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REAL ESTATE

Subject-To Deals Explained: The Creative Finance Strategy Most Investors Fear

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A **subject-to** deal is a purchase where you take ownership of a property "subject to" the existing mortgage staying in place. The seller deeds you the property. The loan stays in the seller's name. You take over making the payments. Title transfers to you; the debt does not.

That single fact — title moves, debt does not — is why some investors build entire careers around subject-to and why others refuse to touch it. Both reactions are rational. Subject-to is a legitimate, decades-old technique, and it is also one that must be handled carefully, transparently, and with real legal counsel. I have spent years in creative finance, and my honest view is that subject-to is neither a magic trick nor a trap. It is a tool with a specific edge and specific risks. This article explains both.

This is education, not legal, tax, or financial advice. Subject-to touches contract law, real estate law, lending agreements, insurance, and taxes, and the rules vary by state and change over time. Do not do a subject-to deal without a qualified real estate attorney. That is not a disclaimer I am adding to be safe; it is the single most important sentence in this piece.

What "Subject-To" Actually Means

When you buy a house the conventional way, you get a new loan, that loan pays off the seller's old loan, and the old debt disappears. In a subject-to deal, none of that happens. The seller's original mortgage stays exactly where it is — same lender, same rate, same balance, same name on the note. You receive the deed and become the legal owner, but you are not on the loan. You simply agree to keep paying it.

It helps to separate two ideas people constantly confuse:

- **The deed** is ownership. In a subject-to deal, this transfers to you.
- **The note and mortgage** are the debt and the lender's security interest. These stay in the seller's name.

You are not assuming the loan. **Loan assumption** is a formal process where the lender approves you, qualifies you, and moves the debt into your name. Subject-to skips the lender entirely — which is exactly the source of both its power and its central risk.

When Subject-To Actually Works

Subject-to is not for every deal. It shines in a narrow set of conditions:

- **The existing loan has an attractive interest rate.** When a seller locked a low fixed rate years ago and current rates are much higher, that in-place financing is genuinely valuable. Taking it over subject-to preserves a payment you could never get on a new loan today.
- **The seller has little or no equity.** If someone owes nearly what the house is worth, there is little room for a traditional sale after costs. Subject-to lets them exit without bringing cash to closing.
- **The seller needs speed or relief more than a top price.** Job relocation, divorce, inherited property they cannot manage, tired landlords, or an owner falling behind on payments and facing damage to their credit.

The value is created by the gap between the terms of the existing loan and the terms available in the current market. When there is no gap — a high-rate existing loan, or lots of equity, or a seller who can wait for a full-price cash buyer — subject-to usually makes no sense, and a conventional purchase is cleaner.

The Due-on-Sale Clause: The Risk Everyone Talks About

Here is the risk that scares people, and it deserves a straight answer.

Nearly every mortgage contains a **due-on-sale clause** (also called an acceleration clause). It gives the lender the right to demand full repayment of the loan if the property is sold or transferred without the lender's consent. A subject-to transfer is exactly the kind of transfer that can trigger this right. So the honest, plain-English risk is: **the lender could call the loan due, requiring the full balance to be paid at once.**

Now the nuance, because both the fear and the dismissal of this risk are usually overstated:

- The due-on-sale clause is a **right, not an automatic event.** Nothing happens the instant a deed is recorded. A human at the servicer has to notice the transfer and choose to act.
- Historically, lenders have often not exercised it as long as payments arrive on time, because a performing loan at market or above-market rate is not a problem they are eager to create work over.

- That historical tolerance is **not a guarantee.** In a higher-rate environment, a lender has more incentive to call a low-rate loan due and re-lend the money at today's rates. Assuming yesterday's leniency will hold forever is a mistake.

Responsible practitioners do not pretend this risk away. They plan for it. The standard mitigations include keeping the loan perfectly current, keeping reserves available, and having a realistic exit — the ability to refinance into a new loan or sell the property — if the loan is ever called. If you cannot survive the loan being called, you should not do the deal. Full stop.

Seller and Buyer Motivations

Subject-to only works when it solves a real problem for both sides. Understanding the motivations keeps the deal honest.

Party	Common motivation	What they get	What they risk
Seller	Little equity, needs a fast exit, or facing missed payments	Relief from the payment and a clean departure	The loan stays in their name and on their credit
Buyer/investor	Wants in-place financing and control of an asset	A property with attractive existing terms, low cash in	Due-on-sale exposure and full payment responsibility

Notice the seller's risk. The loan remains in their name, which means their credit is still tied to whether you pay. This is the ethical heart of subject-to. If you buy a property this way and then stop making the payments, you are damaging a real person's credit and possibly driving their home into foreclosure. That obligation is not paperwork. It is a promise. I treat a seller's name on that note as a responsibility I carry personally, and anyone who does not think about it that way should not be doing these deals.

Paperwork and Safeguards

The difference between a professional subject-to and a reckless one is largely in the documentation and the protections built in for both parties. At minimum, careful practitioners involve an attorney to prepare and review:

- **A purchase agreement** that clearly states the sale is subject to the existing financing, spelling out the loan balance, terms, and who is responsible for payments.
- **The deed** transferring title, prepared and recorded correctly for the state.
- **An authorization to release information** so you, the new owner, can communicate with the loan servicer, confirm payments post, and monitor the account.

