

Selling REOs and HUD Foreclosures



By Mike Phillips

Definitions

REO:

Real Estate Owned property is a property that a mortgage lender takes back into its 'care' as a result of a foreclosure on a home that has not yielded a buyer during a foreclosure sale.

Asset Recovery Specialist

The Listing Agent who handles the listing for the seller.

REO/Asset Manager

Employee of the REO company who handles all aspects of the transaction on Seller's behalf.

BPO

Broker Price Opinion – similar to a Competitive Market Analysis, but designed for companies as opposed to individual homeowners and are conducted by a local real estate agent.

Typically combines drive-by exterior examination, external data sources, previous sale data, property assessment data, recent comparable sales and current neighborhood listings, as well as a photograph of the subject property.

Deed of Trust

Kansas calls it a mortgage, but Missouri terminology is a Deed of Trust.

Bankruptcy

The one thing that can stop a foreclosure.

Short Sale

When the outstanding obligations (loans) against a property are greater than what the property can be sold for. Sometimes the lender agrees to accept this smaller sale price and the borrower can subsequently avoid foreclosure.

Deed in Lieu of Foreclosure

The lender agrees to allow the borrower to “give the property” to the lender and the borrower can subsequently avoid foreclosure. This is seldom practiced.

Redemption Period – KS Only

Time allotment in which the borrower can still pay off what they owe and avoid foreclosure. Based on a multitude of factors and the time varies. Seller could still list the property for sale and the proceeds would go to the court. Banks can change their mind on this at the last moment.

Notice

Foreclosures must be advertised to the public as a notice that a sale will be conducted at the courthouse. If county population is 50,000+ it must run for 20 consecutive days. When population is under -50,000 a weekly notice is required for 4 consecutive issues.

Trustee's Deed - Type of deed issued to buyer at foreclosure by trustee. A deed conveying land ownership executed by the trustee who holds the land in trust

Sheriff's Deed - A deed given by court order to convey title to property that has been sold to satisfy a judgment of delinquent taxes.

General Warranty Deed - A deed in which the grantor warrants title against all claims, offering the greatest guarantee of protection of any type of deed, and which is used in most real estate deed transfers of title

Special Warranty Deed - An agreement whereby the current owner/seller guarantees he has done nothing that would impair or cloud title, but does not make any guarantee for what occurred prior to his ownership of the property

Quitclaim Deed - a legal instrument which is used to transfer interest in real property. The entity transferring its interest is called the grantor, and when the quitclaim deed is properly completed and executed it transfers any interest the grantor has in the property to a recipient, called the *grantee*. The owner/grantor terminates (“quits”) any right and claim to the property, thereby allowing the right or claim to transfer to the recipient/grantee.

Unlike most other property deeds, a quitclaim deed contains no title covenant and thus offers the grantee no warranty as to the status of the property title and there is no guarantees that the title is free and clear.

**Brace yourself for a different
kind of real estate game-**

**This is *not* your father's
Oldsmobile!**



Rule #1

He who has the gold makes the rules.

Prepare yourself for having no control over the process! The Lender has total control over the process, so remember it and inform your buyer of this.

Rule #2

This is a horse of a different color.

Working with these properties is nothing like working with traditional sales. You must release yourself of an old mindset.

Rule #3

Tell your buyers to fasten their seat belts.

If they're properly briefed about the process beforehand then all of you will have a much smoother transaction.

The Seller's Side of the Equation



The Process of Foreclosure

Bank gives notice to borrower via Certified Letter.

Bank *may* work with borrower to resolve the situation.

A random agent will be assigned by the lender to conduct a BPO.

Short Sale:

Might be considered if the property has been on the market for a while and offers are lower than list price.

If so, the Bank instructs the Title Company to prepare a HUD.

The Bank may change its mind at the last second.

If resolution is NOT possible, the following begins:

Kansas:

Right of Redemption period may apply.
Homeowner could list and attempt to sell, proceeds go to the court.

Bank may rescind this permission up until closing.

Missouri:

The Bank sends a Trustee to the courthouse steps. They have a beginning figure in mind that includes the mortgage balance, attorney fees, interest, penalties, etc.

