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The Paper Source
The Voice of the Note Business

7 Keys to Land Notes

By Richard Koehler

> Develop an expertise in an area where there is little or no competition

Note investors and brokers who get rich do so by developing niche markets. They develop an expertise in an area where there is little or no competition. If you are only going to buy or broker first position notes on owner-occupied, single family residential homes, you will face stiff competition in finding them and then in getting the best price.

One niche market that has not been fully exploited is land notes. There are profits to be earned. Historically, however, it has been difficult to find buyers for land notes. The secret in buying and brokering land notes is to locate safe ones that are profitable for you and attractive to an investor.

First, buy notes only on developed land, not dirt. Developed land means the roads, telephone, water and electricity are in, but there is no building.

Second, buy land notes with recourse back to the note seller. This means the seller of the note is personally liable if the payor defaults on his or her payments.

Third, you want to have a realistic appraisal on the land value; "realistic" because developers can distort the value by selling a parcel to a colleague at an inflated price. New buyers and some appraisers will use this phony sale price to give an inflated appraisal.

Fourth, run a credit check on the payor. You should try to broker land notes with good payors who have "A" or "B" credit.

Fifth, verify that the payor made a MINIMUM cash down payment of 25% on the property — many investors won't consider a note with less than 30% or even 50% down.

Sixth, call the payor to verify that he is happy with his purchase and that he is not unrealistic about making profits on his new property. Many land developers will "oversell" a developed lot, leaving the buyer with dreams of riches in a few years. When the buyer's dream bursts, you do not want to be stuck with a disgruntled payor.

Finally, keep your investment-to-value (ITV) at or below 50% if you want to broker the note to an investor. You do this by agreeing to buy only part of the payment stream. For example, if you and your investor are comfortable with a $30,000 value for a lot in a residential area, you would multiply .50 times $30,000 to get the maximum investment for your note buyer. In this case, an investor would put a maximum $15,000 in this note. If there was a $22,500 note to be sold, you would offer to buy only part of the payment stream.

Your goal is to find a good supply of lots and a hungry developer. Advertising that you buy land notes is one effective way to locate them. Other brokers have been successful working with real estate brokers, others contact developers by phone, offering to finance some of their sales. Your marketing creativity can be rewarded with several of these deals a month.

A Capital Gains Rollover Can Help You Avoid a Big Tax Bill—But Not Forever

By Julie Taylor | REALTOR.com

Property owners, including inheritors, have lots of hurdles when it comes to selling a property.

The topic of capital gains tax is a frequent thorn in a seller's side, but there's a strategy that can soften the blow.

What is capital gains tax?

Capital gains refer to the profit earned from selling an asset. The capital gains tax is the tax you owe on that profit when the asset is sold for more than its initial purchase price.

"If you buy a property for $300,000 and later sell it for $400,000, that $100,000 gain is potentially subject to capital gains tax," says Paul Miller, managing partner of Miller & Company Certified Public Accountants.

But there are certain exclusions and exemptions to be aware of, which depend on how long you've owned the asset.

Primary residence

The IRS allows every individual, regardless of their income, a tax-free exemption on capital gains from the sale of a primary residence.

"The exclusion is up to $250,000 for single filers and $500,000 for joint filers," says Miller. This capital gain can be permanently excluded from your taxable income.

However, you do have to meet specific requirements to claim this capital gains exemption:

- The home must be your primary residence.
- You must have owned it for at least two years.
- You must have lived in it for at least two of the past five years.
- You cannot have taken this exclusion in the past two years.

Second home

The IRS treats the sale of a second home differently than a primary home, when it comes to capital gains taxes.

"The primary home tax exclusion does not apply to a sale of a second home, although if you make the second home your primary residence for two years (out of the last five years before the sale), the exclusion can apply to that home as well," says Mark Luscombe, principal analyst at Wolters Kluwer Tax & Accounting.

