

ADVISORY TO BUYER REGARDING PURCHASE OF BANK-OWNED PROPERTY

1. WHAT IS A BANK-OWNED PROPERTY? This is generally property a bank has acquired through bankruptcy, foreclosure, or by a voluntary process where the borrower has conveyed it back to the bank “in lieu of foreclosure.” In these cases, the bank, or its authorized servicer, becomes in charge of reselling the property on the open market. Property held by a bank through one of these methods is referred to as “Real Estate Owned” or “REO” property. Although most sellers of Oregon residential property are required to answer a lengthy list of questions regarding the property’s condition and status, known as the Seller’s Property Disclosure Statement, banks selling REO properties are exempt from this requirement.

2. ARE THERE ANY RISKS TO BUYERS ACQUIRING REO PROPERTY? There can be. One relates to the physical condition of the property. During the last few years, many homeowners were unable to afford their mortgage payments; or if they could afford the payments, they could not afford normal and prudent maintenance and repair practices. Additionally, some homeowners simply vacated their homes, letting them sit idle until the bank took them back through foreclosure. In other cases, some homeowners ceased making their payments but remained in the home or permitted a renter or occupant to do so until forced to leave upon foreclosure. In these situations and others, by the time the banks reacquired many of these homes, there was much-deferred maintenance and repair – some visible and obvious, and some hidden from view. With Oregon’s wet winter and spring climate, mold, moisture, and mildew may occur when homes have been left unattended for any period of time. Similarly, operating systems, such as irrigation, septic, plumbing, heating, cooling, electrical, and others, may be in various states of disrepair. Another risk in acquiring REO property relates to homes occupied by renters or squatters at the time of foreclosure. Although infrequent, there can be instances of unknown persons in possession of the property following a foreclosure sale or other transfer to the bank. In most cases, however, these situations have been resolved before sale on the open market. In all instances, buyers of REO property should make sure to have locks changed following closing.

3. HOW CAN I BE SURE I KNOW THE TRUE CONDITION OF THE PROPERTY? When buyers offer to purchase bank-owned property, they frequently use the standard Oregon Real Estate Forms, LLC Real Estate Sale Agreement (the “OREF Sale Agreement”). This form contains many standard

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seller representations regarding the condition of the property, together with other provisions (for example, remedies and the use of alternate dispute resolution) commonly included in most Oregon residential real estate transactions. However, when selling REO property, banks may insist their buyers sign an addendum, which dilutes many of the standard protections found in the OREF Sale Agreement. Furthermore, banks are not legally required to complete a Seller's Property Disclosure Statement. These facts, coupled with the general lack of bank knowledge concerning the condition of an REO property and the extensive disclaimers of liability found in the banks' addendum, underscore the need for buyers to have a thorough and extensive professional inspection when purchasing REO property. In some instances, these inspections may need to be more extensive and invasive than those conducted for homes that have been continuously maintained up to the time of closing.

4. ARE THERE ANY ISSUES REGARDING TITLE WHEN ACQUIRING REO PROPERTY? Recently, there have been some court rulings placing into question the quality of the banks' title when they recover property through the non-judicial foreclosure process (that is, by trustee advertisement and sale). Although there is some risk of a bank selling REO property with a flawed title, it is statistically remote. A prudent choice is to obtain an owner's policy of title insurance. At the time of closing, most banks pay for the issuance of an owner's policy of title insurance to their buyers. Additionally, banks do not normally convey title to REO property using a General Warranty Deed, which is common in traditional non-bank residential sales. This means beyond the title insurance policy, recourse directly against a bank for selling Buyer REO property with a defective title may be limited. If Buyer is concerned about any of these matters, Buyer should consult an attorney familiar with these issues before making an offer.

