UNWRAPPING THE WRAP MORTGAGE

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A. INTRODUCTION

Wraparound mortgages enjoyed their heyday in the 1970s and 1980s as an alternative to traditional financing for buyers and borrowers unable or unwilling to obtain high interest loans to acquire or refinance real property. With inflation and interest rates climbing, it's time for a fresh look at this creative financing tool. This paper focuses on the treatment of wraparound mortgages under Texas law, including their benefits, challenges, and state and federal regulation.

B. EXPLANATION OF THE WRAP

A wrap loan may go by many names – "wraparound financing", "wraparound mortgage", "all-inclusive mortgage", "hold-harmless mortgage", "wrap deed of trust" or "overlapping mortgage.[1] But all of these terms refer to the same concept: a subordinate mortgage that includes the debt due on a prior or underlying mortgage as part of the secured debt. However, the prior loan is not assumed. Instead, the subordinate mortgage "wraps around" the prior obligation, which remains valid and effective, and payments on the wrap mortgage are used by the wrap lender to pay the debt service on the "wrapped" mortgage. Stated another way:

> A "wrapped note" represents a total obligation which recognizes senior liens and includes the obligation to discharge the indebtedness secured by such senior liens out of the total obligation set forth in the "wrapped note" *but* without legally assuming the specific senior indebtedness. In other words, the new obligation is wrapped around the prior indebtedness, whether one or several, and the new indebtedness remains junior in priority to the existing lien or liens.[2]

Wrap financing is available for both residential and commercial properties, and courts have explicitly held that wraparound mortgages are valid under Texas law.[3] The structure of a wrap mortgage does not, in and of itself, constitute a failure of consideration or violate any covenant of title or the covenant against encumbrances.[4] However, the new sections of the Texas Finance Code effective January 1, 2022 severely restrict the availability of residential purchase money wrap mortgages, as detailed below in Section G.1.

1. Purchase Money Wraps

Wrap mortgages are most commonly used to finance purchase transactions. In *Summers v. Consolidated Capital Special Trust*, the Texas Supreme Court described a wraparound mortgage in a purchase transaction as follows:

> Under wraparound financing, the purchaser makes an installment note which includes, or "wraps around," the principal balance of an underlying indebtedness. The purchaser expressly does not assume responsibility for the underlying indebtedness, and he accepts title subject to the lien or liens which secure payment of that underlying indebtedness.[5]

Typically, the seller will provide a seller-financed note to the buyer secured by a deed of trust on the property. That wrap mortgage will be in an amount sufficient to cover the current balance of the seller's existing mortgage on the property, but the existing mortgage will not be satisfied or released at closing. The seller remains "personally liable under any prior obligation, but the purchaser never becomes personally obligated for such."[6]

2. Refinance Wraps

More infrequently, a wrap loan is used by an owner of property already encumbered by a first lien to further borrow against the equity in the property.[7] While the third-party wrap lender advances only the difference between the face amount of the wrap note and the debt due on the underlying loan(s), the wrap borrower is still obligated to pay the full amount of the wrap note, which includes the underlying debt.[8]

For example, assume a piece of property worth $3 million is encumbered by two existing mortgages: Deed

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[1] James L. Isham, Annotation, *Validity and Effect of "Wraparound" Mortgages Whereby Purchaser Incorporates Into Agreed Payments to Grantor Latter's Obligation on Initial Mortgage*, 36 A.L.R. FED. 144 n.1 (4th ed. 2021).

[2] *W. Fed. Sav. & Loan Ass'n v. Atkinson Fin. Corp.*, 747 S.W.2d 456, 459 (Tex. App.—Fort Worth 1988, no writ).

[3] *See In re Tejeda*, 586 B.R. 831, 837 (Bankr. W.D. Tex. 2018) (citing *Greenland Vistas, Inc. v. Plantation Place Assocs., Ltd.*, 746 S.W.2d 923, 925 (Tex. App.—Fort Worth 1988, writ denied)).

[4] *Hampton v. Minton*, 785 S.W.2d 854, 859 (Tex. App.—Austin 1990, writ denied). Because the wrap deed was explicitly subject to the underlying deed of trust, it did not breach the covenant against encumbrances, which can only be breached, if at all, at the time and delivery of the deed. *Id*. at 860.

[5] *Summers v. Consolidated Capital Special Trust*, 783 S.W.2d 580, 581 (Tex. 1989).

[6] *Greenland Vistas, Inc.*, 746 S.W.2d at 925.

[7] Bill B. Caraway, *Unwrapping the Wraparound Mortgage Foreclosure Process*, 47 WASH. & LEE L. REV. 1025, 1027-28 (Fall 1990).

[8] *Id*. at 1028.

of Trust A in the amount of $500,000 and Deed of Trust B in the amount of $2 million. The wrap lender agrees to provide the owner a $500,000 loan secured by the remaining equity in the property, so the wrap mortgage (Deed of Trust C) must be in an amount of $3 million in order to wrap the prior deeds of trust. The owner will make payments on Deed of Trust C, and from those payments the Lender C will make payments to Lenders A and B. Keep in mind this type of financing is typically palatable to a third-party lender only where it can charge a substantially higher interest than what is owed on the existing mortgages.

C. BENEFITS OF THE WRAP

1. For the Borrower

For a purchaser that cannot qualify for traditional financing, a wrap mortgage financed by the seller may be the only means of acquiring the desired real property. By obtaining financing directly from the seller, the purchaser is also able to avoid those fees and possible delays associated with institutional financing. For the refinance wrap borrower, there is the additional convenience of paying principal and interest on one note, not two.[9]

In a rising interest rate environment, the wrap buyer can take advantage of the low rate on the seller's existing mortgage, paying only the higher interest rate on the portion of the note over and above the underlying indebtedness. The seller may also charge a lower interest rate on the wrap loan compared to the prevailing rate available with traditional financing, since the seller will still profit from the spread between the low rate of the underlying mortgage and the wrap mortgage. A borrower may also consider a refinance wrap mortgage in lieu of refinancing an existing deed of trust if the prior loan contains a prepayment penalty or other restrictions on prepayment.[10]

2. For the Lender

A wrap mortgage generally provides the lender with greater security in its investment than a traditional second position lien because the lender knows if a default on the prior loan is coming (due to the wrap borrower's non-payment) and can step in and make a payment to prevent that default. This also enables the wrap lender to avoid incurring late fees and foreclosure costs on the first loan while the wrap lender begins the foreclosure process on the wrap mortgage. Conversely, if the wrap borrower continues making its payments, the lender will realize an increasing equity stake in the real property.[11]

With a purchase money wrap, the seller may be also able to obtain a higher sales price in exchange for the more convenient financing to the borrower. At a minimum, the seller is able to alleviate its payment burden on the underlying indebtedness. While the seller will not realize the full proceeds of the sale until the wrap loan matures, this loan structure may provide significant tax advantages for the seller, as discussed in Section E.1.