- **Clear disclosure to the seller**, in writing, that the loan stays in their name and that the due-on-sale clause exists. Informed consent is not optional.
- **A servicing arrangement**, often a licensed third-party loan servicer, that collects your payment and pays the lender, creating a clean, verifiable record that the mortgage is being paid.
- **Insurance handled correctly**, so the policy reflects the new ownership and interests appropriately. Getting insurance wrong is a common and avoidable way these deals blow up.

Additional safeguards experienced buyers use include maintaining cash reserves for the payment, sometimes using a trust or entity structure (with counsel), and keeping meticulous records. The through-line is transparency: a well-built subject-to deal has nothing hidden from the seller, and a clean paper trail if anyone ever asks questions.

The Honest Risks You Must Accept

Let me be direct about what can go wrong, because balance requires it:

- **The loan gets called.** Covered above. Your plan must survive it.
- **You stop being able to pay.** The seller's credit and home are on the line, not just yours. This is a moral and financial hazard you take on fully.
- **The seller cannot get a new loan** while their name is still on this mortgage, because lenders count it against them. This is a real cost to the seller that must be disclosed and understood.
- **Insurance and escrow mistakes** can leave the property uninsured or the taxes unpaid, quietly, until a claim or a delinquency notice surfaces the problem.
- **State-specific legal issues.** Some jurisdictions regulate these transactions more tightly, especially where a seller is in distress. What is fine in one state may be restricted in another.

None of these make subject-to illegitimate. They make it a strategy that punishes carelessness and rewards discipline, disclosure, and reserves. That is true of most powerful tools.

I got into creative finance because conventional financing does not fit every situation, and some of the best outcomes for both buyer and seller happen in the space between the standard options. Subject-to lives in that space. Used honestly — full disclosure to the seller, a real plan for the due-on-sale risk, proper paperwork, and the character to keep paying a loan that carries someone else's name — it is a fair and effective tool. Used carelessly, it hurts real people. Know the difference before you ever sign, and bring a real attorney with you when you do.

Key takeaways

- In a subject-to deal, title transfers to the buyer while the existing mortgage stays in the seller's name — the buyer takes over the payments but does not assume the loan.
- It works best when the existing loan carries an attractive rate, the seller has little equity, and the seller values speed or relief over top price.
- The due-on-sale clause lets the lender call the full balance due; it is a right, not an automatic event, but it must be planned for, not ignored.
- The seller's credit stays tied to the loan, making on-time payment a genuine ethical obligation, not just a financial one.
- Professional subject-to deals depend on documentation, written disclosure, correct insurance, and often a third-party servicer creating a clean payment record.
- Subject-to punishes carelessness and rewards discipline and reserves — never do one without a qualified real estate attorney.

Frequently asked questions

What does buying a property "subject-to" mean?

It means you take ownership of a property while its existing mortgage remains in the seller's name, and you take over making the payments. Title transfers to you, but the debt and the lender relationship stay with the seller. You are not formally assuming or refinancing the loan.

Is a subject-to deal legal?

Subject-to transactions are a long-established technique and are generally legal, but they intersect with contract law, lending agreements, insurance, and state-specific rules, some of which regulate distressed-seller transactions closely. Legality and required disclosures vary by location. Always work with a qualified real estate attorney before doing one.

What is the due-on-sale clause and how worried should I be?

It is a provision in most mortgages that lets the lender demand full repayment if the property is transferred without consent, which a subject-to transfer can trigger. It is a right the lender may choose to exercise, not an automatic event, and historically many performing loans were left alone. You should still plan as if it could be called, keeping the loan current, holding reserves, and having a refinance or sale exit ready.

How is subject-to different from assuming a loan?

Loan assumption is a formal, lender-approved process that qualifies you and moves the debt legally into your name. Subject-to skips the lender entirely; the loan stays in the seller's name and you simply agree to pay it. That difference is the source of both subject-to's flexibility and its central risk.

Why would a seller ever agree to this?

Sellers with little equity, an urgent need to move, or payments they can no longer manage often cannot sell conventionally without bringing cash to closing. Subject-to lets them exit quickly and stop carrying the payment. In exchange, they accept that the loan stays in their name until it is paid off or refinanced.

What happens to the seller if the buyer stops paying?

The loan is still in the seller's name, so missed payments damage the seller's credit and can push their former home toward foreclosure. This is why paying reliably is an ethical obligation, not just a business one. Responsible buyers keep reserves and use third-party servicers so payments are verifiable.

What paperwork and safeguards does a subject-to deal need?

At minimum, an attorney-prepared purchase agreement stating the sale is subject to the existing loan, a properly recorded deed, written disclosure to the seller about the loan and due-on-sale clause, correct insurance, and usually a third-party servicing arrangement. Cash reserves and, where advised, an entity or trust structure add protection. The goal is full transparency and a clean, verifiable record.

Is subject-to a good strategy for beginners?

It can be powerful, but it carries real legal, financial, and ethical responsibility that punishes carelessness. A beginner should not attempt one without a qualified real estate attorney, adequate reserves, and a genuine plan for the loan being called. If you could not survive the loan being accelerated, the deal is not right for you.

About the author. Scott Tischler is the Founder & Chairman of AIrecommend.ai and a practitioner-authority on AI search and Answer Engine Optimization. With 20+ years in marketing technology — including American Express, MetLife, and UBS — and executive study at Wharton, Harvard, Yale, and Oxford, he helps businesses become the ones AI recommends.