



## **Buying a Foreclosure Property: Highway to the Danger Zone (unless you're careful)**

Buying property at foreclosure sales is a popular form of real estate investment, but even Maverick and Goose would be careful of buying a foreclosure property.

There are two types of foreclosure: judicial and non-judicial. Non-judicial foreclosure sales are held on the first Tuesday of every month between the hours of 10:00 a.m. and 4:00 p.m. at the location determined by the commissioner's court of the county in which the property is located. *See* Texas Property Code Section 51.002. Notices of foreclosure sales must be filed with the county clerk and posted at least 21 calendar days prior to the intended foreclosure date. These notices are entitled "Notice of Trustee's Sale" or "Notice of Substitute Trustee's Sale." They provide information about the debt, the legal description of the property, and designate a 4 hour period during which the sale will be held. In larger metropolitan areas there may be a foreclosure listing service, such as the one in the Houston area, which publishes a monthly list of properties posted for foreclosure.

### **The Power of Research**

The investor's goal is to get instant equity in the property by paying a relatively modest sum at the foreclosure sale. If plagued by liens, however, apparent equity can disappear. Checking the title of the property that will be sold is imperative. Is the lien being foreclosed a second or third lien? If so, then the first lien (usually a purchase-money lien held by a mortgage company) will continue in force. First liens are king. They are not extinguished by foreclosure on an inferior lien. What about IRS liens? Improvement liens? Liens imposed by homeowners associations? Any or all of these could consume whatever equity might otherwise have existed in the property.

Researching title is something every investor should do. Be sure to obtain copies of the deed and any deeds of trust or other lien instruments. If the investor is not sufficiently knowledgeable to do this, it is advisable to obtain a title report or abstractor's certificate, which is available for a fee from a title company. If you need more information about the property, you can contact the trustee named in the Notice of Trustee's Sale. A trustee may have a copy of an inspection report on the property that they may be willing to share. Remember, there is no such thing as too much information when buying foreclosed properties.

### **The Condition of the Property**

Buying at a foreclosure sale will be "as is," meaning buying in the property in its present condition, and without warranties, express or implied. Be especially careful about condition of the foundation (learn to know the signs of settlement), whether the property is flood-prone, and whether or not there may be environmental contamination (generally not a problem if the house is in a restricted subdivision). Avoid any property that suffers from any one or more of these deficiencies.

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## Value

Not surprisingly, it is important not to bid more than the equity in the property (fair market value less the total dollar amount of the lien(s), if any, that will survive the foreclosure). Obtain a comparative market analysis (cma) from a realtor to determine the fair market value.

## No Holds Barred Sale

Foreclosure sales in larger counties are no holds barred. Generally, there are no rules as to any particular spot at which a trustee must stand or that only one trustee can carry on a sale at one time. Several trustees may be talking at once. There are no buzz words, although trustees usually recite the details of the note and lien, the fact that it went into default, proper notice was given, the note was subsequently accelerated, and the property is now for sale to the highest cash bidder. Trustees must, however, conduct their sales within the four-hour period specified in their notices. The investor should remain in motion, talking to the trustees, until he finds the right trustee with the right property. Do not let the excitement of the sale cause you to exceed your pre-established maximum bid.

## Straight Cash

It is risky to carry large sums of cash. Most trustees will allow a buyer an hour or two to return with a cashier's check in the amount of the sales price. If the buyer does not return within that time, the sale is resumed. Many investors will carry an assortment of cashier's checks in different amounts, allowing them flexibility in bidding amounts.

## Somebody Lives in the Property

Your Substitute Trustee's Deed will trump any lease that the former owner signed with an existing tenant. This is unfortunate, even unjust, for the tenant - but that's reality. The choice is for you to make - allow the tenant to remain on terms acceptable to you or evict the tenant. Eviction under such circumstances is seldom accomplished without resort to filing a forcible detainer action in Justice of the Peace court in the precinct in which the property is located. Evictions can often take 3 to 4 weeks (much longer in the event of appeal by the tenant to county court) and involve substantial attorney's fees. Build these costs into your budget from the beginning. Hire an attorney for your first couple of evictions, then you will be prepared to handle them yourself.

## Right of Redemption

An investor should be prepared to hold the property and avoid either making substantial improvements to it or re-selling it until after any applicable rights of redemption have expired. The "Residential Property Owners Protection Act" provides for certain procedures and protections in the event of foreclosure by a homeowners association. The redemption period is 180 days. *See Texas Property Code Section 209.011.* After foreclosure for unpaid taxes, the former owner of the homestead or agricultural property has a two-year right of redemption. *See Texas Tax Code Section 34.21a.* The investor is entitled to a redemption premium of 25% in the first year and 50% in the second year of the redemption period,

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plus recovery of certain costs that include property insurance and repairs or improvements required by code, ordinance, or a lease in effect on the date of sale. For other types of property, the redemption period is 180 days and the redemption premium is limited to 25%.

### **Bankruptcy**

Always check the bankruptcy records to make sure the owner in default has not filed bankruptcy immediately before the sale. If so, the sale is null and void. The problem for the investor is that it is sometimes a difficult and lengthy process to recover the money the investor paid for the property at auction.

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