A seller may consider wrap financing where its current loan includes a substantial prepayment penalty or its interest rate is low and it can make a profit on the difference between the wrap mortgage payments and the debt service on the underlying mortgage. For example, an owner of real property worth $2 million with a $1 million mortgage at 8% simple interest will pay $80,000 in annual interest payments. If the owner sells that property using a wrap mortgage to finance an additional $500,000 with 10% simple interest, the face amount of the wrap note will be $1.5 million and annual interest payments at 10% will be $150,000. The wrap lender will remit $80,000 to the prior lender on the $1 million loan and keep the remaining $70,000. Thus, what is effectively a $500,000 loan will yield a 14% rate of return, well in excess of the wrap mortgage's face 10% rate.[12] A similar outcome may result where the term of the wrap mortgage is simply longer than that of the underlying mortgage.

D. RISKS OF THE WRAP

1. Failure to Pay the Prior Mortgage

The primary risk of any wrap mortgage is that the wrap lender will fail to pay the wrapped mortgage despite the wrap borrower's full payment, resulting in a foreclosure of the prior lien that extinguishes the borrower's interest. Case law and news articles are replete with horror stories of this in the residential context. In a recent example, the Arizona State Attorney General filed a consumer fraud suit against a Tucson real estate investor, alleging he sold homes with wrap mortgages but failed to make the payments on the underlying loans, the senior lenders foreclosed, and the

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[9] *Id*. at 1030.

[10] *Id*. at 1027 n.18.

[11] *Id*. at 1030; *see also Matter of Investors Funding Corp. of New York, IFC Collateral Corp.*, 547 F.2d 13, 15 (2d Cir. 1976) ("IFC received three key benefits from the wraparound mortgage: assurance of prompt payment of the Buffalo first mortgage; the difference between the 6% interest due on the first mortgage to Buffalo Savings and the 7¾% due on the wraparound mortgage, i. e., 1¾% on the principal amount of the first mortgage; and, because the monthly rate of amortization was significantly faster on the first than on the second mortgage (the term of the first was shorter), a continuously increasing equity interest.").

[12] MICHAEL T. MADISON, ET AL., 1 LAW OF REAL ESTATE FINANCING - SPECIAL TYPES OF SECONDARY FINANCING—WRAPAROUND MORTGAGE § 8:12 (2021).

buyers lost their homes, even though they had made the payments on their loans to the investor.[13]

There are multiple strategies that can be used in residential or commercial transactions to protect against this risk. The wrap loan documents can be structured to allow the borrower to make payments on the senior loan if the wrap lender fails to do so, and receive corresponding credits on its future installment payments. The loan documents may also provide for damages for failure to pay the underlying loan or require the wrap lender to fully satisfy the prior loan if the prior lender accelerates due to non-payment. Additionally, the parties can utilize a third-party escrow or collection agent to receive the borrower's wrap mortgage payments and from those funds pay the debt service to the prior lender and the remaining excess to the wrap lender.[14] Alternatively, with the prior lender's permission, the wrap borrower may pay the prior lender directly and separately pay the wrap lender the excess. But the wrap lender may not be willing to allow the wrap borrower to make the payments on the underlying debt, as the wrap lender will not know if the wrap borrower actually makes those payments. If all else fails, the wrap borrower may have a cause action against its lender depending upon the terms of the wrap mortgage. For example, in *Newsom v Starkey*, the Dallas Court of Appeals affirmed the trial court's summary judgment for the wrap borrower in its action for breach of the wrap lender's covenant to pay the prior loan and to recover the amount of its payments made under the wrap note.[15]

Where the nonpayment of the underlying loan is due to the wrap borrower's payment default, the wrap lender has no duty to continue paying the underlying loan or provide the wrap borrower with notice of an impending non-judicial foreclosure of the underlying deed of trust, absent any contrary provisions in the documents.[16] In *Hampton v. Minton*, the Austin Court of Appeals found that the wrap borrower's non-payment was a material breach of the wrap note that repudiated the contract and excused the wrap lender's failure to perform its duties.[17] The court further held that "when the maker of a wraparound note materially breaches the agreement, thereby triggering a chain of events that results in foreclosure by a senior lienholder, the holder of the wraparound note may, notwithstanding his own failure to pay the prior note, recover a deficiency judgment against the maker of the wraparound note."[18]

The key takeaway is that regardless of the source of the default, the prior lender can still enforce its lien against the collateral property, even in the wrap borrower's bankruptcy. In *In re Tejeda*, the bankruptcy court for the Western District of Texas held that the prior lender on a wrapped loan was entitled to participate in the wrap borrower's bankruptcy and enforce its lien against the property over the trustee's objection.[19] While the lender did not have contractual privity with the wrap borrower as the debtor, it still had a valid lien against the debtor's property and thus constituted a "creditor" of the debtor under 11 U.S.C. § 102(2).[20]

2. Exercise of the Due-on-Sale Clause

Some commercial loans and nearly all residential loans funded by institutional lenders contain a due-on-sale or due-on-transfer clause or even a due-on-encumbrance clause. Generally, a lender is more willing to enforce such clauses if it determines that its security is at risk, or it can obtain a better interest rate from a new borrower. But this assumes that the lender is even aware that its borrower no longer owns the property.

