

**PURCHASE CEMAS
1 CREDIT HOUR**

Consolidation, Extension, Modification Agreement (10 MINUTES)

- Agreement that allows that allows the buyer to assume responsibility for the seller's existing mortgage on the property, borrow any new required money, and then consolidate the two notes and mortgages into one
- How it works:
 - Sales price is \$1 million
 - Seller has existing unpaid principal of \$500,000
 - Buyer would like to finance \$800,000 of the purchase price
 - In this case, the buyer will:
 - Pay the seller \$500,000
 - Assume the seller's \$500,000
 - Obtain a "new money mortgage" for \$300,000
 - Consolidate the seller's \$500,000 mortgage and the buyer's new money mortgage into a single \$800,000 loan with a new rate and term equivalent to the rate and term they would have received on a standard \$800,000 loan.
 - The seller's assigned mortgage is consolidated with the buyer's new mortgage and is extended and modified based on the terms agreed to by the buyer and the buyer's lender. The new, consolidated, extended, and modified mortgage results in a single lien against the property, with the buyer's lender as the only mortgagee. The underlying mortgage note is no longer deemed a liability for the seller because it has been modified by the CEMA agreement.

BENEFITS TO THE BUYER (10 MINUTES)

- Mortgage Tax Savings
 - The buyer gets a reduction in mortgage tax—usually the largest single closing expense.
 - When obtaining a mortgage in New York State, the buyer of a property typically pays mortgage tax on the entire amount of their new mortgage. The mortgage tax rate in the five boroughs of New York City ranges from 1.8% to 2.55% of the loan.
 - With a purchase CEMA, however, a buyer is only required to pay the tax on the so-called "new money," the amount that they borrow in excess of the seller's outstanding principal balance. In the example above, the buyer will save the entire mortgage recording tax on \$500,000 (the amount of the seller's unpaid principal balance). While a buyer of a \$1 million dollar property taking out an \$800,000 mortgage would normally be taxed on the full amount of the loan at a rate of 1.925%, totaling \$15,400, if the seller assigns their \$500,000 mortgage to the buyer, the buyer only pays taxes on the remainder of the financing—\$300,000—reducing the tax bill to \$5,775, a savings of \$9,625.
- Most major lenders consider a purchase CEMA a specialty purchase product that the buyer should ask about as early in the purchasing process as possible.
- Seller's existing mortgage is assigned at closing to the buyer and then amended to reflect the terms of the buyer's new mortgage commitment. Otherwise, the purchase transaction is the same as a transaction without a CEMA.

BENEFITS TO THE SELLER (10 MINUTES)

- Seller can use their willingness to participate in a CEMA as an incentive to potential buyers either when marketing the property or when trying to close a negotiating gap.
- The seller gets a significant reduction in their New York state transfer taxes in virtually all cases thanks to a continuing lien deduction
 - The seller saves a portion of their New York State transfer tax because, rather than the Seller paying transfer tax on the full sale price, the transfer tax is the sale price less the amount of the mortgage assumed by buyer. [i] The New York State transfer tax rate is currently 0.4% of the sales price of a home.
 - Using the example from above, if the seller assigns his existing \$500,000 mortgage on a \$1 million property, instead of paying transfer tax on the full sale price (i.e., \$1 million), seller only pay taxes on \$500,000, or the sale price minus the amount of the mortgage that's getting assigned to the buyer. State transfer tax amounts to \$2 per every \$500 of the property's value. So to calculate seller's potential savings, seller's transfer taxes for the final sale will come to \$2,000 instead of \$4,000—a 50% savings.

ELIGIBLE TRANSACTIONS (10 MINUTES)

- The seller needs to have an outstanding mortgage and the buyer needs to be financing the purchase.
- The property must be a one-to-three family house or single residential condo unit. (NO Co-Ops).
- The buyer's lender, seller's lender, and the buyers and sellers themselves must be willing to participate.
- A buyer cannot force a seller to assign the existing loan but can seek to include a provision in the contract requiring the seller's cooperation with a CEMA. The seller has no obligation to execute any modification.
- A purchase CEMA also requires that certain documentation on the property—called the chain of assignments—is available. If the seller had a CEMA from the prior owner, the seller will need the complete chain of assignments duly executed and recorded in order to support the new mortgage.

OBSTACLES (10 MINUTES)

- Purchase CEMAs do add a complicated layer to the purchase.
- Thus, likely more fees from lenders/attorneys for the additional work.
- The County Clerk's recording fees for the CEMA documents could be another \$300-\$500.
- Buyer should get estimated closing costs and compare that to the amount of mortgage tax savings.
- A buyer contemplating a purchase CEMA should introduce the idea to the seller early on and, if possible, include a written stipulation in the sales contract requiring the seller to cooperate.
- Adds additional time to closing process
- Some banks will not assign mortgages

INCENTIVE DURING NEGOTIATIONS (10 MINUTES)

- It's a way for both parties to cut costs without the seller lowering the price. Since the savings are so much more significant on the buyer's side, buyers (outside of a condo sponsor purchase) may offer to throw some of the savings back to the seller in order to coax them into a deal
- When it comes to negotiating with a sponsor/developer, buyers often fail to obtain outright price reductions on the condo unit because—since the sale price is publicly recorded—a price reduction effectively sets a new lower price for every unit in that line.

- Instead, buyers should focus on “off deed” concessions: Payment of buyer’s legal fees, prepayment of common charges for a defined period of time, upgrades to a unit’s finishes and fixtures, roof rights, license to a non-deeded parking space, sponsor covering buyer’s contribution to the reserve fund. A request that the sponsor cooperate with a purchase CEMA certainly belongs on that list.



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