

## Buying Foreclosed Properties: Know the Risks

Do you want to find your absolute best deal in real estate? A foreclosure may be the best way to go. But, before you start looking know that when buying foreclosures you are buying something much different than if you purchased the same property from a typical seller.

When purchasing a property from a typical seller, even if the property is sold “as is”, you usually have some protection. The seller has owned or occupied the property for some time and they know some of its history. Even if no *Seller's Property Disclosure* is offered, state laws usually dictates that should the seller be aware of a significant problem that they disclose the problem to the buyer.

With the sale of foreclosures from lenders, the same laws usually apply. The difference is that the lender usually knows absolutely nothing about the property other than what is contained within the appraisal report from when they first made the loan. They have never occupied the property and may even never have actually seen the property, and they are not required to reveal what they don't know (or should have known).

Assume a typical seller does not provide a disclosure form and immediately after purchasing the property

you find that the septic tank was backing up. If you check with the neighbors and confirm that this was a problem which existed prior to the sale you may have recourse against the seller, since the seller knew or should have known about the problem and did not disclose it to you. With a foreclosure, you will usually have no such recourse against the lender.

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The same condition exists with almost every aspect of the home including the mechanical (heating/air) system, electrical system, plumbing system, and any other physical aspect of the property.

The risk of purchasing a foreclosure extends far beyond the physical aspects of the property.

In Georgia, lender's often transfer property utilizing a *Limited Warranty Deed* and sometimes a *Quit Claim Deed*, instead of the typical *Warranty Deed*. What is the difference?

In layman terms: a *Warranty Deed* is just that. It is a deed where the title is warranted. If a title problem crops up from 50 years ago, the seller is warranting the title. You probably have some recourse against the seller.

A *Limited Warranty Deed* usually warrants the title for only that period of time which the property was owned by the seller. If a title problem crops up based on something that happened when the seller owned the property, the seller may have some responsibility. But if the event which caused the title problem occurred at any other time the seller probably has no responsibility.

A *Quit Claim Deed* typically states that the seller is transferring any and all rights, title and interest they have in the property to you. However, the deed offers no warranty that the seller actually has any rights, title or interest in the property nor does it offer a warranty against title problems.

A person does not have to own a property to give a *Quit Claim Deed*. It just releases the property from any claims that person might have against the property. Quit Claim Deeds are most often used to correct title defects and to transfer properties between related parties, not to transfer properties under arms-length transactions.

When buying a property in Georgia, a *Warranty Deed* is best, a *Limited Warranty Deed* is common, and a *Quit Claim Deed* is the least desirable.

*They are trustworthy, fast, - the type of people that takes you from beginning to end to get what you wanted!*

*-Linh & Chuong N., Morrow, Georgia*

Also consider this: leases run with the land. Is any or all of the property leased?

Just because the property is vacant does not mean it is not leased. A lease may not require that the

lessee (tenant) actually occupy the property. Instead, it may just give the lessee the right to occupy or use the property.

Depending on the language in the note, deed to secure debt, and/or lease, leases may or may not be wiped out when a lender forecloses on a property. If a lease should later crop up, it may or may not be ruled invalid by the courts and you will probably have to spend a good bit of money in legal fees to present your case. Is this problem common with foreclosures? We don't think so. Has it actually happened? We feel certain it has.

These are just a couple of the many legal issues which must be considered when buying a foreclosure.

With foreclosures, the purchase agreement is usually in the lender's favor.

When buying from a lender the contract for the purchase of a foreclosure is often much different from that for a typical purchase. You may make the offer and even negotiate using a “standard” contract, but just when you think you have a deal the lender will often present an addendum to the contract which significantly alters the transaction.

The lender's addendum can be several pages long, we have seen them as long as 10 or more legal size pages. They are often very detailed; giving the lender the greatest advantage possible.

Upon reviewing the addendum you may find that the time limits imposed in the original contract are completely ignored and replaced with time limits more favorable to the lender.

You may also find that the contingencies in the original contract have been altered. For example, the “due diligence” period in the original contract which may have essentially given you a free look at the property now requires you to provide to the lender a copy of any inspection reports along with your statement to the objections and giving the lender time to correct the problems. Thus, you no longer have a “free look” period which allows you to back out for any reason for for no reason.

