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Higher Rate Redux: Recalling The Legal History Of “Transfers Subject To,” Wrap-Around Mortgages, Assumable Loans, And The Due On Sale Clause In A New Era Of Rising Interest Rates

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As residential mortgage interest rates have nearly tripled over the past 18 months, some participants in the real estate industry have been considering ways to market and sell real estate by keeping low-rate existing mortgages in place while transferring ownership of the property to a new owner or buyer. This is the first time in well over a generation since the specter of high interest rates generated so much interest in “creative financing.” Many participants in the industry today have no memory of the legal developments precipitated by the last period of rapidly rising rates, now some four decades in the past. While interest rates have yet to approach the stratospheric levels of the early 1980s, this is a propitious time to review the extensive and fairly definitive statutory and case law that emerged in that era, and remind ourselves of the limited possibilities for keeping the benefits of an existing low-rate mortgage loan while transferring the property to a new owner.

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