Financing the acquisition of real property with a purchase money wrap without the lender's consent runs the risk that the prior lender will discover the transfer, accelerate the loan, and foreclose. Indeed, the standard Fannie Mae Texas single family deed of trust and the multifamily loan agreement define an unauthorized transfer of the property as an event of default, and the servicing guidelines instruct the servicer to accelerate the full loan balance and proceed to foreclosure.[21]

[13] Carol Ann Alaimo, *State Lawsuit Accuses Tucson Firms, Manager, of Defrauding Homebuyers*, TUCSON.COM (June 16, 2021), https://tucson.com/news/local/state-lawsuit-accuses-tucson-firms-manager-of-defrauding-homebuyers/article_05fa9c0e-e5be-11eb-bb9c-7375bbe48805.html

[14] MICHAEL T. MADISON, ET AL. 1 LAW OF REAL ESTATE FINANCING - SPECIAL TYPES OF SECONDARY FINANCING – WRAPAROUND MORTGAGE – ADDITIONAL COVENANTS § 8:13 (2021).

[15] *Newsom v. Starkey*, 541 S.W.2d 468 (Tex. Civ. App.—Dallas 1976, writ ref'd n. r. e.).

[16] *Hampton v. Minton*, 785 S.W.2d 854, 859-60 (Tex. App.—Austin 1990, writ denied).

[17] *Id*.

[18] *Id*.

[19] *In re Tejeda*, 586 B.R. 831, 834 (Bankr. W.D. Tex. 2018).

[20] *Id*.

[21] The Single Family Servicing Guide specifically instructs the servicer to provide the purchaser with30 days' notice to pay the mortgage loan balance in full or to apply and qualify for a new mortgage loan. If the borrower fails to do so, then Fannie Mae instructs the servicer to begin foreclosure proceedings. FANNIE MAE SINGLE FAMILY SERVICING GUIDE, D1-4.1-05: Enforcing the Due-on-Sale (or Due-on-Transfer) Provision (November 8, 2017) https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-D-Providing-Solutions-to-a-Borrower/Subpart-D1-Assisting-the-Borrower-with-Property-Related/Chapter-D1-4-Transfers-of-Ownership/Section-D1-4-1-Information-Relating-to-Transfers-of-Owner/D1-4-1-05-Enforcing-the-Due-on-Sale-or-Due-on-Transfer-/1041317441/D1-4-1-05-Enforcing-the-Due-on-Sale-or-Due-on-Transfer-Provision-11-08-2017.htm.

Texas courts can (and do) enforce due-on-sale clauses upon discovery of an undisclosed conveyance and wrap mortgage, even in the residential context.[22] For example, in *In re Mullin*, the Morgans obtained a $500,000 home equity loan from Argent Mortgage in 2004, secured with a deed of trust lien that was assigned to Wells Fargo with Barclays Capital as servicer.[23] When the Morgans defaulted on their loan payments in 2009, they sold the property to Steven Mullin who financed the purchase with a $575,000 wraparound mortgage payable to the Morgans.[24] Neither the Morgans nor Mullin notified Wells Fargo or Barclays or sought their consent to the sale.[25] Later that same year, Mullin defaulted on the wrap mortgage and filed a Chapter 13 bankruptcy petition to prevent the Morgans from foreclosing.[26] Due to Mullin's non-payment on the wrap, the Morgans also defaulted on their prior home equity loan and Barclays began foreclosure.[27] Barclays eventually learned of the sale and Mullin's bankruptcy through counsel for the Morgans and Mullin.[28] When Mullin proposed to include installment payments on the wrap mortgage (but not on the prior home equity loan) in his Chapter 13 plan, Barclays objected that the plan prevented it from collecting on the home equity loan and precluded any foreclosure during the pendency of the plan.[29] It also moved to lift the automatic stay so that it could foreclose due to the Morgans' violation of the due-on-sale clause.[30] The bankruptcy court ultimately held that the due-on-sale clause in the home equity loan was enforceable, the Chapter 13 plan impermissibly modified Wells Fargo's right to enforce the due-on-sale clause, and thus there was cause to lift the stay and allow foreclosure for violation of the due-on-sale clause.[31]

However, there is authority beyond Texas that a purchase money wrap does not violate a due-on-sale clause where the prior lender's security is not impaired. In *Consolidated Capital Properties, II, Ltd. v National Bank of North America*, a Florida appellate court held that even though the borrower violated the due-on-sale clause when it conveyed its commercial property to a third-party purchaser with a wrap mortgage after the lender refused to give its consent, the lender was not entitled to accelerate the loan because it failed to demonstrate that its collateral was impaired as a result of the sale.[32] According to the court, the lender appeared primarily concerned about getting its money back so that it could get a higher rate in a new loan.[33] Similarly, in *Daugharthy v. Monritt Associates*, a Maryland court of appeals affirmed a trial court decision to enjoin a lender from accelerating its prior loan after its borrower sold the home and financed a wrap mortgage because the seller was not in default on the prior loan.[34] Again, there was evidence that the lender simply wanted a better rate of return on its money and manufactured an argument that the wrap borrower had assumed the loan rather than taken title subject to it.[35]

3. Wrap Mortgage Declared Usurious

As shown in the example in Section C.2, because the wrap lender can achieve an interest rate higher than the face of the wrap loan, there is the possibility that the effective rate of interest may run afoul of the applicable usury statutes.

There are two general theories under which a court may not consider a purchase money wrap mortgage to be subject to usury laws: (1) purchase money loans are exempt from usury statutes because no loan or forbearance occurred and the purchaser has power to negotiate the terms of the credit transaction;[36] and (2) the full amount of the wrap principal is the actual amount loaned because it was necessary to acquire the property, assuming the collateral property is worth at least the amount of the wrap loan.[37]

The only Texas opinion to address this question applied the second theory.[38] In *Greenland Vistas, Inc. v. Plantation Place Associates, Ltd.*, the Fort Worth court of appeals did not limit the balance of the wrap

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[22] *Sonny Arnold v. Sentry Savings Assoc.*, 633 S.W.2d 811, 813 (Tex. 1982) (holding that a due-on-sale clause is valid and enforceable so long as it is not an undue restraint on alienation); *In re Mullin*, 433 B.R. 1, 3 (Bankr. S.D. Tex. 2010) ("[T]his Court writes this Memorandum Opinion to emphasize its holding that due on sale clauses will be enforced even when a bankruptcy petition has been filed because these clauses are a "fundamental aspect of a mortgagee's rights ...").

[23] *In re Mullin*, 433 B.R. at 4.