In the addendum the lender may impose a per diem (daily) charge should you fail to close in a timely manner but not agree to any such charge in the event they fail to close in a timely fashion.

The lender may also reserve the right to sue you for specific performance (trying to make you buy the

property if you crap-out on the contract), but require you to waive the right to sue them for specific performance should they crap-out.

While the lender wants you obligated to the contract, the lender will be able to terminate the agreement for almost any reason imaginable. The end result is that you have no way out, yet the lender has many.

And the list goes on. The bottom line is that, often, the lender's addendum to the sales contract of a foreclosed property can be the most one-sided document you will ever encounter, and they like to sneak attack you with the addendum after you have already spent considerable time and effort negotiating the contract through their agent.

Will the lender negotiate off what is in their addendum? Maybe.

By now, you probably understand that buying a foreclosed property is not always such a great bargain, but it can be. Just be aware that any reduction in price is not just because the lender wants to sell the property quickly. Much of the reduction in price is because of the additional risk you are assuming and the one-sided terms and conditions of the purchase contract.

Are you uncertain how much of a discount is appropriate for the additional risk assumed? How much of a discount would you expect if a car dealer offered a new car with no warranty whatsoever? If you were buying a new wide-screen television, how much of a discount would you expect if the retailer offered it with no warranty whatsoever?

Cars and televisions are not real estate, but you get the idea. Increased risk decreases value.

Even with all of the risk involved, buying a foreclosure can still be financially rewarding. You just need to go into the transaction with your eyes wide open knowing that more due diligence is required than with the typical sales transaction.

The good news is there are certain steps you can take to help protect yourself and reduce some of your risk when buying a foreclosure. Here are some of the most common.

**Buy Title Insurance:** This can help protect you in the event a title problem does arise in the future. Make sure you obtain an owner's title policy in addition to the policy issued to your lender at closing.

**Get an Inspection:** Have the property inspected by a professional building/home inspector. They can spot problems that you might miss.

**Get a Survey:** Even if there is a recorded plat of the property, it does not show any changes which may have been made since the survey was made. Be sure the survey depicts all improvements on the property and any easements.

**Get an Appraisal:** Even if you are paying cash for the property an appraisal can give you invaluable insight. If the property needs rehabilitation, ask the appraiser to appraise the property "as is" and "as if repaired".

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**Purchase a Home Warranty:** Home warranties are not the best thing since sliced bread but they are often better than nothing and purchasing one may prevent you from having to pay a lot of money to have a major system replaced.

**Talk with the Tenants:** If the property is tenant occupied, ask them about the property. Ask detailed questions and get as much information as you can.

**Talk with the Neighbors:** Neighbors can be a great source of information. They sometimes know more about their neighbor's business than they do their own. Go door knocking and introduce yourself.

**Check with the County Health Department:** If there is a septic tank on the property, check with the health department or other agency regulating such items and see if there has been any reported problems.

**Check with the City or County Code Enforcement Office:** The code enforcement office will have a record of any known code violations with the property. Often, they will even know something about the prior property owner and their situation.

**Check with the City or County Zoning Office:** Make sure the property conforms with current zoning codes or is a legal non-conforming use. Just because the prior owner operated a auto-body shop out of the property does not mean you can do the same.

**Check with Water/Sewer Department:** Check to see if the property is actually hooked up to sewer and water services and inquire about any known problems with the property and the delivery of such services.

*This is only the beginning... the start of many purchases to come Brande, and there's no one else we would rather have on our team but you.*

*-Jandan & Dorothy S., Ellenwood, Georgia*

**Obtain Copies of Protective Covenants and Deed Restrictions:** You can find these at the county court house. These may be lengthy documents or simple notes on the side of the recorded plat. Read them thoroughly.

There are many other steps you can take to reduce the inherent risks of buying foreclosed properties. Understand that many buyers of foreclosed properties experience few or no significant problems with their transactions. By doing your homework you can greatly increase your odds of a successful and financially rewarding transaction.

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