If there is no buyer at the courthouse steps, the Bank Trustee buys it and now it's an **REO**.

The Buyer's Side of the Equation



Where do you find a list of REO's?

~ Heartland MLS - Advanced Search, *Type of Ownership* or scroll down to the remarks and type in “foreclosure.”

~ The Daily Record (Missouri)

~ The Legal Record (Kansas)

~ Internet:

Johnson County Kansas District Court
Public Record

HUDHOMESTORE.com (a nationwide website)

Types of REO's

Banks

HUD (see later section)

MI and PMI companies

VA

Conventional

Selling “Traditional Listings” versus selling REO’s

What’s the same?

- ~Basic Contract is used (the KCRAR form)
- ~Inspection period normally 10 days, but many want 5 days or less
- ~Earnest Money and Proof of Funds presented at time of contract
- ~Title is clear at time of sale
- ~No encumbrances can remain on the title, including taxes, HOA, etc.
- ~Listing Agent works for the Seller, Buyer’s
- ~Agent works for Buyer

What's different?

- ~Addendums are provided by the bank
(could be before the offer or after)
Don't use KCRAR addenda except for
*"Additional Disclosures as Required by
State or Federal Law"*.
- ~Properties are "AS IS"
- ~Inspections are for knowledge only (no
repairs will be done by seller)
- ~Earnest Deposit becomes NON-
refundable after inspections

More Differences...

- ~Per Diem charges apply if closing isn't on time – could be \$50-\$100 daily paid by buyer!
- ~No Seller's Disclosure available.
- ~Longer waiting period to get things done.
- ~ Most Asset Managers are handling 200 to 300 properties in several states.
- ~Some banks have deed restrictions on properties because of potential fraud.

Buying on the Courthouse steps:

Buyer can purchase properties either on the Courthouse steps or through a REO company later.

Buyer must have a letter of credit for courthouse purchases. (Or cash, cashier's check, money order)

Verify the legal description! It's crucial to ensure the legal description matches the buyer's expectations. Mistakes are not uncommon.

The Process:

Many Asset Managers require for offers to be submitted on their “Offer Worksheet” which contains basics such as price, terms, concessions, etc. This includes Counter Offers.

Once the REO company accepts the offer or counter offer, all paperwork is sent to them for signatures. Typically, acceptance is verbal and then signatures are taken care of afterwards. It is extremely rare for a verbal “OK” to be rescinded.

Remember, many Asset Managers have hundreds of properties and agents to oversee. Calling multiple times will only serve to slow down the process.

Loan processing for your buyer must be started immediately. Don't waste time! Read the Bank's Addenda very carefully to determine if a per diem penalty will be charged for a delayed closing. ***(Could be \$50-\$150 per day!)***

Termites:

REO companies will only address LIVE infestation.

Contract Names:

Never try to change a name during the course of the transaction. “Assigning contracts” is prohibited, so make sure the right names are in place from the beginning.

Escrow:

Closing will be at the *seller's* chosen escrow company, like it or not. This isn't traditional, but with REO's it makes more sense.

The Escrow Company information will be included with the signed contracts. The Listing Agent may not know the name of the Escrow Company until then, either.

Inspections and Utilities:

You **MUST** get permission prior to scheduling your inspection.

Electric may be on, but water may not and the property may be winterized. Be smart and check out the property the day before your inspection to be certain utilities are on, or you may have to pay re-inspection fees if your Home Inspector has to return a second time.

Condition:

Properties are sold “as is.” Typically, the only items the REO company will fix are those required by the lender. The company will not approve repairs for anything “cosmetic, wear and tear,” etc. However, you could raise the price and have the seller credit back for the repair, but it’s unlikely they will be completed prior to closing. Keep in mind there is only so much “room” in the sales price vs value to build in repair concessions. The REO/Asset Manager has caps on concessions they are allowed on each file.

MORTGAGE FRAUD



The FBI defines mortgage fraud as “a material misstatement, misrepresentation, or omission relied upon by an underwriter or lender to fund, purchase, or insure a loan.”