[24] *Id*. at 5.

[25] *Id*. Interestingly, the Morgans did not record the wrap deed of trust.

[26] *Id*. at 6.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 7.

[30] *Id*.

[31] *Id*. at 11-16.

[32] *Consol. Capital Properties, II, Ltd. v. Nat'l Bank of N. Am.*, 420 So. 2d 618, 622-23 (Fla. Dist. Ct. App. 1982).

[33] *Id*.

[34] *Daugharthy v. Monritt Assocs.*, 293 Md. 399 (1982).

[35] *Id*. at 406-07. But note that the federal Garn-St. Germain Depository Institutions Act of 1982 includes federal preemption of state constraints on due-on-sale clauses. 12 U.S.C. § 1701j-3(b)(1) ("Notwithstanding any provision of the constitution or laws (including the judicial decisions) of any State to the contrary, a lender may, subject to subsection (c), enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan.").

[36] Caraway, *supra* n. 7 at 1042.

[37] *Id*. at 1043.

[38] *Greenland Vistas, Inc. v. Plantation Place Associates, Ltd.*, 746 S.W.2d 923, 925-27 (Tex. App.—Fort Worth 1998, writ denied).

loan to the actual cash funded by the wrap lender because the purchaser and wrap borrower received the full benefit of the property.[39] Put another way, the purchaser could not have acquired the property without a loan in the amount of the wrap mortgage, and the wrap loan constitutes not only cash funded but also purchase credit. Thus, the court found that the wrap lender's demand for the full balance of the wrap note after the purchaser's default did not constitute charging or receiving interest above the lawful rate.[40]

However, other jurisdictions may take a different view, especially as to refinance wraps. For example, in *Skinner v. Cen-Pen Corp.*, the Skinners obtained a $50,000 loan at 13.25% from Cen-Pen Corporation secured by a wraparound mortgage of their first deed of trust.[41] But Cen-Pen actually advanced only $4,298.18 to the Skinners, raising the effective interest rate on those funds to 31.22%.[42] The Virginia Supreme Court found that it was not bound by the contractual recitation of the interest rate stated in the wrap loan documents and could "look behind the formal documents to discover the true nature of the transaction."[43] In doing so, the court held that:

> [T]he clerical responsibility undertaken by Cen–Pen (for which it apparently assessed an additional $3 monthly "collection fee") does not convert a $4,298.18 loan into one for $50,000. Rather, the true nature of the transaction was a $4,298.18 loan bearing an effective interest rate of 31.22%. This rate was not stated in the note, as required by Code § 6.1–330.16(F); hence, Cen–Pen's annual interest charge exceeded the maximum authorized interest rate of 8% by 23.22%.[44]

Ultimately, there is little case law addressing the application of usury laws to wrap mortgages and without a Texas Supreme Court ruling, a state appellate court may adopt a different approach than that applied in *Greenland Vistas*. Practitioners should consider whether a usury savings clause should be included as part of the wrap loan documentation.

E. CHALLENGES OF THE WRAP

1. Tax Treatment of the Wrap

A wrap mortgage is by nature an installment loan. Pursuant to Internal Revenue Code § 453(b), a seller in an installment contract will not be taxed on the full amount of the sales price but rather each installment payment when it is actually received, as long as at least one installment payment is received in the tax year after the disposition (sale) of the property. As a result, installment sellers can spread out the tax consequences of the sale over the term of the installment contract. However, if there is a prior mortgage that the buyer assumes or takes subject to, and the assumed mortgage exceeds the basis of the property, then that excess is treated as a deemed payment in the tax year of the sale and thus taxed in the year of the sale.[45] This tax treatment can have substantial ramifications for the seller and possibly negate any tax benefit from the installment sale.

In *Stonecrest Corp. v. Commissioner*, the federal tax court held that for tax purposes, a wraparound mortgage should be treated as an installment sale and not as an assumption or purchase subject to an existing lien.[46] Thus, the excess of the wrap mortgage over the seller's basis was not includible as a payment deemed received in the year of sale.[47] The Internal Revenue Service disagreed with the tax court, and in 1981 it issued a Temporary Treasury Regulation to reverse *Stonecrest* and affirm that wraps must be treated as assumptions or subject to loans.[48] But the battle was not over. In 1987, the tax court issued its opinion in *Professional Equities, Inc. v. Commissioner*, holding that the 1981 Temporary Regulation was beyond the scope of its authority as granted in the Installment Sales Revision Act of 1980.[49] However, the court also confined the installment sale tax treatment to wraparounds where the seller is not expressly obligated to apply the buyer's payment to the underlying indebtedness.[50] According to the court:

> In the 30 years since *Stonecrest* we have identified wrap-around sales, in part, by the fact that in those sales the purchase price is paid in full directly to the seller. It is true that in wrap-around sales the seller may service the underlying mortgage out of the payments received from the buyer, but he is not obligated to do so and instead is free to discharge that mortgage however he chooses. The fact that he may normally choose to use the sale proceeds to service the underlying obligation does not justify the Commissioner's treating those proceeds as not, in fact, received by the seller. The seller

[39] *Id*.
[40] *Id*. at 927.
[41] *Skinner v. Cen-Pen Corp.*, 414 S.E.2d 824, 825 (1992).
[42] *Id*.
[43] *Id*. at 826.
[44] *Id*.
[45] Temp. Treas. Reg. § 15A.453-1(b)(3)(i).
[46] *Stonecrest Corp. v. Internal Revenue Comm'r*, 24 T.C. 659, 667-69 (1955).
[47] *Id*.
[48] Temp. Treas. Reg. § 15A.453–1(b)(3)(ii).
[49] *Professional Equities, Inc. v. Internal Revenue Comm'r*, 89 T.C. 165, 180-81 (1987).
[50] *Id*. at 179-80.

> in a wrap-around sale receives neither "current payment nor the practical benefit of current payment of the underlying debt." He receives instead the full payment price directly. If the seller did not receive unrestricted use of the full payment price directly but was merely a conduit for the mortgagee, we would not treat that sale under the method of taxing gain prescribed for wrap-around sales, but would apply the "subject to" and "assumed" regulations.[51]

Eventually, the IRS acquiesced to the *Professional Equities* decision in 1988.[52] Thus, a wrap mortgagee may continue to receive the beneficial tax treatment of an installment sale, but only so long as the buyer does not contractually obligate the seller to use its payments to satisfy the underlying debt. Payments to a third party escrow or mortgage servicer that agrees to pay the debt service on the prior lien(s) may solve this concern, but to the author's knowledge there are no reported cases so holding. The buyer/borrower and seller/lender must reach agreement on the issue.

