



**TO:** Alliant National Agents and Approved Attorneys  
**DATE:** October 31, 2025  
**SUBJECT:** *Assumptions, Subject To, Wraps - Variations on a Theme*

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**Note: This bulletin does not replace or supersede any State bulletins issued on this subject and should be considered supplemental to any such bulletins.**

Rising interest rates and challenging market conditions have led to an increase in variations of the “assumption” transaction in which the buyer may not have a third-party lender.

In an assumption transaction, you may be asked to close and insure the purchaser based upon an “assumption” of the existing loan, “subject to” the existing loan, or utilizing a “Wrap Mortgage/Deed of Trust”. While a true assumption of the existing loan will involve the current lender and its approval of the assumption, the current trend is to not involve the lender.

When the seller’s current lender is not involved or aware of the sales transaction, there are numerous risks to consider:

- Most deeds of trust or mortgages have a “due on sale” clause that requires the loan to be repaid in full in the event of a sale. Failure to do so may be considered an “event of default” triggering a demand for payment in full and a foreclosure of the deed of trust/mortgage when payment is not made;
- Without lender contact, the seller’s disclosure of the loan terms and balance due may not be complete or accurate;
- There may be a failure to account for escrow reserves given the lack of confirmation from the lender; and
- There is an increase in seller impersonation without lender contact.

When you encounter such transactions, please be very careful and follow these underwriting guidelines:

## Assumptions Without Lender Approval

This transaction involves a buyer assuming responsibility for the seller's underlying indebtedness, but you are instructed NOT to make any contact with the lender for loan information and balances, escrow balances, consent to the assumption, etc.

1. You must include exceptions on both the commitment and any policies issued for all existing mortgages/deeds of trust that will not be paid in full at closing – and to all new mortgages/deeds of trust created at closing;
2. The Exceptions in Schedule B for each unpaid existing mortgages/deeds of trust must include the following language:

***“, including, but not limited to, all due on sale provisions contained therein, and consequences of default arising from failure to have obtained lender’s written consent.”***
3. Obtain a satisfactory **seller’s loan figure statement**, completed, and signed by both seller and buyer. See **Exhibit “A”** attached hereto.
4. Obtain a satisfactory **disclosure and hold harmless agreement** signed by both seller and buyer whereby they:
  - a. Acknowledge there may be a due on sale provision contained in any and all underlying mortgages/deeds of trust;
  - b. Acknowledge that a failure to contact the underlying lender to obtain consent may be considered an event of default and may cause the debt to be accelerated and the lien foreclosed;
  - c. Acknowledge they have requested you and Alliant National not to contact the lender; and
  - d. Agree to hold you and Alliant National harmless from and indemnify you and us against loss resulting from the lack of lender consent or approval, including losses arising from any existing defaults on the loan and inaccurate information regarding the loan and escrow balances or terms. See **Exhibit “B”** attached hereto.
5. Require that the deed of conveyance to the insured contain language, which references the underlying note and deed of trust/mortgage securing the note and provides that the buyer is assuming the obligation to pay that deed of trust/mortgage.

The following is a sample of such language, though it should be language that is approved and authorized by the buyer and seller. Other provisions can be included in the language depending upon the desires of the parties.

Please note that the addition of this language also requires the addition of the Buyer’s signature and appropriate witnesses and notarization of the Buyer’s signature on the deed conveying title.

This conveyance is specifically made subject to a Deed of Trust/Mortgage to \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_, \_\_\_\_, and recorded on \_\_\_\_,

\_\_\_\_\_ in Deed Book\_\_\_\_ at Page\_\_\_ , securing the original principal sum of \$\_\_\_\_\_. Said Deed of Trust/Mortgage has a current outstanding principal balance of approximately \$\_\_\_\_\_. The Party of the Second Part (Buyer), as evidenced by \_\_\_\_\_ (his, her) signature below, hereby assumes this indebtedness as a part of the consideration for this conveyance.

6. It is also possible that the seller will carry back a lien for any difference between the sales price and the current balance of the lien being assumed. Depending on local law, the vendor's lien in the deed to the purchasers should reference both the lien assumed as well as the new lien to seller.

