simultaneous closings.
2. Property and or seller are commonly distressed.
3. Is the seller a vulnerable person and do they have a full awareness of the transaction? Is the seller utilizing power of attorney?
4. If so, Escrow should discuss the transaction with the seller to evaluate their knowledge of the terms of the sale.
5. Have the attorney in fact sign a power of attorney affidavit and indemnity.

power of attorney affidavit and indemnity

INDEMNITY AGREEMENT (POWER OF ATTORNEY)

This Indemnity Agreement (Power of Attorney) (“Agreement”) is made as of this day by (“Indemnitor”) for the benefit of Stewart Title Guaranty Company (“Stewart”) and _____, Stewart’s limited agent for the issuance of title insurance policies, “Agent”.

FACTUAL CONTEXT:

A. Indemnitor has been named as the attorney in fact under that certain Power of Attorney dated _____ and executed by _____ as Principal(s) (the “Power of Attorney”).

B. Indemnitor desires to use the Power of Attorney to sign certain documents relating to the sale and/or encumbrance of the property described above (the “Property”) and desires that Stewart issue a policy or policies of title insurance in connection therewith in reliance thereon and without the signature of the Principal(s).

C. In order to issue the policy or policies of title insurance, Stewart and Agent have requested certain assurances from the Indemnitor.

REPRESENTATIONS AND AGREEMENT

1. Indemnitor hereby represents and warrants to Stewart and Agent that:

a. I am the person named as the attorney in fact or agent in the Power of Attorney.

b. If I am acting as a successor attorney in fact, the following circumstances and facts occurred which entitle me to become the acting attorney in fact:

c. To the best of my knowledge, the Principal(s) under the Power of Attorney is/are still alive.

d. To the best of my knowledge, the Principal(s) was/were, at the time the Power of Attorney was executed, competent to sign the Power of Attorney and was/were not under any undue influence to sign the Power of Attorney.

Insuring The Resale of a Flipped Home

1. Mechanics Lien Exposure by Material and Labor Providers.
2. Substandard materials and lack of proper permitting.
3. Title Companies defaulting to Expanded Coverage Owners Policies increase risk and exposure.





Homeowners Policy Coverage

COVERED RISKS

8. Someone else has a lien on Your Title. Some examples of liens are:
 - f. a statutory lien, attaching before or after the Date of Policy, for service, labor, material, or equipment in connection with an improvement or work related to the Land and furnished before the Date of Policy.

10. Someone else claims to have a right affecting Your Title because of fraud, duress, incompetency, or incapacity.

16. Because of a violation existing at the Date of Policy of a State or Municipal subdivision law or State or Municipal subdivision regulation affecting the Land:
 - a. You are unable to obtain a building permit from a Municipal authority;
 - b. You are ordered by a State or Municipal authority to remove or remedy the violation; or
 - c. someone else refuses to perform a contract to purchase the Land, lease the Land, or make a mortgage loan on the Land, based on that violation.

18. You are ordered by a State or Municipal authority to remove or remedy any portion of Your existing structures—other than boundary walls or fences—because any portion of Your existing structures was built without obtaining a building permit from the proper Municipal authority.

Wraps

- 1.The seller has an existing mortgage on the property they are selling.
- 2.A buyer is interested in purchasing the property but may not qualify for a traditional mortgage from a bank due to poor credit or other reasons.
- 3.Instead of obtaining a new mortgage from a bank, the buyer enters into an agreement with the seller. The seller essentially becomes the lender for the buyer.
- 4.The buyer makes monthly payments to the seller, which include both the payments on the existing mortgage (held by the seller) and an additional payment to cover the new mortgage amount.
- 5.The seller, in turn, continues to make payments on the existing mortgage using the funds received from the buyer.
- 6.The seller profits from the interest rate differential between the existing mortgage and the higher interest rate charged to the buyer.

Risk of Wraps

- 1. Due-on-Sale Clause:** Most traditional mortgage agreements contain a due-on-sale clause, which allows the lender to demand full repayment of the loan if the property is sold.
- 2. Default by Buyer:** If the buyer defaults on their payments under the wraparound mortgage, the seller is responsible for making the payments on the underlying mortgage even though they no longer hold the Title.
- 3. Lack of Control:** The seller no longer has direct control over the property after the sale, as the buyer now holds ownership rights. This lack of control can lead to concerns about property maintenance, insurance, and other matters.
- 4. Fraud and Scams:** Real estate wrap transactions can be susceptible to fraudulent schemes, both from unscrupulous buyers and sellers. It's crucial to conduct thorough due diligence.

