

Managing Distressed Real Estate Deals: Be Prepared!

As an attorney who devotes much of my practice to real estate law, I would liken the real estate market in the past 10 years to a bell curve-or perhaps more aptly-a roller coaster track-that began on level enough ground in the early part of the decade, gradually climbing to dizzying heights in the mid-2000s, only to careen downward in a freefall that few were prepared for. If you're reading this, chances are, you are among the intrepid brokers and agents who have hung on for the ride and are ready for a return to "normalcy." But, we may be experiencing the "new normal" in the world of commercial-and, to a somewhat lesser degree, residential-real estate. The days of fast and easy real estate transactions, some often occurring with little more than a handshake, and banks eager to make deals happen, may just be a dim memory for us to fondly reflect upon.

Real estate transactions involving distressed, foreclosed, REO, or short sale properties (whether residential or commercial), that have historically involved a more attenuated process with more than their fair share of frustration and challenges to go around for everyone involved, may now take even longer to close.

That doesn't mean, however, that short sales, distressed sales, foreclosures/REOs cannot still be a manageable and profitable source of business. These properties may often be an excellent investment opportunity for your buyer clients and you don't have to shy away from them, provided you pay attention to some important factors that come along with this type of transaction and you're prepared to weather more than the usual storms.

It should go without saying that, when handling a commercial listing, agents must perform their due diligence through tax and bankruptcy searches on both the corporate and individual levels. Better to know the full financial picture from the outset and avoid any surprises down the road. While there has been some relaxing of banks, mostly in the residential arena, lending remains tight in the commercial market, and lenders continue to exercise scrupulous attention in approving deals.

It takes a lot more to satisfy banks, particularly in high dollar situations, than it did five years ago. For example, I recently closed a transaction with a rock-solid purchaser who had impeccable credentials and financial qualifications. Nevertheless, he was required-in addition to the usual corporate guarantees-to provide personal and corporate guarantees from two of his partners in another LLC that wasn't a part of the transaction, but in which the purchaser also held a financial interest. In another instance, the purchaser's wife was made to sign a personal guarantee to satisfy the loan requirements of the lender.

On the seller's side, quite often the short-selling bank will also have an independent appraisal done in order to protect their interests in the deal and ensure that they are getting the best deal possible given the situation. Lenders also frequently request BPOs to further solidify their position in the short-selling transaction.

Remaining profitable when working on transactions involving distressed properties, properties in foreclosure, or in pre-foreclosure relies largely upon timely execution. Companies that must sell in order to avoid insolvency and further decline into even greater debt are, naturally, very eager to complete the transaction before their financial situation worsens. When representing sellers in this situation, it is crucial to identify qualified buyers and perform all necessary due diligence regarding their financial qualifications. Being mindful of the urgency and the potential for contentious negotiations when multiple creditors may be involved helps expedite the transaction. In situations where the business owners and shareholders are not the only ones with a financial stake in the sale-landlords, creditors, vendors/suppliers with overdue payables, and lets not forget employees and retired pension beneficiaries-it is important to have a legal advisor with the expertise to handle conflicts as they arise and hopefully avert them before they squash a transaction.

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