

Welcome to *Policy Matters*, an engaging and informative monthly e-newsletter featuring expert insight and analysis on emerging relocation products, policies and services that can provide immediate benefit to your organization.

The Fact and Fiction Behind Foreclosure Properties: Determining Whether A Foreclosure Property Is Right For You

At the end of October, over two million homes were somewhere in the midst of the foreclosure process, according to Lender Processing Services (LPS).¹ A majority have yet to go up for auction, and nearly one fourth are owned by the lenders who provided or purchased the homes' mortgages – and more foreclosures are on the way. The LPS report indicates that 4.9 million homes are delinquent by 30 days or more but not yet in foreclosure, and loans that are at least 90 days delinquent are at a record high, at about 2.2 million. Virtually all residential housing projections predict that foreclosures will remain a significant part of the market for the foreseeable future.

As such, foreclosure properties make up an increasing segment of the housing market. RealtyTrac reported in September of 2010 that foreclosure homes accounted for 24% of all residential home sales in the 2nd quarter of 2010². And this percentage is thought to be much higher in the harder hit markets of Florida, Nevada, California and Arizona. While foreclosure properties have always been available for the more enterprising buyer, the sheer number of foreclosures on the market greatly increases the likelihood that the purchase of these properties will become more commonplace. Therefore, it is critical for buyers to be aware of the unique factors that impact the sale and purchase of a property in the foreclosure process.

A "foreclosure" property may range from one in which the buyer stopped loan payment and left the property, to one that went to sheriff's sale and is now owned by the lender. For transferees who are considering purchasing a foreclosure property in the new location, this could mean a potential "great deal" on a house and the opportunity to purchase a larger home than they would otherwise be able to afford.

However, it is important for both company and transferee to consider the uncertainties or additional risks associated with foreclosed properties. SIRVA recommends companies provide transferees with guidelines for purchasing a foreclosure property in order to ensure they have a clear understanding of the process and are fully protecting their interests in the home. In this

¹ LPS Mortgage Monitor, November 2010 report

² RealtyTrac.com, Stats and Trends

Issue of *Policy Matters*, we will address common questions and concerns that arise when transferees are considering purchasing a foreclosure property.

In order to understand the potential pitfalls, we must first evaluate the differences for buyers when purchasing a foreclosure property vs. a normal resale transaction.

Property Condition

First and foremost is the condition of a foreclosure property. Unlike a normal home-sale situation where the existing owners generally make every effort to ensure their home appears to be in pristine condition, owners facing foreclosure do not typically provide the necessary upkeep. In some cases an evicted owner may damage the home or remove attached items on the way out. Stories abound of owners ripping out the copper pipes or taking the window treatments and kitchen cabinets. Even if the property hasn't been intentionally vandalized, many foreclosures need extensive repairs. For older homes, which require more upkeep, this neglect could be more serious. For this reason, it is absolutely necessary for transferees to ensure the property is vacant and properly secured before they consider buying. This is the most effective way to ensure that no further damage to the property can take place by anyone living in or accessing the home.

Another potential issue is gaining access to the property in order to inspect prior to buying the home. The ultimate objective is to make sure a buyer is fully aware of any potential repairs or issues with the home. Best practice is to avoid buying a home at a sheriff's sale or auction. Although these sales offer steep discounts, one does not typically receive prior access to the property to evaluate the home condition. Thus, repair costs and potential liability for environmental or other unseen defects could wipe out any perceived market gains.

The best possible scenario is for transferees to buy a Real Estate Owned (REO) property, which is a property the lender purchased through the foreclosure process. This allows a buyer to negotiate a contract with the lender allowing the right for a home inspection. Buyers must then ensure they exercise their right to have any inspections performed on the property prior to the closing. Although the REO lender may be unwilling to negotiate repair issues, the transferee buyer will at least be well aware of property conditions when deciding whether to proceed with the transaction.

Title

There are a few key differences with the transfer of title on a foreclosure property.