Assumptions

- 1.Existing Mortgage:** The current property owner (the seller) has an existing mortgage loan on the property they are selling.
- 2.Qualified Buyer:** The buyer must qualify for the assumption, usually by meeting the lender's credit and financial requirements. The lender assesses the buyer's financial stability to ensure they can make the mortgage payments.
- 3.Application and Approval:** The buyer, seller, and lender collaborate to complete an assumption application. The lender will review the buyer's financial information and credit history to determine if they are eligible to assume the mortgage. The lender may charge an assumption fee for this process.
- 4.Legal Documentation:** Once approved, the lender and both parties will prepare legal documents to transfer the mortgage from the seller to the buyer. These documents outline the terms and conditions of the assumption, including the interest rate, loan balance, and repayment schedule.
- 5.Closing:** Similar to a standard real estate closing, the buyer and seller sign the necessary paperwork to transfer ownership of the property. At this point, the buyer assumes responsibility for the mortgage.
- 6.Payment Responsibility:** After the closing, the buyer is responsible for making mortgage payments directly to the lender. The seller is no longer liable for the mortgage payments.

Assumption Red Flags and Risk

1. Seller does not want their lender contacted.
2. Innocent Buyers have no legal representation as to their rights. Expanded Homeowners Coverage could come into play.
3. Buyers are often flippers who plan to resale the home quickly. In addition to the usual Flipper concerns, the original borrower must be available to request the payoff.

Eliminating Assumption Risk

1. Require that a Third-Party Assumption agreement is Recorded at Closing.

The buyer agrees to assume the loan and its terms.

The seller is released from liability for the loan.

The lender agrees to the assumption and releases the seller/borrower from liability.

Vacant Land Sales Rising Risk of Fraud



Red Flags:

- No outstanding mortgages - free and clear property;
- Seller in a rush to close;
- Owner is a non-US citizen;
- Sales amount is usually under \$50,000, although the amount may be higher;
- County's Property Appraiser records show the owner's address to be outside of the United States;
- Real estate agent never meets with principals and is hired by e-mail;
- Sale documents are e-mailed to seller, no in-person closing or use of RON;
- Typographical errors and non-matching signatures common;
- Passport/ID appears suspect with use of cut and pasted photos;
- Notary acknowledgments are suspect and may claim to be from US Embassy or an attorney/notary in South Africa or other foreign country;
- Purported owner is not currently located at the owner's address listed in the county's tax records;
- Wiring instructions utilize banks not located in the owner's country of residence (as shown in county's tax records) and/or list third party payee/account owner;
- Multiple foreign countries involved for one party (e.g., seller in one place, documents notarized in another, wire going to another country);
- Documents sent to title company already executed without prior inquiry to title company about how they need to be completed and acknowledged.

Stopping Vacant Land fraud

The number one way that we have found to catch vacant land fraud is to send a letter out of Escrow to the address noted in the Real Estate Tax Records.

Vacant Land Letter Example

[Agent Name and Address; include Agent's phone number and email]

Date

[Name and mailing address of the property owner listed in the Tax Assessor's Records]

Subject Property: 125 Main Street, Anywhere, 11122 (the "Property")
Assessor's Parcel No. 11-22-33-4444-CP3O
Agent File Number: 202X-123456789
Pending Property Sale to: (John/Jane Buyer)

Dear [Name of Property Owner listed in the Tax Assessor's Records]:

[Agent Name] was selected to provide title insurance involving a purchase and sale of the above Property. We are writing to you today as part of our fraud prevention efforts. We want to alert you that a transaction may be pending.

The purpose of this letter is to alert you that someone is trying to convey and/or encumber this Property, and to confirm that we are communicating with the true owner of the Property and that the transaction is being done with your knowledge and permission. If you are selling or refinancing this Property, please allow this letter to serve as our thank you for allowing [Agent Name] to handle this transaction. We appreciate your business.

IF YOU ARE NOT IN THE PROCESS OF SELLING THIS PROPERTY, PLEASE CONTACT US IMMEDIATELY AT [(xxx) xxx-xxxx] OR BY E-MAIL AT THE ADDRESS FOUND ABOVE.

We thank you for your attention to this matter.

Sincerely,

[Agent Name]
XXXXXXXXXXXX
XXXXXXXX, XX 12345
Phone: XXX-XXX-XXXX

Issues arising out of RON

This Notarial act involved the use of electronic communication technology

The Escrow officer if known or Notary must be contacted to verify which RON platform was utilized or even if a RON platform was used.

Preferred document branding.

NotaryCam Doc ID: 6932c22c-b01b-45a0-876d7

Questions ?