

Executive Summary: Monetized Installment Sale (M453) Transactions

When an owner prepares to sell a capital asset, the owner should consider selling the asset—real property of any kind, mineral rights, water rights, stock in a privately held business, partnership interest, personal residence, art or antique collection, or whatever—to S.Crow Collateral Corp., a qualified dealer in capital assets.

S.Crow Collateral Corp. offers to purchase capital assets in what are called “Monetized Installment Sale” or “M453” transactions. When an owner sells to S.Crow Collateral Corp. in an M453 transaction, the owner is offered, but is not required to accept, a limited-recourse “monetization loan” from a third-party lender introduced to the owner by S.Crow Collateral Corp.

If the seller accepts the offered monetization loan, it will be funded “up front”, as the expression is: that is, at the loan closing, which occurs promptly after the closing on the sale of the asset.

Achievements

Subject to due diligence and qualifying facts, the transactions may achieve these results:

1. Immediately (that is, within days) available monetization loan proceeds for the seller nearly equal to the selling price, under terms by which the lender cannot compel the seller to pay more in interest and principal on the loan than the amounts which S.Crow Collateral Corp. actually pays to the seller as interest and principal on S.Crow Collateral Corp.’s installment obligation to the seller, unless the seller breaches the loan documents in some other way;
2. Complete freedom for the seller to use the monetization loan proceeds for any business or investment purpose as the seller chooses, without any involvement by S.Crow Collateral Corp. or the lender in that business or investment, and without any payment whatever from that business or investment to S.Crow Collateral Corp. or the lender;
3. Complete administrative ease throughout the 30-year term, with payments on the M453 installment sale and payments on the monetization loan processed by a long-term escrow company affiliated with the lender and accounted and reported annually to their respective parties and the Internal Revenue Service by the long-term escrow company;
4. Reduced debt-service cost for other debt;
5. Minimized credit risk, default risk and performance risk; and
6. Deferral of the capital gains tax for as long as 30 years, with no net cost to the seller before the end of that period.

Immediate Resale; Closings

As is typical of dealers of all types throughout the economy, S.Crow Collateral Corp. will immediately re-sell the asset to the subsequent buyer, who otherwise may well have purchased the

asset directly from the owner who sells to S.Crow Collateral Corp. The closing on the M453 transaction and the closing on the resale will occur simultaneously, typically where the closing would have occurred if there had been no M453 transaction. The closing on the monetization loan will promptly follow, typically at the office of the loan-closing agent selected by the lender.

Transparency

Every transaction with S.Crow Collateral Corp. in which the seller is involved will be fully disclosed to the seller and the seller's advisers in advance and will be entirely transparent to them, before the seller commits to the transaction.

Overview: The Structure and Process of a Typical M453 Transaction

As a dealer in capital assets, S.Crow Collateral Corp. purchases the asset—it can be virtually *any* capital asset, whether it's a business, investment or personal one—from the owner-seller, on an unsecured installment contract which calls for payments of interest only by S.Crow Collateral Corp. to the seller for 30 years, followed by payment of the entire purchase price at the end of the term.

Most often, the seller has already found an intended buyer for the asset before S.Crow Collateral Corp. becomes involved. Most often, the intended buyer is prepared to pay cash, or a considerable portion of the price in cash, but the seller wishes to consider alternatives. With that in mind, the seller brings S.Crow Collateral Corp. into the deal, to be an intermediate purchaser from the seller. The purchase price in the installment contract in an M453 transaction is typically equal to the resale price after closing costs and brokerage commissions, but with provision for a discount at the end of the 30 years if S.Crow Collateral Corp. fully performs.

At the same time as the purchase, S.Crow Collateral Corp. re-sells the asset to the subsequent buyer to whom the seller had intended to sell directly. As the seller to the subsequent buyer, S.Crow Collateral Corp. receives and retains the sale proceeds which the subsequent buyer pays.

Although there are two sale transactions—the installment sale to S.Crow Collateral Corp. and the resale to the subsequent buyer—there is only one transfer of legal title; the deed or other instrument of transfer will pass directly (in what is called a “directed” conveyance or transfer) from S.Crow Collateral Corp.'s seller to S.Crow Collateral Corp.'s buyer, without going through S.Crow Collateral Corp. Therefore, the subsequent buyer will receive the same instrument of transfer from the same party with the same representations and warranties, on the same day and for the same price as would have been the case if S.Crow Collateral Corp. had not been involved. However, S.Crow Collateral Corp. acquires equitable ownership rights to the asset when the installment agreement is signed, and those equitable ownership rights of S.Crow Collateral Corp. pass to the subsequent buyer along with the legal title from the seller.