2. Obtaining Consent from the Prior Lender

If the underlying loan contains a due-on-sale or due-on-encumbrance clause, the parties must obtain the prior lender's consent to the sale if they do not want to risk foreclosure of the prior lien. In the residential context, the new wrap mortgage regulations in Texas Finance Code Chapter 159 require sellers to explicitly disclose whether the senior lienholder has consented to the transfer of the property.[53] However, if the underlying loan has been securitized or sold on the secondary market, it may be difficult for the seller to identify the servicer and get a timely response. The lender may also have little interest in granting a waiver where it stands to earn a better rate on a new loan. But in a low interest rate environment, a lender may be more receptive to the request.

Additionally, the underlying loan may require the lender's consent to take certain actions with respect to the property. While the wrap borrower may be able to obtain the consent of the wrap lender, the prior lender may have little incentive to give its consent where it is unfamiliar and has no contractual relationship with the wrap borrower.[54]

3. Title Insurance

Texas title insurance is available for wrap mortgages, although its availability for residential wraps is much more limited after the passage of new Texas Finance Code Chapter 159, explained below. The question is whether the title insurer will be willing to insure the wrap deed of trust as a first priority lien, notwithstanding the prior mortgage. Under the principle of subrogation, the wrap mortgage payments used to make the debt service on the prior lien should be entitled to the priority of that prior lien.[55] To support the application of subrogation, the title insurer may require a contractual subrogation clause in the wrap mortgage or even a separate subrogation agreement between the wrap borrower and lender.[56] But the amount of the wrap mortgage in excess of what is paid on the underlying lien likely will not be entitled to the priority of the underlying lien. Moreover, the possibility of foreclosure of the prior lien remains while the wrapped mortgage has not been fully satisfied. And though an indemnity from one of the wrap mortgage parties to the title insurer may be some comfort in issuing the policy, it may not be sufficient to prevent a finding that the wrapped mortgage is prior and thus a potential claim on the loan policy.[57]

Regardless of whether the wrap mortgage is insured as a first priority lien or not, there is title insurance coverage available to protect against a usury finding outside of Texas. The ALTA 27 endorsement, which insures against loss or damage sustained by the lender due to the invalidity or unenforceability of the insured lien because the loan violates state usury laws, may be available for the wrap lender's loan title policy. However, there is no comparable Texas endorsement available at this time under Texas title insurance regulations.

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[51] *Id*. (internal citation omitted).

[52] Internal Revenue Service Action on Decision - 1988-23 (IRS AOD Sept. 12, 1988).

[53] *See* statutory form disclosure in 7 TEX. ADMIN. CODE § 78.101(b).

[54] STUART M. SAFT, COMMERCIAL REAL ESTATE TRANSACTIONS, § 6:54 WRAPAROUND MORTGAGES (3d ed. 2021)

[55] *Fed. Home Loan Mortgage Corp. v. Zepeda*, 601 S.W.3d 763, 766 (Tex. 2020) ("In the mortgage context, the doctrine allows a lender who discharges a valid lien on the property of another to step into the prior lienholder's shoes and assume that lienholder's security interest in the property, even though the lender cannot foreclose on its own lien.").

[56] MICHAEL T. MADISON, ET AL., 1 LAW OF REAL ESTATE FINANCING - SPECIAL TYPES OF SECONDARY FINANCING— WRAPAROUND MORTGAGE – LEGAL PROBLEMS § 8:14 (2021).

[57] *See First Nat. Bank of Minneapolis v. Fidelity Nat. Title Ins. Co.*, 572 F.2d 155, 160 (8th Cir. 1978) (finding a question of fact as to whether the wrap lender accepted a position as a secondary lienholder, notwithstanding the terms of the loan title policy which listed it as a first priority mortgage, and thus a question of fact as to whether policy exclusion 3(a) (excluding matters "created, suffered, assumed or agreed to by the insured claimant")) excluded coverage.)

4. Reductions or Increases in the Underlying Indebtedness

When the wrap lender is able to reduce the underlying indebtedness through the payment of insurance proceeds, condemnation awards, or prepayments, the wrap loan documents should provide for a corresponding reduction in the balance of the wraparound mortgage.[58] The parties should also consider whether the wrap lender can refinance the underlying lien to take on additional debt, and if so, how much additional debt can be financed and how that will affect the amount of and interest rate on the wrap borrower's mortgage payments.[59]

5. Maintaining Covenants of the Underlying Mortgage

If the underlying mortgage includes covenants tied to preserving the financial viability of the loan or the lender's control of the property, the wrap lender will likely require that the wrap mortgage include similar covenants. For example, if the underlying mortgage requires certain tenancy occupancy rates or tax and insurance impounds, the wrap lender will want a similar covenant in the wrap purchaser's mortgage to prevent against adverse actions by the prior lender or even a declaration of default. The inclusion or reiteration of the terms of the prior mortgage in the wrap mortgage is sometimes referred to as "mirroring" the underlying mortgage.

F. WRAPS IN FORECLOSURE

When a wrap lender forecloses its mortgage, the primary question is how to apply the proceeds received at the foreclosure sale. The Texas Supreme Court appeared to conclusively answer the question, as explained below. However, the opinion has been subject to substantial criticism and numerous questions remain regarding wraps in foreclosure.