Quitclaim deeds are typically provided in cases of a lender foreclosure or a tax sale where the property is auctioned off to recover outstanding debts. The auctioning body is typically a local government, which claims no interest in the property.

A quitclaim deed is a term used to describe a document by which a person (the "grantor") transfers to another person (the "grantee") any interest the grantor may have in a piece of real property. The grantor makes no representations or warranties regarding the condition of the title or claims against the title. By contrast, the deeds normally used for real estate sales (called grant deeds or warranty deeds) contain guarantees from the grantor to the grantee that the title is clear. The exact nature of the warranties varies from jurisdiction to jurisdiction. With a foreclosure sale, the buyer will receive a deed that contains no warranties whatsoever.

With a quitclaim deed, the transfer of title may be unclear. It is imperative that the buyer has the title examined by a professional title examiner and obtains an owner's title insurance policy on that deed at the time of purchase. The standard policy language for an owner's title insurance policy will generally protect the buyer should defects in title arise, including the filing and procedural defects making headlines in the news today. An example of a procedural defect

would be a lender not properly filing paperwork required during the foreclosure process, and as such, a former owner may claim to have an interest in the property.

If the prior owner is still living in the property while the home is being purchased through a foreclosure, there needs to be a specific title insurance policy-language endorsement made in order for that title policy to fully protect the buyer. (Another reason why a buyer should ensure prior owner(s) are no longer living in and do not have access to the property.)

It will be important for the transferee to work closely with his/her title professional and legal counsel to determine the scope of the policy's coverage and risks that are covered. In some instances, there may be title issues discovered during the examination preventing a policy from being issued or requiring an exception to the policy. If procedural deficiencies in the foreclosure process are discovered, those deficiencies will likely be excluded from coverage. If the prior owner is still living in the property while the home is being purchased, an exception will typically be made to any rights the prior owners may have in the property or claims that the foreclosure is invalid. The title commitment and exceptions will also note any matters which may have survived the foreclosure and continue to encumber the property, such as tax or mechanic's liens.

During the foreclosure process there is a redemption period. A redemption period is defined as a period of time after the foreclosure where the current homeowner, any junior lien holder, or anyone else that may have rights to the property can come up with the redemption price (typically the amount owed on the mortgage plus interest and penalties) and redeem the property. This redemption would supersede an outside buyer's rights to purchase the property. It is imperative for the transferee to ensure that the redemption period has expired before entering an agreement to purchase. A redemption period will vary from state to state; however, the best practice in many states is for the buyer to enlist the services of his/her qualified legal counsel to help navigate this process.

Resale Risks

A common belief about foreclosed homes is that there are additional resale risks associated which would become a challenge if transferees relocate again. However, as long as the transferee has taken the necessary steps to secure a good title and maintain the property condition, the property should be comparable to any other. It is recommended that the initial buyer of a foreclosed property document and maintain clear evidence proving that they have properly investigated title, secured title insurance, inspected the property and remedied any defects on the property due to the nature of the foreclosure process. While more diligence, documentation and preparation may be necessary, if properly addressed, the marketing and sale of the property will not be negatively impacted by the previous foreclosure – provided the property would otherwise be eligible for a home-sale program.

If a buyer takes the necessary steps to thoroughly inspect a property before contracting to purchase, has the title examined by a professional and obtains an owner's title policy, there should be no additional resale risks due to the previous property foreclosure.

Conclusion

Foreclosure properties will remain a significant factor in the marketplace for the foreseeable future. They present excellent financial opportunities for transferees but also require more attention and diligence to ensure a successful investment. However, when proper attention is given to the purchase of a foreclosure property, it can be a key component to a successful and cost-effective relocation for both the transferee and employer.

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The foregoing is intended as general information only. SIRVA suggests that decisions as to your specific situation should be made only after full evaluation of your circumstances with your company leadership, tax and legal advisors, and HR personnel.

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