KANSAS LICENSE LAW

K.S.A 58-3062(a)(12) failing to express the exact agreement of the parties in the contract.

K.S.A. 58-3062(a)(14) fraud and misrepresentation

K.S.A. 58-3062 (a)(15) Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sales price of the real estate or terms differing from those actually agreed upon.

MISSOURI LICENSE LAW 339.100 (4)

Representing to any lender, guaranteeing agency, or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sales price of the real estate or terms differing from those actually agreed upon.

RED FLAGS to Mortgage Fraud

- Assurances not to worry about the appraisal.
- Silent Second Mortgages, Texas Earnest Money, (i.e. a seller carry-back that is forgiven at closing)
- Certain items are omitted from the closing statement.
- Advance down payment amounts which are falsely represented as being paid by the borrower.
- Promises to the buyer that the property will be leased or rented in behalf of the buyer and the loan payments, insurance, etc. will be covered.
- A new immigrant is told to use someone else's social security number.
- Quit claim the property back to seller or co-conspirator without notice to or permission from the lender.
- Resubmission of the listing to MLS for a higher list price so it will coincide with the inflated contract.

Red Flags, continued

- There are an unusual number of addenda to the purchase contract
- Last minute invoices are submitted to the closing agent
- Unusual expenses are paid by the seller, such as large repair charges, and/or charitable donations
- Lenders or mortgage broker not willing to commit something to writing
- Mortgage broker does not want REALTOR to contact lender or investor to alleviate concerns
- Statements that the property will be owner occupied when in fact it will not.

SAFEGUARDS Against Mortgage Fraud

- Make sure that *everything* is shown in the body of the contract. *Everything* about the financing must be shown on the Financing Addendum, not on separate pieces of paper.
- Make sure *everything* is showing on the closing statement
- Review the borrower's Good Faith Estimate (federal law requires the lender to provide this to the borrower within 3 days of application)
- Review the HUD 1 before buyer closes and/or ask someone else to review it for you.

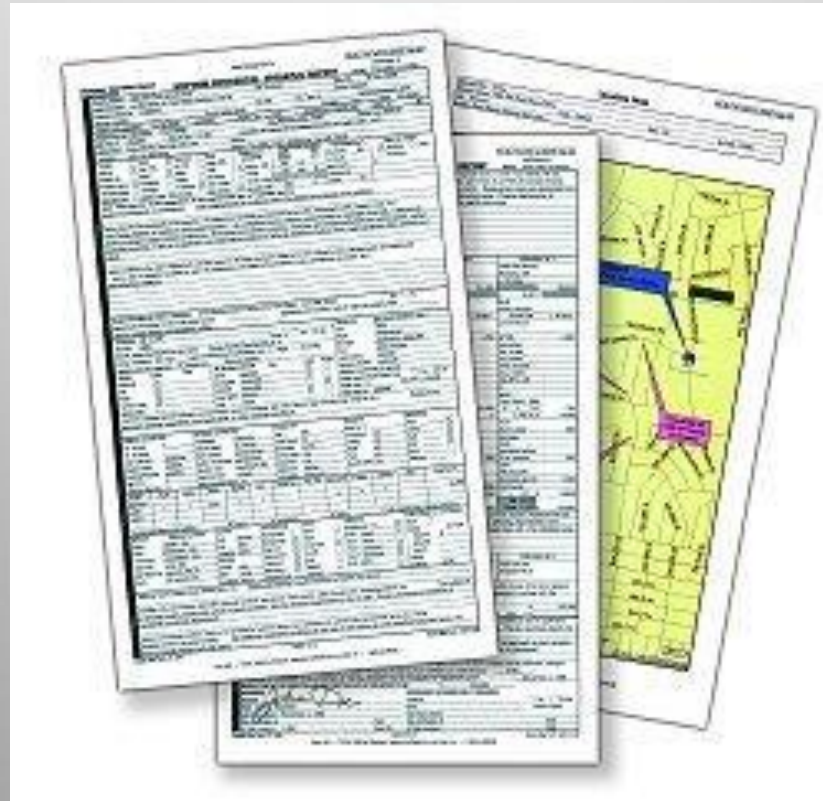
YOUR PROCEDURES To Stop Mortgage Fraud

Say, *“This may not be fraud, but it looks like it so I will not participate.”* Tell the buyer and/or seller the same thing.