1. Application of Foreclosure Sale Proceeds

Prior to 1989, after the foreclosure of a wraparound deed of trust, there was a question as to how to apply the foreclosure proceeds, since the foreclosed borrower is not directly responsible for the wrapped indebtedness. The Texas Supreme Court answered that question in *Summers v. Consolidated Capital Special Trust*, adopting the "outstanding balance" approach which requires the net foreclosure proceeds be used to discharge the entire wrapped indebtedness, including the balance of the underlying loans, before distributing any funds to the foreclosed debtor.[60] As explained by the Court:

> [W]hen a deed of trust lien securing a wraparound note is foreclosed, the amount bid for the property at the sale, net of expenses, is to be credited to the entire outstanding balance, including wrapped indebtedness, due on that note. If the bid exceeds such balance, a surplus results; if the balance exceeds the bid, a deficiency results.[61]

The Court explicitly rejected the "true debt" approach, which asserts that a wrap borrower is only liable for the actual amount of money extended by the wrap lender and not the portion of the wrap loan that represents the underlying indebtedness.[62] In support of the outstanding balance approach, the Court noted that the wrap borrower had by contract promised to pay the full amount of its loan, including the balance of the underlying loans, regardless of whether the borrower assumed the prior notes or any obligations under them.[63] According to the Court, if the true debt approach were applied, the wrap borrower:

> [W]ould owe that purchase price only if it decided to make all payments in full on its installment note. [But i]f it ever decided to default on the contract, it would only owe the amount by which the outstanding balance on its contract exceeded the amount of the underlying notes.[64]

The true debt approach could also cause the defaulted borrower to receive a windfall where the bid was more than amount of the credit actually extended to the borrower, an unappealing result.[65] In adopting the outstanding balance method, Texas followed the lead of California and Florida courts.[66]

To further support the outstanding balance approach, the Court created an implied covenant in the trustee's deed for the trustee to apply the foreclosure sale proceeds to the satisfaction of the underlying debt before making any distribution to the mortgagor.[67] The

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[58] SAFT, *supra* n. 54.
[59] *Id*.
[60] *Summers v. Consol. Capital Special Trust*, 783 S.W.2d 580, 583 (Tex. 1989).
[61] *Id*. On the same day the Court issued its *Summers* opinion, it also applied the "outstanding balance" approach to similar facts in in *Lee v. Key West Towers, Inc*., 783 S.W.2d 586 (1989).
[62] *Id*.
[63] *Id*. at 582.
[64] *Id*.
[65] *Id*.
[66] *Id*. at 583 (citing *J.M. Realty Inv. Corp. v. Stern*, 296 So.2d 588, 589 (Fla. Dist. Ct. App. 1974); *Armsey v. Channel Assoc., Inc.*, 184 Cal. App. 3d 833, 837, 229 Cal. Rptr. 509 (Ct. App. 1986)).
[67] *Id*.

Court's stated goal of the implied covenant was to prevent the foreclosure purchaser from effectively paying the underlying debt twice – first through the foreclosure purchase price (that was not used to pay down the prior debt) and second through the actual payoff of the prior liens.[68]

In 1991, one of the Houston courts of appeal applied the outstanding balance method to the foreclosure of a refinance wrap, not a purchase money wrap as was at issue in *Summers*.[69] The court noted that this presented a different fact pattern than that addressed in *Summers*, but the appellant did not argue that these differences would have altered the application of the outstanding balance method, so the court did not address it.[70]

2. Criticisms of the Outstanding Balance Method

While *Summers* is rooted in equitable principles and attempts to adhere to the intent of the parties, the opinion and its application of the outstanding balance method have been subject to criticism – in particular allegations of bias in favor of the wrap mortgagee. Arguably, the opinion contravened the express language of the deed of trust – that it was only "subject to" the underlying loans, not liable for them; the trustee was only to apply the foreclosure proceeds to the indebtedness secured "hereby;" and there was no instruction in the deed of trust that could be interpreted to allow payment of a different loan.[71] The Court awarded the wrap mortgagee a deficiency judgment because the amount it bid was less than the full amount owed on the wrap note (even though the wrap mortgagee funded far less to the wrap borrower than the face amount of the wrap note).[72] However, if a third party had purchased at foreclosure, it would have had to pay off not only the full amount of the wrap mortgage (which included the amount due on the prior liens) but also the prior liens themselves in order to obtain clear title to the property.[73] Additionally, the Restatement (Third) of Property (Mortgages) explicitly rejects the *Summers* approach.[74]

The *Summers* opinion also leaves multiple unanswered questions. While the Court answered how to apply foreclosure proceeds, it did not explain where those funds are to come from if the wrap mortgagee credit bids at foreclosure.[75] Thus, if the wrap lender bids the full amount of the wrap loan, it "must recognize that its bid, in excess of the equity spread, may have to be paid in cash to the underlying note holder, rather than being satisfied as a total credit against the wraparound note balance."[76] It also failed to address what happens if the underlying loan cannot be paid off due to involuntary prepayment or other restrictions, or if the underlying lender does not want to be paid off due to favorable tax treatment, interest rates, or loan terms that it wants to retain.[77] If a third party bids cash, can a court force the lender to accept the payoff?

Ultimately, the greatest risk of the outstanding balance method is that the wrap mortgagee will receive a windfall. As noted by a commentator, "the wraparound mortgagee thus benefits more when a wraparound mortgagor defaults than when the wraparound mortgagor fully performs under the wraparound."[78] To avoid the potential inequities of this method and questions left open by the *Summers* opinion, the parties should specifically address how to handle foreclosure bidding and proceeds.[79]

G. REGULATION OF PURCHASE MONEY RESIDENTIAL WRAPS

Purchase money wrap financing for residential real property is subject to substantial state and federal regulation. Dodd-Frank and the SAFE Act as well as Texas' implementation of the SAFE Act standards are among the most well-known of those regulations and have been in place for over ten years. However, the recent revisions to the Texas Finance Code represent a new and stringent compliance challenge in residential wrap lending. These regulations and their impact on Texas residential wraps are explained below.

1. SB 43 and Texas Finance Code Chapter 159

To say that the Texas Legislature disfavors residential purchase money wraparound mortgages is an understatement. In 2021, the Legislature passed SB 43 in order to combat what it saw as:

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[68] *Id*.

[69] *Beach v. Resolution Trust Corp.*, 821 S.W.2d 241, 243 (Tex. App.—Houston [1st Dist.] 1991, no writ).

[70] *Id*. at 243, n.1.

[71] *See* Cynthia K. Brotman, *Real Estate-Implied Covenants – Texas Adopts the "Outstanding Balance" Method of Determining Whether Monies Bid at a Foreclosure Sale Involving Wraparound Mortgages Generate Excess Proceeds or Constitute Deficiency*, 21 ST. MARY'S L.J. 1043, 1058 (1990).