5. DO I USE THE SAME PAPERWORK WHEN PURCHASING A REO PROPERTY? Buyer will normally make Buyer's offer of purchase on the standard OREF Sale Agreement. Buyer should ask their Agent to review the form with them before formally making the offer. If a bank accepts Buyer's offer of purchase, it will normally present Buyer with an addendum to sign, which becomes a contractual part of Buyer's purchase transaction. Most such addenda materially alter or eliminate many of the standard provisions contained in Buyer's OREF Sale Agreement. They make it very clear the bank disclaims all liability for

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any materially adverse conditions in the property, and the sale is as-is, with no express or implied warranties. The addenda may also change some of the contingency time frames provided in the OREF Sale Agreement. Some banks may entertain more than one offer at the same time and give preference to an offer submitted after another one. Lastly, banks frequently prefer to conduct negotiations verbally through their seller's real estate agent. They may decline to issue a written counteroffer or rejection of a buyer's offer. Written agreements or addenda do not normally occur until all parties have agreed upon the terms. Until that time, banks may change or delete previously negotiated terms. This can be frustrating to many buyers of REO properties.

6. HOW CAN MY REAL ESTATE AGENT HELP? Buyer's Agent is skilled in assisting Buyer with locating a desired property, completing the OREF Sale Agreement and related forms, arranging and scheduling service providers such as professional inspectors, ordering title insurance, negotiating with the bank's agent setting up escrow, and assisting Buyer throughout the closing process. However, Buyer's Agent is not an expert in property inspections, interpretation of legal documents such as the bank addendum, or opinions regarding the marketability of title to REO property. For these and similar specialized services, Buyer should consult a professional inspector, the title examiner identified in Buyer's preliminary title report, and/or a qualified real estate attorney. If Buyer needs a referral for these or other specialized service providers, check with Buyer's Agent. Although Buyer's Agent may be able to act as a general resource to Buyer, they do not endorse specific service providers. Buyer is free to use any expert of Buyer's choice but should always independently check their professional credentials.

7. CERTAIN LAWS MAY APPLY TO YOUR TRANSACTION: Although a bank is exempt from the law requiring it to provide Buyer with a completed Seller's Property Disclosure Statement, it is not exempt from most other state and federal laws. If the bank disclaims liability or responsibility for compliance with any of these laws, Buyer should consult with Buyer's own expert to determine whether this may impose any additional liability or risk to Buyer. Buyer's Agent is not an expert in these specialized areas. As a buyer of REO property, Buyer should confirm whether the bank selling the property will comply with the following sections of the OREF Sale Agreement or is legally exempt from doing so:

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- (a) Woodstove/Fireplace Insert. If an uncertified woodstove or insert is located on the property.
- (b) Seller Representations. Working smoke alarms and carbon monoxide detectors, where applicable.
- (c) Private Well. The seller to have well water tested.
- (d) Lead-Based Paint Contingency Period. Pertains to homes and structures constructed before 1978.
- (e) Oregon State Tax Withholding Obligations. Applies if the seller is an out-of-state individual or C-corporation.
- (f) FIRPTA Tax Withholding Obligations. Applies if the seller is a “foreign person” under federal law.
- (g) Levy of Additional Property Taxes. Pertains to seller actions disqualifying the property from a special property tax exemption.
- (h) Historic Property Designation. Pertains to property subject to special assessment under [ORS 358.475](#).

8. POSSIBLE ADDITIONAL EXPENSES: The costs normally absorbed by sellers in traditional, non-bank-owned sales may not be agreed to when a bank is selling REO property. (For example, if the home utilities have been turned off, Buyer may be asked to pay the cost of turning them on for a home inspection.) If this occurs and Buyer wants to complete the transaction, Buyer may be asked to pay some additional expenses.

9. ACKNOWLEDGMENT: The undersigned Buyer(s) acknowledge they: (a) have read and understand this Advisory; (b) have been provided with a copy for their own files; and (c) are aware the use of one or more experts is recommended before entering a binding transaction for the purchase of bank-owned property.

Buyer _____ Date _____ a.m. p.m. ←
Print Name _____

Buyer _____ Date _____ a.m. p.m. ←
Print Name _____

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