Inherited property

When you inherit property (such as a home), the value of the property is "stepped up" to its market value at the time of the previous owner's death, according to Luscombe. This means that if you sell the property right after inheriting it, you won't owe any capital gains tax on any increase in value that occurred before the previous owner's death.

"However, any gain from appreciation after death is subject to capital gains tax unless also eligible for the exclusion on sale of a principal residence," says Luscombe.

Investment property

Capital gains tax applies on the sale or exchange of investment property, but Luscombe says the gain on real estate can be deferred by a "like-kind" exchange for other real estate.

So, instead of paying taxes on your capital gain from the sale right away, you "exchange" it for another investment property. This means you don't pay taxes on the gain until you sell the new property at some point in the future.

This is a tax rule that allows you to defer (or delay) paying capital gains tax on the profit you make from selling investment property, as long as you reinvest that profit into a similar property. The new property must be of a “like kind”—meaning it should be similar in nature or character (for example, you could swap one piece of real estate for another, like exchanging a rental property for a different rental property).

How does a capital gains tax rollover work?

Tax Code Sec. 1031 permits a deferral of gain on the exchange of like-kind property.

The strategy is to defer the gain by, instead of selling the real estate, exchanging the real estate for other real estate of equal or greater value, and the gain is not taxed until the replacement real estate is sold.

“You’ll owe the tax eventually—usually when you sell the new property without doing another rollover—but it can be a great way to grow wealth over time,” says Miller.

A capital gains tax rollover through a like-kind exchange applies primarily to real estate and only certain types of business or investment property. It does not apply to things like stocks, bonds, or personal assets.

How to qualify for a capital gains tax rollover

To qualify for a rollover like the 1031 exchange, the property you’re selling and the one you’re buying both need to be held for investment or business use—not personal use.

“So, a rental or commercial building would qualify, but your vacation home wouldn’t,” says Miller.

Besides that, the rules are fairly flexible as to what constitutes like-kind real estate.

“Even an exchange of a building for vacant land qualifies as long as both are held for business or investment purposes,” says Luscombe.

However, there are strict rules when it comes to the timing.

“You need to identify the new property within 45 days and close within 180 days,” says Miller.

An “accommodation party” can be used to help accomplish the exchange within the time limits, according to Luscombe.

This third party is a facilitator who can temporarily hold the property for you during the exchange process and help you meet the time requirements for a like-kind exchange. This is useful if you’re unable to complete the exchange within the required timeline by yourself. The accommodation party helps you meet the deadlines by managing the property on your behalf, allowing the exchange to still qualify for the tax-deferral benefits.

You also have to follow strict timelines and use a qualified intermediary to handle the money.

“This is important because you’re not allowed to touch the cash proceeds at any point in the process,” says Miller.

The benefit of a capital gains tax rollover? You keep your money working for you instead of sending a chunk to the IRS.

“This helps investors scale up—moving from a duplex to a 10-unit building, for example—without being penalized for success,” says Miller. “For businesses, it’s a smart way to upgrade facilities or reallocate assets without draining cash flow.”

However, it’s important to strictly adhere to IRS guidelines, particularly regarding deadlines and eligible property types. It might be beneficial to consult with a tax expert to ensure you meet all the requirements for a valid like-kind exchange.

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Realtor Fees Were Meant to Fall. They Haven't (Yet)

By Molly Liebergall | MorningBrew.com

More than a year after a historic legal settlement promised to deliver seismic shifts to commission structures, homebuyers and sellers are still waiting to see changes that impact their wallets.

ICYMI: A group of sellers accused the National Association of Realtors (NAR) of inflating home costs by letting buyer-side and seller-side agents discuss commission rates on the Multiple Listing Services (MLS) home database, which only agents can see. A jury agreed, so the NAR settled the lawsuit for $418 million in damages and barred agents from sharing commission rates on MLS databases—a huge change that was expected to extinguish the notoriously high 5% to 6% realtor fee in the U.S. (global averages are 1% to 3%).

