



New York Purchase CEMA:
A Win, Win, Win Scenario; Money Saved for Sellers, Buyers and Lenders

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Most sellers and buyers of residential real property in New York wonder why their closing costs are so high when selling and purchasing their homes. The reason is that New York State imposes a transfer tax that is typically paid by the seller and a mortgage tax that is paid by the buyer and the buyer's lender.

In New York State, transfer tax is calculated on the purchase price at a rate of two dollars for each five hundred dollars, and mortgage tax is based on a percentage of the mortgage loan amount at a tax rate that varies from county to county.

For example, on a one, two or three family house or individual residential condominium unit located in Kings County, where the purchase price is \$800,000, the buyer is financing \$550,000 of the purchase price, and the seller has an unpaid principal balance of \$450,000 on their existing loan, the NYS transfer tax paid by the seller is \$3,200 ($\$800,000 \times .4\%$), the NYS mortgage tax paid by the buyer is \$10,588 ($\$550,000 \times 1.925\%$), and the NYS mortgage tax paid by the buyer's lender is \$1,375 ($\$550,000 \times .25\%$).

A document called a **Consolidation Extension Modification Agreement**, better known as a "**CEMA**", may substantially reduce the taxes paid by the seller, buyer and buyer's lender. In a sale/purchase transaction, a CEMA allows (1) the seller to pay NYS transfer tax on only the difference between the purchase price and the unpaid principal balance of the seller's existing loan (known as a "continuing lien deduction"); (2) the buyer to pay NYS mortgage tax on only the difference between the buyer's new loan amount and the unpaid principal balance of the seller's existing loan (known as the "Gap Money"); and (3) the buyer's lender to pay NYS mortgage tax on only the Gap Money.

For a purchase CEMA to work, the seller's lender would have to be willing to assign the seller's mortgage to the buyer's new lender and the buyer's new lender would have to allow the buyer to close their new loan as a CEMA. Assuming that both lenders agree, the seller's existing lender will prepare a document called an Assignment of Mortgage ("Assignment") and the buyer's new lender will prepare the CEMA. The Assignment

and the CEMA basically tie together the seller's existing mortgage with the buyer's new Gap Money mortgage. The terms of the seller's existing mortgage and the buyer's new mortgage are then restated in the CEMA.

So in the example above, if the seller's lender is willing to assign the seller's mortgage to the buyer's new lender and the buyer's new lender allows the buyer to close their new loan as a CEMA, the NYS transfer tax paid by the seller is \$1,400 ($\$800,000 - \$450,000 \times .4\%$), the NYS mortgage tax paid by the buyer is \$1,800 ($\$550,000 - \$450,000 \times 1.8\%$), and the NYS mortgage tax paid by the buyer's new lender is \$250 ($\$550,000 - \$450,000 \times .25\%$). The seller saves \$1,800 ($\$3,200 - \$1,400$), the buyer saves \$8,788 ($\$10,588 - \$1,800$), and the buyer's lender saves \$1,125 ($\$1,375 - \250).

It is important to note that not all Purchase CEMAs will go through as there are many issues that may arise. When loans are bought and sold by lenders many of the important original documents are lost in the physical transfer of the documents between lenders. Notes disappear and in some cases even entire files can disappear. Also, not all lenders will agree to assign the existing mortgage to a new lender. Although most lenders will assign their mortgage to another lender, it is not mandatory that they do so. In addition, the assigning lender may charge an assignment fee and could add several weeks to the closing process waiting for the collateral file to be retrieved.

Notwithstanding the above caveats, the vast majority of Purchase CEMAs will go through and the seller, buyer and buyer's lender will save thousands of dollars. In the current mortgage market, where reducing closing costs is the key to staying competitive, a Purchase CEMA is a terrific method for achieving this objective.