**NOTE: Do not close without Underwriting approval when the underlying mortgage or deed of trust in your transaction is a Home Equity Line of Credit (HELOC), an FHA Loan; or a Reverse Mortgage Loan; and do not close without Underwriting approval if you become aware the underlying mortgage or deed of trust is in default or in foreclosure.**

### **Assumptions With Lender Approval**

This transaction involves a buyer assuming responsibility for the seller's underlying indebtedness with the consent of the lender. If the lender is contacted and consents to the assumption, you must follow the lender's closing instructions which should include the following documents:

1. Lender's written consent and estoppel certificate whereby the lender agrees to the insured transaction, provides the current loan balance, represents that the loan is not past due or in default, and has not matured. An example of a document a lender could use is attached as [Exhibit "C"](#).
2. Assumption/Modification Agreement between seller, buyer, and lender. In some instances, the lender may request ALTA 11 Modification Endorsement to its loan policy. Assuming Alliant National insured the existing loan, you may issue the ALTA 11 following our guidelines and industry guidelines. Feel free to contact Underwriting to discuss issuance of this endorsement.
3. Deed which references the underlying note and deed of trust securing the note and in which the buyer agrees to assume the existing mortgage/deed of trust (see above for language); and
4. In some instances, there may be a new lien created at closing for the difference between the balance of the loan assumed and the sales price. In this instance reference to this new Mortgage/Deed of Trust or in some jurisdictions a Vendor's Lien should be appropriately referenced in the deed of conveyance.

NOTE: The mortgage/deed of trust being assumed together with any recorded modifications or documentation of the assumption as well as any new liens created must be Exceptions in Schedule B of the Commitment and Owner's Policy

## Subject To Transactions

This transaction involves a buyer taking title to the property subject to seller's existing mortgage/deed of trust without the buyer assuming responsibility for the seller's underlying indebtedness.

1. On Schedule B of the commitment and policies to be issued, include exceptions to all existing liens that will not be paid in full at closing – and to all new liens created at closing;
2. Be sure that the Schedule B exception for all existing mortgages/deeds of trust includes the following language:  

***“, including, but not limited to, all due on sale provisions contained therein, and consequences of default arising from failure to have obtained lender’s written consent.”***
3. Seller will execute a Deed referencing the existing mortgage/deed of trust; and
4. Require due on sale disclosure document between seller and buyer, as well an acknowledgement of existing lien. See [Exhibit “B and Exhibit D”](#) attached hereto.

## Wrap Transactions

This transaction involves a type of secondary mortgage given by the buyer whereby the seller's existing deed of trust remains on the property and the wrap loan includes both the outstanding amount owed under the seller's note plus the additional funds being loaned by the seller to the buyer. Please note that certain jurisdictions have specific laws governing Wrap transactions. You must comply with any such laws.

We encourage you as a title agent NOT to undertake the drafting of a Wrap Mortgage/Deed of Trust or note. These are complex documents that should have the involvement of an attorney for each party. The terms can vary significantly depending on the perspective of the party.

If you are asked to insure a Wrap please contact underwriting to discuss. If you are closing a Wrap transaction, all of the foregoing issues remain and exceptions as set forth above must be included in the commitment and final policy as well as the disclosures set forth in Exhibits A and B and D attached hereto.

1. Take an exception for the senior deed of trust/mortgage.
2. Take an exception for any due on sale clause in the senior deed of trust/mortgage (This exception may be removed if the senior lender consents to the wrap by executing a wrap agreement in which these rights are waived).
3. This note must be added after the description of the deed of trust/mortgage on Schedule A:

**NOTE: This policy is issued in the amount of \$\_\_\_\_\_ on the representation that only said sum has been advanced by the insured on the note secured by said deed of trust/mortgage at the date of policy.**

4. Add the following Exception to coverage:

***This policy does not insure the validity or priority of the lien of the deed of trust/mortgage set forth under Schedule A hereof for any advances of the loan secured by said deed of trust/mortgage made subsequent to the date of policy.***

5. Require the following be executed by both buyer and seller:

1. Acknowledgement of Existing Liens (attached [Exhibit D](#))

As always should you have any questions, please contact your underwriting counsel.