As a result…the U.S. real estate industry braced for as much as a 30% drop in the estimated $100 billion Americans pay annually in commission fees. But the new rules have been a dud firecracker since taking effect in August:

"It only took a matter of weeks really, for most agents to find a loophole," one realtor told the *New York Times*, saying, "It's almost a joke." With commission discussions only banned from taking place on the NAR's listing site, agents simply moved those conversations to phone, text, and email.

Average commissions for buyers' agents "barely budged" from Q3 to Q4, and ticked down less than 0.1% from a year earlier (e.g., $415 on a $415,000 home), per Redfin.

Agents are pressuring sellers to continue offering 5% to 6% commission. Fifteen buyers and sellers told the NYT that they were boxed out when they tried to negotiate lower rates or go agentless.

There's still hope: Housing experts predicted that commission declines would happen slowly, and progress may be getting held up by tight inventory.

Buyers without agents have struggled to compete in high-demand areas, especially since listing agents tend to prefer working with represented buyers.

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Cross-collateralization: Encumbering Multiple Properties and Cross-Default Provisions

By Dan J. Harkey

'Cross-collateralization' is not just a term; it's a strategic move in real estate financing. It involves encumbering more than one collateral asset, a strategic approach that allows recorded liens to be placed on multiple assets, usually real properties. While carrying a significant risk, as it can lead to the loss of multiple properties if the borrower defaults, this strategic move can be a powerful tool in real estate financing, empowering borrowers and lenders with broader options and a sense of control over their financial decisions.

For instance, if a borrower defaults on a mortgage for one property, the lender can declare a default on all other properties that are part of the cross-default provision. This safety net ensures that the lender's interests are protected, providing security and protection in the face of potential risks. A cross-default provision is a clause in the loan agreement that triggers a default if the borrower defaults on any other loan with the same lender.

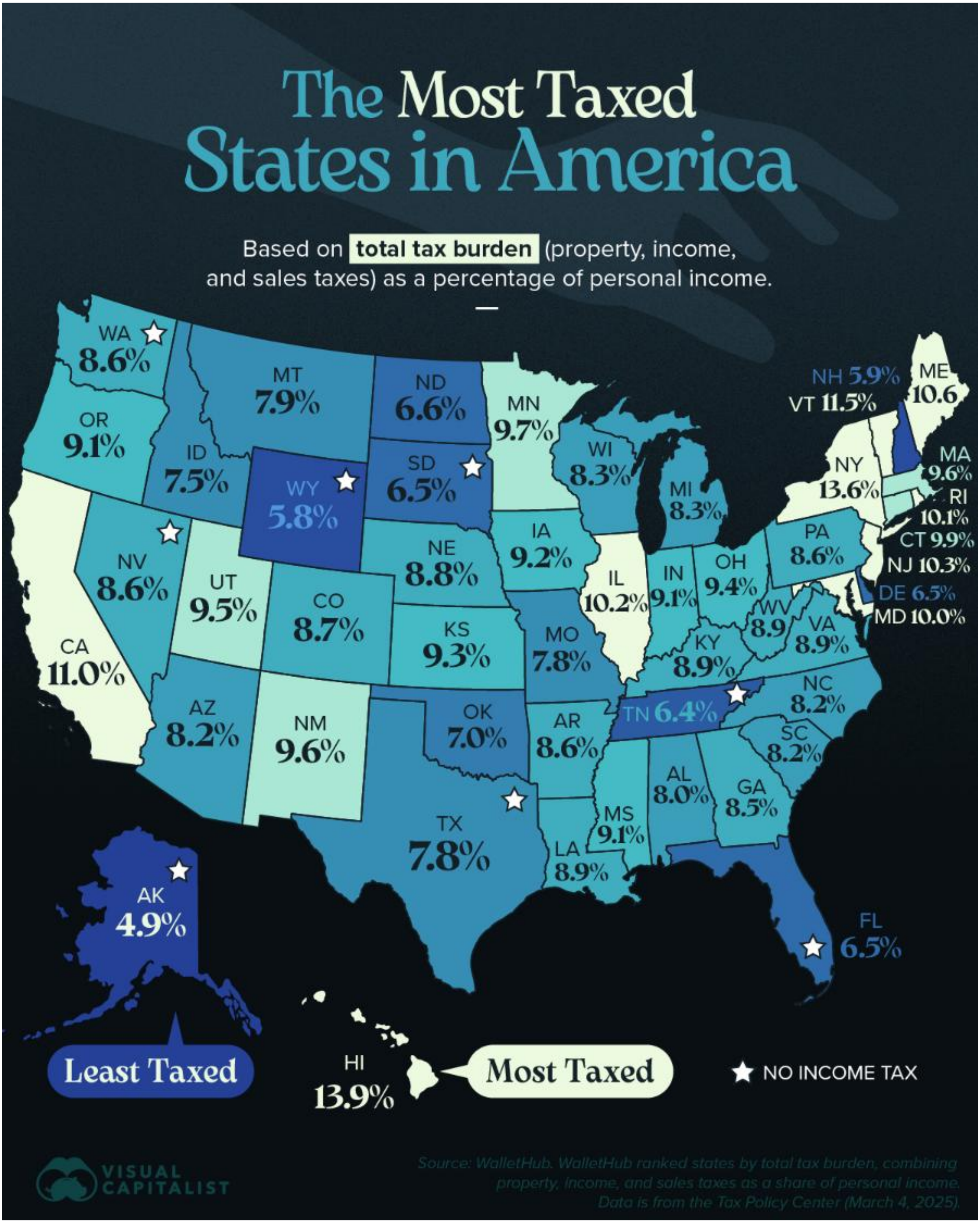
The Borrower's Loan Broker: A crucial player in the financing process, the loan broker acts as an intermediary between the borrower and the lender, providing reassurance and guidance as the borrower navigates the complex world of real estate financing. The broker ensures that the borrower feels supported and guided in their financial decisions and plays a key role in negotiating the terms of cross-collateralization.