[72] *Summers*, 783 S.W.2d at 582-83. So not only does the wrap mortgagee get a reduction in the amount owed on its own debt to the prior lender, but also a deficiency judgment against the wrap mortgagor that can be converted to cash upon execution.

[73] Caraway, *supra* n. 7 at 1038.

[74] RESTATEMENT (THIRD) OF PROPERTY: MORTGAGES § 7.8, report's note (2022).

[75] W. Mike Baggett, 15 TEXAS PRACTICE: TEXAS FORECLOSURE LAW AND PRACTICE § 2.139 (Supp. 2021).

[76] *Id*.

[77] *Id*.

[78] Caraway, *supra* n. 7 at 1041.

[79] The Restatement discusses multiple wrap foreclosure scenarios that can guide practitioners in drafting suitable provisions in wrap loan documents. *See supra* n. 74.

> [A] spike in the prevalence of a particularly insidious category of mortgage fraud involving wrap financing, in which a seller finances the sale of a residential property that already is subject to an outstanding lien, often without notifying the buyer of the senior lien, or the existing lienholder of the sale. If the seller fails to pay the senior mortgagee, the mortgagee can foreclose on the property, and the buyer, who often lives on the property, would be ousted without ever having missed a payment to the wrap seller.[80]

SB 43 contains the most restrictive residential wrap regulations to date, which became effective on January 1, 2022. Those regulations are primarily found in new Chapter 159 to the Texas Finance Code, entitled "Wrap Mortgage Loan Financing."

Texas Finance Code Chapter 159 applies to all wrap mortgage loans involving the purchase of residential real estate, except for: (a) unimproved property; (b) real property in which the prior lienholder has either released the prior lien or consented to the sale of property; and (c) the sale of real property that is the wrap lender's homestead.[81] The Chapter also exempts the following individuals and entities from its requirements for wrap loans: (a) federally insured banks, savings banks, savings and loan associations, Farm Credit System Institutions, credit unions, and any subsidiaries of these entities; (b) state or governmental agencies, political subdivisions, or other instrumentalities of the state and employees thereof; and (c) a residential real property owner that does not make more than three wrap mortgage loans in any 12-consecutive-month period.

The actual requirements for wrap loans under the new chapter are numerous and potentially onerous, and include the following:

- Any person originating or making residential wrap purchase money loans must be licensed or registered to make or originate such loans under an applicable chapter of the Finance Code or otherwise qualify for an exemption under those applicable chapters;[82]
- Wrap lenders must provide statutory disclosures to the wrap borrower (which the borrower must sign) on or before the seventh day before the borrower enters into the wrap agreement;[83]
- Wrap borrowers may rescind the wrap loan and any related purchase agreement within seven days after receipt of the mandatory disclosures, regardless of whether the disclosures were timely made.[84] However, if the disclosures are made after closing, the wrap borrower's rescission period extends to 21 days.[85] If the lender never provides the disclosures, the borrower may rescind at any time.[86]
- If a wrap loan is not closed by an attorney or title company, the lien securing the wrap loan is void.[87]
- The wrap lender owes the wrap borrower a fiduciary duty to use the borrower's payments to satisfy the wrapped prior lien,[88] and the lender holds the borrower's payments in trust for the benefit of the borrower.[89]
- The wrap borrower has a right of action to enforce the terms of Chapter 159, recover actual damages, and/or obtain other remedies under the Texas Deceptive Trade Practices Act, and is entitled to recover its court costs and attorneys' fees in such an action.[90]
- If the property will be the wrap borrower's residence and the wrap lender fails to pay the underlying loan, the wrap borrower can deduct the amount owed to the prior lender from its payment to the wrap lender.[91]
- The savings and mortgage lending commissioner may enforce Chapter 159 via cease and desist orders, administrative penalties, and a suit for injunctive relief, in addition to any other remedy at law.[92]
- The commissioner may also inspect and/or investigate any wrap lender registered under Texas Finance Code Chapter 158 to determine compliance with that chapter.[93] Information gathered during an investigation may be shared with state or federal agencies.[94] The commissioner also has subpoena power to require deposition testimony and/or documentation.[95]

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[80] Senate Research Center, Bill Analysis, Tex. S.B. 43, 87th Leg., R.S. (2021).
[81] TEX. FIN. CODE § 159.002.
[82] *Id*. at § 159.051.
[83] *Id*. at § 159.101(a). An example of the statutory disclosure form, found at 7 TEX. ADMIN. CODE § 78.101(b), is attached as Appendix "A." The disclosure includes the Texas Property Code § 5.016 executory contract disclosure information, as required by Texas Finance Code § 159.101(a)(1).
[84] *Id*. at § 159.101(d).
[85] *Id*. at § 159.104(b).
[86] *Id*. at § 159.104(a).
[87] *Id*. at § 159.105.
[88] *Id*. at § 159.152.
[89] *Id*. at § 159.151.
[90] *Id*. at § 159.106.
[91] *Id*. at § 159.202.
[92] *Id*. at § 159.301.
[93] *Id*. at § 159.252(a), (b).
[94] *Id*. at § 159.252(f).
[95] *Id*. at § 159.253(a).

As a result of these new requirements, the wrap borrower's rescission rights, and the practical inability to determine whether a wrap lender is exempt from Chapter 159, some title companies and insurers are no longer willing to close and insure residential wraps.

2. The SAFE Act, T-SAFE, and Dodd-Frank

As a subset of seller-financed loans, residential mortgage wraps are subject to those state and federal laws regulating seller-finance loans secured by residential real property, including the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act" at 12 U.S.C. § 5101 et *seq*.),[96] the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009 ("T-SAFE" at Texas Finance Code Chapter 180); and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank", Public Law 111-203).

