

a matter of contract and therefore a REO contract must be read carefully. If the contract offered by the seller contains such clauses, the buyer must consider and plan for the resulting uncertainty before relying on the contract to change position or expend funds.

**REALTORS® can give important marketing, business and negotiating advice to buyers considering REO properties.**

Because REO property is owned by a lender, the seller will often demand that buyers who wish to finance the purchase of REO property obtain a loan pre-qualification letter from the REO owner. Most REO contracts also demand use of an escrow company chosen by the seller. Such requirements do not violate the Real Estate Settlement and Procedures Act (RESPA) unless the seller demands that the loan itself, or buyer-purchased title insurance, be obtained from a particular settlement service provider. Demanding that pre-qualification and escrow services be provided by a particular

provider is perfectly legal as long as the buyer remains free to obtain a loan and title insurance from the service provider of the buyer's choice.

REO forms typically contain very detailed "as is" clauses that shift responsibility for the condition of the property to the buyer. In most REO transactions, the seller will make no disclosures regarding the condition of the property or its allowed uses. REO sellers often will not make repairs nor pay to correct any problems. It may be difficult or impossible for the buyer to sue the seller if a defect is discovered after closing or the property otherwise proves unfit for the buyer's intended purpose. It is therefore critical that the buyer undertake a due diligence investigation of the property to satisfy themselves of its condition and fitness for the buyer's purpose.

REALTORS® can give important marketing, business and negotiating advice to buyers considering REO properties. Each REO seller, however, has their own real estate forms for REO sales. Each contract, therefore, must be carefully read and considered by the buyer

before signing. Real estate licensees are not attorneys and are prohibited by law from giving legal advice. Because of the uncertainty inherent in REO transactions, the additional risk involved, and the use of non-standard forms, the need for legal advice may arise and buyers should plan for that eventuality.



### Additional Resources

<http://www.hud.gov/local/or/homeownership/foreclosure.cfm>

[http://dfcs.oregon.gov/ml/foreclosure/foreclosure\\_fraud.html](http://dfcs.oregon.gov/ml/foreclosure/foreclosure_fraud.html)

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm>

[http://ftcsearch.ftc.gov/search?q=foreclosure&site=NewsRelease&proxystylesheet=ftc\\_consumer&skip=o&output=xml\\_no\\_dtd&client=ftc\\_consumer&access=p](http://ftcsearch.ftc.gov/search?q=foreclosure&site=NewsRelease&proxystylesheet=ftc_consumer&skip=o&output=xml_no_dtd&client=ftc_consumer&access=p)



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## Purchasing Distressed Property

Please review the information in this pamphlet as a first step in that planning and discussion.



# What is "Distressed Property"?

"Distressed property" is real property facing foreclosure or recently acquired by a lender as the result of a foreclosure. Properties facing foreclosure and lender-acquired properties are often priced below the market to facilitate their sale. Below market pricing can make distressed properties attractive to buyers. Distressed property purchases do, however, often mean increased uncertainty and risk for the buyer.

REALTORS® are licensed and trained to assist buyers in the purchase of real property of all kinds. Distressed property purchases, because they either involve the consent of a lender or other third parties or involve property owned by a lender as the result of foreclosure, can be daunting undertakings. Careful planning and discussion with a REALTOR® is important if you are considering a distressed property purchase. Please review the information in this pamphlet as a first step in that planning and discussion.



## Short Sale Properties

A short sale is any sale where the purchase price will not pay off the mortgage or other liens and clear the title. Because the seller cannot deliver clear title, short sales require a "short sale addendum" that makes the transaction

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contingent upon the seller obtaining the consent from their creditors permitting a reduction in the closing costs sufficient to close the transaction for the purchase price. Buyers of

short sale properties should carefully review the short sale addendum with their agent before entering into any agreement to purchase property that is contingent on lender, or other third party, consent.

Because a short sale is contingent on the consent of one or more third parties, the buyer and seller may have very little control over the process. Buyers should, therefore, carefully consider those provisions of the short sale addendum that bind the buyer and seller to the sale agreement. Such addendums may contain "drop dead" clauses that automatically terminate the sale agreement if the lender has not responded within a certain period of time. Determining how long a drop dead period to allow is a critical decision. Buyers may want additional terms that allow them to terminate unilaterally anytime prior to lender approval. Consent deadlines should be discussed with the buyer's agent prior to entering into a short sale agreement.

Because a short sale is contingent on the lender's consent, sellers can, and often do, continue to market the property during the lender consent period. Continued marketing may result in other buyers offering the seller, and thus the lender, more money for the property. Having an accepted

offer on a short sale property is therefore no guarantee of actually getting the property. Because the lender must consent before any offer will become binding, the situation in a short sale is more akin to bidding during an open auction period than to a typical homeowner/homebuyer purchase.

In short sales, lenders will often demand changes in the terms of the sale agreement as a condition of giving their consent. Buyers should be prepared to deal with the additional uncertainty created by demands that the buyer and seller change the terms of their offer. Such demands can range from a demand that the buyer increase the purchase price to changing the closing date to foregoing seller repairs. Although disconcerting, it is legal for the lender to demand changes because the seller is asking the lender to forgive a legal debt and the lender can negotiate the terms of that forgiveness.

Because the transaction is contingent upon third party consent, short sales often fail. As a buyer, you are entitled to refuse to change the terms of your offer. Doing so, however, can cause the lender to withhold consent and therefore kill the transaction. Similarly, the lender can demand concessions or terms that the seller will not agree to. The seller can refuse those concessions or terms, but, again, doing so can cause the lender to withhold consent and therefore kill the transaction. There often are multiple lien holders in a short sale situation creating even more uncertainty. The buyer should understand these dynamics, discuss them with their REALTOR® and plan accordingly.

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## Real Estate Owned Properties

When a lender forecloses on a property, or obtains title in lieu of foreclosure, the property becomes what is called "Real Estate Owned" or "REO" property. REO properties are almost always sold using forms and procedures developed by the lender. Such forms and procedures can significantly affect a buyer's rights and obligations in the transaction. The deed conveyed in REO transactions often does not include the same title warranties as in other real estate transactions.

REO forms often contain provisions that delay formation of the contract or otherwise reserve the seller's right to cancel the contract anytime prior to closing. They also often contain penalty clauses that require the buyer to pay a penalty if for any reason the transaction doesn't close on time. Such things are