

# Be careful when buying foreclosures

It pays to do research; have a good team

The sign on the wall in my high school football locker room read, "Failing to Prepare, is Preparing to Fail." Never has this been truer if you are considering buying a foreclosed property today. There are many pitfalls that can befall the novice foreclosure property buyer. Failing to prepare in this case can cost you much heartache and many thousands of unanticipated dollars. It is not advisable to show up at the courthouse for the very first time on the day you expect to bid and hopefully buy that dream foreclosure. Do you think Tiger Woods shows up at the U.S. Open at a course he has never played before and just walks up to the first tee to start the competition cold? Nope. Tiger has a team and works hard to be successful.

Tiger does not fail to prepare and his results show it. You shouldn't fail to prepare either. You have to know what you don't know, so you don't lose your shirt when trying to buy a foreclosed property. Visit the courthouse often to see how the process works.

To cover all the bases adequately, you need a good team with the following members:

## 1. Broker

If you are not an expert who studies and works in the real estate market every day, then you need an experienced real estate broker to: perform a comparative market analysis for your target property, review land use and zoning to check for conformity and/or grandfather status, check neighborhood for long term viability (is it going up or going down) and review homeowners association or condominium association information for past foreclosures which can cause higher fees going forward. Many associations are assessing cur-

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rent and new owners for unpaid shortfalls caused by foreclosures. If the property is in a golf club community, he should consider the number of homes already built there which would have to share in the substantial cost of operating a golf club if the developer either fails or files for bankruptcy. She should check on availability and terms of insurance prior to you making a bid. Florida insurance underwriters are having withdrawal symptoms over any unoccupied building and it may become difficult or impossible to obtain an insurance binder to insure against fire, windstorm and vandalism. Having a tenant in place will help get better insurance rates. All these issues are a factor in considering how much to pay for a property.

## 2. Contractor/Inspector

If you are not a licensed contractor that has knowledge and experience with roofs, HVAC's, plumbing, electrical, structural, landscaping and mold-related issues, then you need such a person on your team. This is crucial and can save you tremendous amounts of money. A walk through a target property for a peek using untrained eyes and a quick "go/no-go" gut decision can cost you thousands of dollars later. Do not look for the cheapest inspector. Look for the contractor/inspector who is most thorough with years of experience. Ask for references from his clients over the past two years and ask for a sample report so you know what level of detail to expect. Skimping here to save a few hundred dollars can easily cost you thousands of dollars later. Defaulting mortgagors or vandals could have stripped the property of

every appliance and fixture. Ignored routine maintenance for many months can lead to costly capital improvements. Leaks and mold can hide unseen inside walls. You need help to estimate rehab costs to fix everything for your budget. Get the best inspector money can buy. He will save you lots of money, frustration and lost downtime needed to bring the property back to a "no deferred maintenance" status so it can be occupied, rented or resold ASAP. Phase I environmental audits are recommended for commercial properties to insure no toxic site contamination exists. Your motto here is "No Surprises."

## 3. Real Estate Attorney

If you are not a real estate attorney who is familiar with all the legal pitfalls that can occur when buying a foreclosed property, then you need a knowledgeable real estate attorney on your team. Fort Myers real estate attorney Jay Brett helped me prepare for this article by providing me with a list of things to do or to avoid doing when buying a foreclosed property. Some of his advice:

### • Title Search

A thorough title search will uncover construction or tax liens, junior lien mortgages or other encumbrances such as a Lis Pendens where other parties may have claims against the property and be claimants who were not joined in the pending foreclosure action. How would you like to be the winning bidder at the courthouse and pay \$50,000 for a home only to learn later that a \$50,000 second mortgage and a \$4,000 construction lien to an HVAC contractor still exist, regardless of the fact that the HVAC compressor has already been stripped out? You also need to know whether there are any back taxes or assessments owed, as these will not be wiped out by any foreclosure action.

### • Tenants

Tenants can be a blessing or a curse. You need to know which one you will inherit before you buy it. Check for tenants who may occupy the property and who may later claim possession rights under a written (or oral) lease that could include an option to buy the property which may still be enforceable. You cannot rely solely on public records or a review of the foreclosure case to determine whether a tenant is present. You or your broker should inspect property and look for signs of a tenant (or squatter). It is also important that your attorney check to see whether there exists "subordination", "attornment" and/or "non-disturbance" provisions built either into the mortgage being foreclosed or in any leases that may be in effect. For example, if a tenant is in place and there is a "non-disturbance" clause in either the foreclosed mortgage or the tenant's lease which was approved by the foreclosing lender, a new owner may have no choice but to continue to honor that tenant's lease, provided they are not in default. It is critical that your attorney carefully review not only the leases but the terms of the foreclosed mortgage as well.

### Alternative Methods

If you decide there is simply too much risk for your appetite in buying a foreclosure on the court house steps, you should consider working directly with banks and other lenders who already have an inventory of foreclosed properties called REOs (Real Estate Owned). Some banks wish to unload these properties quickly to avoid payments of real estate commissions and other carrying costs.

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