The SAFE Act requires the states to pass legislation to require residential mortgage loan originators ("RMLOs") to be licensed with their own state and in accordance with the SAFE Act national standards.[97] The implementing regulations include a de minimis exception to registration for those RMLOs making five or fewer residential mortgage loans in the past 12 months.[98] T-Safe includes a similar de minimis exception, except that the RMLO cannot make more than *three* seller-finance mortgage loans in any 12-consecutive-month period.[99] T-Safe also exempts from its requirements any seller-finance loan involving the seller's own residence.[100]

Dodd Frank is complex regulatory scheme that amended multiple existing statutes, but as applied to seller-finance transactions:

> It requires that a seller-lender in a residential seller-financed transaction (including wraps) determine at the time credit is extended that the buyer-borrower has the ability to repay the loan (the "ATR rule"). The ATR rule obligates the seller to investigate the buyer-borrower's credit history, current and expected income, financial obligations, debt-to-income ratio, employment status, and the like in order to make a determination that a buyer-borrower has the reasonable ability to repay.[101]

In making that ATR determination, the lender must consider the following:

- The consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan;
- The consumer's current employment status;
- The consumer's monthly payment on the proposed mortgage;
- The consumer's monthly payment for mortgage-related obligations;
- The consumer's current debt obligations, alimony, and child support;
- The consumer's monthly debt-to-income ratio or residual income; and
- The consumer's credit history.[102]

Like the SAFE Act and T-SAFE, there is a de minimis exceptions to the application of the ATR rule of Dodd-Frank. A person (which includes business entities and trusts[103]) is not considered a creditor if does not extend credit for transactions secured by a residential dwelling more than five times in the preceding calendar year.[104]

H. CONCLUSION

As an alternative financing method outside of the mainstream, wrap mortgages have inherent risks and the Texas case law addressing them is not fully developed. Additionally, residential purchase money wraps are subject to multiple state and federal regulations with strict compliance requirements. However, with diligent drafting of loan documents by counsel who are cognizant of those risks and requirements, wrap mortgages can serve a useful purpose and provide unique benefits to borrowers and lenders alike. And with interest rates on the rise and borrowing requirements tightening, we may be poised to see the resurgence of wrap lending.

[96] The SAFE Act was passed as Title V of the Housing and Recovery Act of 2008.
[97] *See* 12 U.S.C. §§ 5103–5105.
[98] 12 C.F.R. § 1007.101(c)(2)(i).
[99] TEX. FIN. CODE § 180.003(a)(5)–(6). SB 43 lowered the de minimis exception from five mortgage loans to three.
[100] *Id*. at § 180.003(a)(4).
[101] David J. Willis, *Wraparound Transactions in Texas*, https://lonestarlandlaw.com/wraparound-transactions-in-texas/ (last visited May 24, 2022).
[102] 12 C.F.R. § 1026.43(c)(2).
[103] 12 C.F.R. § 308.3.
[104] 12 C.F.R. § 1026.2(a)(17)(v).

Figure: 7 TAC §78.101(b)

NOTICE OF WRAP-AROUND MORTGAGE FINANCING ENCUMBERED BY SUPERIOR LIEN PURSUANT TO TEXAS FINANCE CODE SECTION 159.101 AND TEXAS PROPERTY CODE SECTION 5.016

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THE PROPERTY REFERENCED BELOW AND WILL BE IN A SUPERIOR POSITION TO ANY LIEN CREATED BY THE FINANCING YOU ARE SEEKING. THIS NOTICE CONTAINS INFORMATION CONCERNING WHETHER OR NOT THE SUPERIOR LIENHOLDER(S) HAVE CONSENTED TO THE PROPERTY BEING TRANSFERRED TO YOU. IF A SUPERIOR LIEN HAS NOT BEEN RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE SUPERIOR LIENHOLDER, IT IS POSSIBLE THE SUPERIOR LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE SECURED BY THE SUPERIOR LIEN AND MAY AFFECT YOUR RIGHTS AS BUYER OF THE PROPERTY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION OR DISCUSS THIS MATTER WITH AN ATTORNEY.

IMPORTANT NOTICE REGARDING PROPERTY INSURANCE: ANY INSURANCE MAINTAINED BY A SELLER, LENDER, OR OTHER PERSON WHO IS NOT THE BUYER OF THE PROPERTY MAY NOT PROVIDE COVERAGE TO THE BUYER IF THE BUYER SUFFERS A LOSS OR INCURS LIABILITY IN CONNECTION WITH THE PROPERTY. TO ENSURE YOUR INTERESTS ARE PROTECTED, YOU SHOULD PURCHASE YOUR OWN PROPERTY INSURANCE POLICY TO INSURE THE PROPERTY. BEFORE PURCHASING THIS PROPERTY, YOU MAY WISH TO CONSULT WITH AN INSURANCE AGENT LICENSED BY THE TEXAS DEPARTMENT OF INSURANCE REGARDING THE INSURANCE COVERAGE OPTIONS AVAILABLE TO YOU AS BUYER OF THE PROPERTY.

PROPERTY INFORMATION:

Physical Address		
Street:		
City:	State:	Zip:
Legal Description		

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

ISSUED BY:

Lender		
Legal Name:		
Date of Issuance		
Date:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Loan Originator (Company) License/Registration Information (if applicable)		
Legal Name:		
NMLS ID:		

LIENHOLDER(S) AND LIEN INFORMATION (list by order of the date the lien was perfected, from oldest to newest; attach additional sheets as necessary):

Lien 1:		
Lienholder		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Lien Information		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
Consent		
Has the Lienholder Consented to the Transfer?	☐ YES	☐ NO

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

Lien 2:		
Lienholder		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Lien Information		
Account/Reference No.:		
Principal Balance:	Payoff Figure:	
Payment Frequency:	Payment Amount:	
Interest Rate:	Date of Maturity:	
Other Terms or Conditions:		
Consent		
Has the Lienholder Consented to the Transfer?	☐ YES	☐ NO

INSURANCE INFORMATION (attach additional sheets as necessary):

Policy 1:		
Insurer		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Policy Information		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

NOTICE OF WRAP-AROUND MORTGAGE FINANCING

Policy 2:		
Insurer		
Legal Name:		
Mailing Address		
Street:		
City:	State:	Zip:
Contact Information		
Phone:	Fax:	
Email:	Website:	
Policy Information		
Account/Reference No.:		
Insured Amount:		
Insured Property:		
Insured Party:		

PROPERTY TAX INFORMATION:

Property Taxes Due on the Property	
Amount:	
Annual Property Tax Estimate	
Amount:	Tax Year:

ACKNOWLEDGMENT BY BUYER(S):

____________________________ ________________________
Signature Date

____
Printed Name

____________________________ ________________________
Signature Date

____
Printed Name