The borrower's loan broker presents the client's loan requirements: My client needs a loan for $1,500,000. He is willing to pay off his first $500,000 on his home and cross-collateralize a six-unit building with adequate protective equity. He needs cash to rehab the six-unit building and provide cash flow for another property for entitlements to build another 4-plex. He will refinance with institutional lenders upon completion and stabilization of rents. This statement outlines the client's financial needs and plans for the loan.

The loan falls into making a loan, encumbering their single-family owner-occupied home, and other income properties. Since the loan proceeds are primarily for business purposes, the loan does not fall under the federal and state consumer laws. This means that the borrower may not have the same level of protection as they would under consumer laws. Over 50% of the loan proceeds are for business purposes, not consumer purposes. This distinction is crucial as it determines the regulatory framework under which the loan operates, ensuring the audience is fully aware of the legal framework in which their loan operates.

The lender will make the $1,500,000 loan, provided they encumber both properties with a cross-collateralized first deed of trust. This means the lender will have a security interest in both properties, and in the event of default, they can foreclose on both properties. Since there is only one loan, there is no need for a cross-default provision.

Dan Harkey brings a wealth of knowledge spanning back to 1972. In addition to a life teaching credential, and has owned and operated a successful real estate sales company, mortgage company, escrow company, general insurance brokerage, and property management company. www.danharkey.com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Source: WalletHub. WalletHub ranked states by total tax burden, combining property, income, and sales taxes as a share of personal income. Data is from the Tax Policy Center (March 4, 2025).

Never Buy Notes from People Who Teach Notes!

As one of the smartest people in the business says,

"There is an inherent conflict of interest with any education program that offers investment assets as well. Note investors beware: someone can't be an impartial and expert educator and also offer assets for sale. The educator's fiduciary obligation is to teach discerning and quality due diligence (and to help one master the art of the negotiation) to maximize the student's profit from the acquisition of an asset. The note seller's function is to maximize the asset's sale price. The two are, by definition, in conflict. If you expect a two-for-one deal you're merely asking to get screwed."

