

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## TitleTRACK

# What you need to know about REOs

The last four years have been a roller coaster ride for the national housing market. Nevada, Florida and California are some of the states hardest hit by the ongoing foreclosure epidemic. In Nevada alone foreclosures make up approximately 37 percent of the real estate market or almost two of every five homes for sale.

Rochester, however, has had one of the most stable housing markets in the country and as a result has been relatively unaffected by the default onslaught. Good Morning America, Zillow.com and Forbes.com have all listed Rochester as one of the best places to buy a home in America. One of the factors Zillow.com took into consideration was the almost microscopic foreclosure rate in the "Flower City" of .24 percent.

Current market conditions indicate that the foreclosure tide may last for another five to seven years. Even though the local foreclosure rate is miniscule as compared to other parts of the country, Rochester still has almost 200 foreclosed properties currently listed for sale. Where at one time the REO (Real Estate Owned - by the bank) transaction was a rare beast, the local real estate bar is likely to see these transactions with increasing frequency.

REO sales do not necessarily conform to local practice however and as such, counsel for the purchaser should be aware of the pitfalls a purchaser may encounter.

**The Real Estate Brokers** — Many real estate brokers do not have experience with selling REO properties. However, even the most experienced broker can fail to advise the purchaser that these transactions often have extended timelines for closing and that the purchaser is responsible for many of the fees that would otherwise be a seller expense.

**The Seller Addendum** — The local Monroe County Bar Association contract is familiar to most of us, but attached to that contract will be the seller's addendum. If there is any conflicting language or terms between the local contract and the addendum,

the addendum will control, even if it is contrary to local practice. The attorney approval period is often waived.

**"AS IS, WHERE IS"** — With the glut of REOs in the market, lenders are less likely than ever to take an additional loss on the property by agreeing to repairs; in many cases even if the buyer is obtaining an FHA/VA loan. The standard contract will indicate the property is being purchased in its current condition and the seller will not make any repairs.

**Closing dates and per diem** — The local practice with regard to closing dates is "on or about." Do not presume that your REO transaction will follow this rule. If you do, you may cost your client anywhere from \$50 to \$150 per day in fees charged by the seller for not closing on time. Be proactive with the lender and seller.

**Title and title insurance** — The seller addendum may or may not indicate that the seller will pay for a fee policy. In many instances, they do so as an incentive to utilize the seller's title company. Be on the lookout for marketable or insurable title clauses in the contract. Most REO sellers only offer insurable title.

**Referee's Deed** — It is not unusual for the Referee's Deed and Report of Sale to not be of record. Obtaining the Deed and RR0S often delays the closing.

**Surveys and Abstracts** — An REO seller will not generally pay for either the abstract or the survey.

**Inspections** — All inspections are usually at purchaser's expense unless otherwise clearly noted in the addendum. This includes termite inspections, radon tests, structural engineers, etc. The cost of inspections may be mitigated by any closing concession provided by the seller.

**The Settlement Statement and closing costs** — Like all standard purchase and sale transactions, REOs utilize the HUD-1 Settlement Statement. Sellers do not generally accept the local settlement statement however. Even an all cash transaction must



By **KRISTEN LAMB**

Daily Record  
Columnist

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use a HUD-1 and any fees and all concessions must be reflected. If the seller has allowed the purchaser concessions, there are two general principles to be aware of:

1) Total closing costs on page 2 of the HUD-1 must match or exceed the concession;

2) The seller will generally not allow the purchaser to receive back at closing more than the purchaser paid up front. For example, if the purchaser paid a \$1,000 deposit and after all bank fees and seller concessions, the buyer is receiving back \$1,003, the seller may require a reduction in its concession by \$3 to match the initial deposit. Some REO sellers however, do not allow the purchaser to receive any funds back at closing at all.

Possession — Finally and most importantly, until the seller (not the seller's attorney) has received their funds, the purchaser is usually not permitted possession of the property under the terms of the contract. Therefore, if closing is on Friday afternoon and the deed is not on record until Monday, the seller will not usually permit the purchaser to have possession until Monday.

Exercising due diligence and communicating with the purchaser will often be the difference between a smooth closing and a transaction fraught with last minute extensions and frustration.

*Kirsten Lamb is vice president and general counsel for WebTitle Agency, an authorized title insurance issuing agent for First American Title Insurance Co. of New York, Fidelity National Title Insurance Co. and Old Republic National Title Insurance Co. Offices are located at 69 Cascade Drive, Suite 101 Rochester, N.Y.14614; phone (585) 454-4770; www.webtitle.us.*