Both the installment sale to S.Crow Collateral Corp. and its resale to the subsequent buyer are closed simultaneously, pursuant to mutually agreed closing instructions provided to the closing agent.

Overview: The Monetization Loan

At the same time and if the seller so desires, a third-party lender which is unrelated to S.Crow Collateral Corp. is willing to lend to S.Crow Collateral Corp.'s seller (or, in the case of an entity which is the seller, the owner or owners of the entity) an amount of cash that is equal to a specified percentage of the price that is paid by S.Crow Collateral Corp.'s buyer. S.Crow Collateral Corp.'s monthly interest payments on the installment contract will typically equal the seller's loan-interest payments, although the interest rate on the monetization loan will be higher, because the installment purchase price will be higher than the loan amount. The final due dates on the installment contract and the monetization loan will typically be the same, and the principal amount paid on the installment contract at the end will equal or exceed the amount that the seller then owes on the loan.

The lender's loan documents allow the seller/borrower to use the monetization loan proceeds for any business or investment purpose which the seller/borrower chooses, including to pay business or investment debt, whether in regard to the asset being sold or whatever else. The seller/borrower is not restricted in the use of the proceeds of the investment.

The lender does not receive a lien on the installment contract, on the asset that was sold, on the installment payments made by S.Crow Collateral Corp., or on the investments made by the seller/borrower.

S.Crow Collateral Corp. is not a party to the loan; the monetization loan is a transaction solely between the seller/borrower and the lender.

Direct-Deposit, Direct-Pay Long-term Escrows

If the M453 transaction occurs, three long-term escrows will be established, pursuant to written instructions to which the seller agrees, at the long-term escrow company affiliated with the lender: the "Installment Escrow", the "Funding Escrow", and the "Loan Escrow".

Each month, S.Crow Collateral Corp. will pay an installment-interest payment into the Installment Escrow, and thereupon the escrow company will credit S.Crow Collateral Corp. with having made an installment-interest payment. S.Crow Collateral Corp.'s connection with that money thereupon ends, and the money then transfers to the Funding Escrow, where the money belongs solely to the seller. Money then transfers from the Funding Escrow to the Loan Escrow, at which time the seller/borrower is credited with having made a loan-interest payment. When the principal is paid at maturity, the same process is followed.

From the seller-borrower's point of view, this is an automatic debit-and-crediting process, just as would occur if a borrower were to arrange for incoming payments to be automatically deposited in the borrower's bank and for outgoing payments to be automatically withdrawn from the borrower's account in that bank.

Every January, the long-term escrow company will provide accountings of moneys received and paid, will perform the required tax reporting of the interest payments, and will bill the seller for the annual escrow fee.

The Whole Story: The Transaction Documents

What is presented here is only a fraction of the whole story about the transactions that will occur to effectuate the installment sale of an asset to S.Crow Collateral Corp. in an M453 transaction and the lender's issuance of the monetization loan. The whole story will be that which is contained in the transaction documents for the two distinct transactions.

Seek Your Own Legal, Tax and Investment Advice

S.Crow Collateral Corp. is across the table from the seller as the seller's counter-party and is not an adviser to the seller. S.Crow Collateral Corp. functions strictly as a dealer in the purchase and resale of capital assets and does not offer or provide legal, tax or investment advice to any seller.

It is important that the seller seek his or her own legal, tax and investment advice so that the seller and the seller's advisers can ascertain whether proceeding with an M453 transaction would be in the seller's best interest in the circumstances.

Disclaimer

As a principal only, S.Crow Collateral Corp. does not act in the capacity of a broker, sales representative, investment adviser, or tax or legal adviser; does not sell or recommend any security; and does not accept any transaction fee or payment for transaction services. Circumstances may affect tax and legal outcomes. Each transaction is different and unique to each participant. Neither S.Crow Collateral Corp. nor any of its officers or employees may or does provide tax, legal or investment advice. Nothing herein is intended to be, or may be taken to be, tax, legal or investment advice. Interested parties should consult their legal, tax and investment advisers before participating in any transaction.