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Legal Corner

9 States Are Suing Landlords Over Rent-Setting Algorithms

By Allaire Conte | REALTOR.com

It's no secret that rents surged across the country in the early 2020s, driven by pressures from inflation, limited supply, and a spike in demand. But according to a new lawsuit from the U.S. Department of Justice and nine state attorneys general, there may have been another, less-visible force at play: algorithms.

A sweeping antitrust case accuses some of the country's largest landlords of using RealPage, a rental-management software company, to coordinate pricing, artificially inflating rents and undercutting fair market competition. The complaint alleges that RealPage enabled landlords to share proprietary data and set prices in lockstep, leading to higher costs for renters and reduced affordability in already-strained housing markets.

"The conspiracy allegedly engaged in by RealPage and these landlords has harmed Arizonans and directly contributed to Arizona's affordable housing crisis," Arizona Attorney General Kris Mayes, who was the first to bring charges against RealPage, shared in a press release from her office.

In Phoenix and Tucson alone, she noted, rents jumped by more than 30% over two years—a surge she attributes in part to what her office called a "rental monopoly."

If the allegations hold up in court, the consequences could be transformative. This case has the potential to deliver relief to renters who paid artificially high prices while upending how rents are set in buildings nationwide.

What is RealPage, and why is it controversial?

RealPage is a Texas-based tech company that provides property management software, including the rent-pricing algorithm at the heart of this lawsuit. The tool, known as YieldStar, uses data from nearby rental listings to suggest prices that maximize profits. But according to the lawsuit, this system did more than just automate pricing.

The complaint alleges that RealPage facilitated "algorithmic collusion," encouraging landlords to raise rents in lockstep rather than compete with one another. By sharing proprietary data and allowing RealPage's algorithm to coordinate pricing decisions, landlords effectively engaged in a form of price-fixing that reduced competition and inflated rents, particularly in high-demand markets.

"The defendants in this case unlawfully lined their pockets at the expense of New Jersey renters who struggled to pay the increasingly unlivable price levels imposed by this cartel," New Jersey Attorney General Matthew Platkin, said in a statement, pointing to rent hikes that helped fuel the state's housing pinch.

RealPage, for its part, strongly denies the allegations. The company argues that its software supports efficiency, flexibility, and compliance.

"Housing affordability should be the real focus," said RealPage CEO Dana Jones in a June 2024 statement. "Despite the noise, we will continue to innovate with confidence and make sure our solutions continue to benefit residents and housing providers alike."

Who's being sued and where?

The antitrust lawsuit shaking up the rental market isn't just targeting RealPage. It's also going after some of the biggest names in property management across the country.

The DOJ is leading the charge along with Arizona, Colorado, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Oregon, and the District of Columbia.

The list of defendants reads like a who's who of large-scale landlords: Greystar, Camden Property Trust, Cortland, LivCor, and Cushman & Wakefield are just a few of the corporate players accused of using RealPage to squeeze more from renters.

What does this mean for renters today?

If the state and federal cases succeed, tenants who lived in buildings that used RealPage's rent-setting software may be eligible for compensation.

That means potential refunds or restitution for renters who unknowingly paid inflated prices.

While nothing is guaranteed yet, the legal momentum is growing, and renters in affected properties may soon have a path to file claims.

A watershed moment for renters?

If the courts find that RealPage and its landlord clients used technology to suppress competition and inflate rents, it could force a major rethink of how rental prices are set—and potentially open the door to fairer, more transparent practices.

But beyond the courtroom, this case reinforces a more powerful reality: Renters aren't powerless. Through public pressure, investigative reporting, and now collective legal action, tenants are challenging practices once thought untouchable. And they're being heard. For millions of renters, this could be the moment the balance of power begins to shift.

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