Report event to your broker.

Report event to appropriate regulatory agencies.

HUD Appraised Values



Recent changes by HUD that involve appraised values ...

...not being disclosed, as well as the ability for buyers to obtain new appraisals, have raised some questions regarding bid submission for FHA purchases.

When conducting training or answering questions from selling agents, NLBs need to keep in mind that per Mortgagee Letter 2013-44, the maximum FHA mortgage amount is “Limited to the lesser of (a) the contract sales price (b) the new appraisal value, or (c) the initial list price of the HUD REO property.”

Continued

Not knowing the appraised value should not make a difference. Since the maximum FHA mortgage amount is limited to the lesser of the 3 items mentioned above, if a buyer bids over the initial list price then they will be required to bring funds in the amount of the overbid to closing.

Continued

If HudHomeStore.com has a property over the appraised value, and the buyer submits an offer above appraised value, the lender will be able to order a new appraisal. However, brokers need to understand that in this scenario, if the bid exceeds the initial list price then finds in the amount of the overbid will be required at closing.

Continued

Since properties may be listed above the appraised value in markets that are increasing, Mortgagee Letter 2013-44 allows buyers to submit competitive offers and still be able to use FHA financing.

HUDHomestore E-Signature Workflow for Brokers and Agents

After the Asset Manager accepts a bid

- Bidding Broker/Agent gets an email notifying them that their bid has been accepted with a subject line "Selling Broker/Agent Bid Acceptance Notification".
- E-Signature checklist allows verification or updating of Buyer, Signing Broker, and Closing Agent info.
- An Earnest Money Deposit section does not display until a contract is in place.

After Asset Manager starts the contract process

- Bidding Broker/Agent gets another email with a subject line "Selling Broker/Agent Final Bid Verification".
- E-signature checklist allows upload of Earnest Money verification and verification and update of Buyer, Signing Broker, and Closing Agent info.

E-Signature Steps after the Asset Manager verifies the checklist

1. Bidding Broker/Agent gets an email with a link to review the contract and clicks "Finish" to move to the next step (or clicks the "Click to Reject the Sales Package" button to cancel the E-Signature process).
2. Broker responsible for signing the contract gets an email with a link to sign the contract and clicks Finish to go to the next step.
3. Each Buyer gets an email with a link to sign the contract and click Finish to go to the next step. Primary buyer signs at bottom of sales contract; additional buyers get to initial at the bottom of the following page.
4. Closing Agent gets an email with a link to sign the contract and clicks Finish to go to the next step.
5. Asset Manager gets an email with a link to sign the contract and clicks Finish to go to the next step.

Note on entering Closing Agents

When you start to type the Closing Agent name, a list of the HUDHomestore's existing Closing Agents drops down. Try to find the one you will use from the drop-down list instead of entering a new one. If you're not sure which to use, pick one you're familiar with (you can always change your selection later).

If you enter a new Closing Agent, there will be an extra step in the E-Signature process that will slow things down. The Asset Manager or HUD staff will need to check whether the entered Closing Agent matches one already in the system. If they can't find a match, HUD staff will need to enter the new one into the system. You will get the contract more quickly if you use the system to find a match to the Closing Agent you are entering.

Tip on finding an existing Closing Agent

If the Closing Agent is in HUDHomestore as "The Most Excellent Closing Agent Company", entering the word "Excellent" won't necessarily find them. Entering "The Most" would increase your odds of finding them if they are already in HUDHomestore.

Once you have a ratified contract, you must get the Earnest Money to the Listing Agent's Office and get an Earnest Money receipt.

The Listing Agent's office will send the receipt to HUD and get the actual check to the title company when instructed to by HUD.

KEEP YOUR RECEIPT!

Neither the Buyers Agent or the new home owner may have a copy of the HUD key.

The new buyer must be prepared to switch out the door locks after closing.

Call the listing agent after closing and they will pick up the yard sign, lockbox and key.

The End

