

Negotiating and Buying “Real Estate Owned” Property in 2010 - 2011

So you or your clients are in the market to buy some property “at a steal” and think that now is the time to get the “deal of the century”. Well, it can be a good opportunity and this is a buyer’s market, but there are some definite challenges and pitfalls to watch for.

As a Florida licensed attorney, as well as a former real estate sales agent, and a recent buyer of real estate owned property, myself, I have a practical approach to “house hunting” in a niche market with circumstances unique to this type of sale. I also have the hands on experience with regard to negotiating the deal. The “real estate owned” property to which I refer is property owned and marketed by the foreclosing lender, or its assignee. In other words, the lender foreclosed on the property, took title to it, and is now trying to market it and recoup as much of its loss (e.g. the defaulted mortgage, associated costs, etc.) as is possible. The secret to remember is that the lender, now the owner, is not in the business of selling property, and therefore does not negotiate a sale like a private seller.

The lender has associations with regular real estate sales agents who list the property on the MLS (multiple listing service) and show it. The listing will indicate that the property is a “real estate owned” property, or your own sales agent can identify it as such for you. Finding these properties is, thus, not very difficult. Once you or your client identify the property of choice, then there follow other issues, such as negotiating the sale.

When strategizing to get the best deal possible, keep in mind that the lender cannot hold inventory (real property) for any length of time, as that is not its business and it is not equipped to deal with the headaches of maintenance or the long-term costs involved. Therefore, when you watch the real estate market, you will recognize that lenders typically drop the sales price of the property about \$10,000 to \$20,000 every 20 to 30 days in order to move the property. So, it can become a waiting game, - can you or your client wait long enough to buy the property at your target price, or before another purchaser steps into the mix and scoops up the deal? Although that may sound a bit depressing, no need to dishearten that a wealthier or savvier buyer is going to outbid you *without your knowledge* or without affording you the opportunity to do something about it.

Unlike a private seller who can do or say anything he wants, - such as holding onto the property until he gets his asking price, or bluffing that there is another bidder out there, - the institutional lender is bound by certain laws, as well as its own internal policies and procedures. These can be used to your benefit or that of your client’s benefit. “How?” you ask. Well, first of all, you make a low-ball bid and the lender must respond with a counter offer, - it doesn’t have the option of refusing to negotiate until you come up with a more favorable offer. Simply by forcing it to come up with a counter-

bid, you can gauge the direction in which the price is going and the speed at which it is moving toward your target price. Once you get the lender's counter-offer, you can respond by making the same, exact low-ball bid all over again to see how much or how little flexibility there is. There is no shame in making the same low-ball bid to the lender more than once (- you can do it multiple times) because the lender is not a private person with personal feeling toward the property that might influence the way it reacts in an emotionally negative way.

The lender also has certain rules which require that it respond to any offer within a certain time frame, - although I must say that it doesn't always abide by those rules and is frequently late in providing an answer. However, there is at least a guideline and you can have an expectation as to how soon you may get a response. If there is another bid on the table simultaneously, it is frequently the lender's policy to advise you of such, and even to advise you of how much it might actually be. I would expect this information to be truthful and accurate, coming from an institutional lender, whereas I might doubt its veracity as relayed by a private seller. Having this information gives you the opportunity to respond according to your client's ability and preference.

Lastly, while we've been discussing the benefits of negotiating with an institutional lender, as opposed to a private seller, there are certain drawbacks which vary from lender to lender. What I am referring to is the pre-drawn, proprietary sales and purchase contract which you can expect the lender to present to you as a substitute for, or "addendum" to, a FAR BAR sales contract (the standard sales contract your real estate sales agent normally uses). Each lender has its own terms of preference in the fine print.

At this point the sales price and closing terms have typically been agreed to, but the lender's own proprietary contract should be reviewed with a fine tooth comb for terms which basically eliminate some or all of the typical warranties that a buyer would expect to receive. This is when having good legal counsel is extremely important for the buyer to understand the effect(s) of the new contract. That way he can make a well-informed decision regarding whether or not to go forward with the sale, based upon whether or not the new terms are acceptable to him.

While, as discussed above, good legal counsel is essential, so is a motivated real estate agent who focuses on both detail and follow up. Certain documents may be required of the buyer as well as compliance deadlines, so it is critical that the agent be responsible and responsive to make sure that these matters are properly and timely addressed. Similarly, in my experience, constant follow up is required, and an agent who is dedicated to closely shepherding the process is indispensable.

Aside from the above discourse about negotiating the sale and carefully reviewing the contract, there are numerous other considerations that are unique to purchasing "real estate owned" property. Please watch for future informative articles on these topics.

Submitted by Elyce Schweitzer, Florida Bar Admitted Attorney, and Florida Supreme Court Certified Circuit Civil Mediator, with residential mortgage foreclosure mediation training, <http://www.orlandomediators.org>.