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Bank Owned Property Sales: Who's protecting the public from these totally one-sided sales?

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Bank Owned Property Sales: Who's protecting the public from these totally one-sided sales?

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What would the Department of Commerce or the Attorney General's Office do if they discovered that an investor sold a property "as-is" with respect to the physical condition and title of the property and used a purchase agreement that was binding on the buyer, but not on the seller? And further, the purchase agreement required the buyer to use a title company either owned by the seller, or with whom investor had a close relationship (no disclosure of course). The investor would be labeled as a predator and they would do everything in their power to shut the investor down.

The typical sale in which the seller is a lender features all of the above and more yet, nothing has been said or done by the State. Everyone crucified the lenders (long after the fact) for the loans that are now going bad, but where are they now? With an explosion of foreclosures (over 12,000 in Minnesota in 2007 and over 30,000 predicted for 2008) the market is going to be flooded with properties being sold to an unsuspecting public.

What is going to happen when some naive young couple buys a bank owned property with no warranties and later finds out that the wiring was stripped out of the home, the

Questions

water heater was removed and the foreclosure was screwed up so they don't even have good title? They don't have the money to deal with any of these problems and the title insurance they purchased contained an exception for the foreclosure problem. What happens if the wife's father is a legislator or they end up on television during sweeps week for one of the local "investigative" reports? When the public finds out that it is standard practice for the bank that owns the property to stand behind nothing it sells, I believe they will be outraged.

The lender is impossible to deal with, so the real estate agents who represented the lender and/or represented the buyer become very attractive targets to file ethics complaints, Commerce Department complaints or lawsuits against.

The following are some issues that arise with the common bank owned property purchase:

- a. The lender is not bound to the sale until some committee approves the sale, yet the buyer is still bound.
- b. Even after the committee approves the sale, the lender often has a clause that allows it to terminate the purchase agreement for any reason at any time. Again, the buyer is bound by the agreement but the seller/lender is not.
- c. The lender sells the property in an "as-is" condition. They often do not follow state or local laws and regulations regarding disclosures (i.e., various "truth-in-housing" requirements).
- d. The properties can have problems that are not typical of a normal purchase - the copper is stripped out of the home, the wiring is pulled out, all of the appliances are removed, speakers are taken out of walls and ceilings, built-ins are removed and anything that can be removed or ripped out of the house may be removed. Some are visible, and some are not. Some you might look for, while others you wouldn't look for unless you know about these properties. The damage might have been inflicted by the former owner, or may be the

result of a break-in that happened after your inspection.

e. The lender forces the buyer to take title insurance by a title company of their choice (in some cases owned by the lender). If you try to use your own title company, they will charge the new title company an outrageous amount for the title evidence. The title company, who is vital to the buyer since the seller/lender won't warrant title, is now a company either owned by the seller or beholden to them for business. Are they going to protect the buyer? Are they going to treat the buyer like a client? In my experience the answer is no.

f. In most cases, the closing documents are not presented to the buyer prior to the closing and the closing is a mobile closing (the title company the buyer is forced to use may be located two hours away from the buyer). The buyer has no one to explain to them what they are signing or how to deal with a problem.

g. Some of the lenders do not sign the HUD at closing. Even though we are a table funding state, they have nobody at the closing with authority to sign on their behalf. In the meantime the buyer's money is paid out. What happens if the lender files bankruptcy after the closing and before they sign the HUD Statement? What happens if the home is broken into between the closing and when the lender approves the sale and gives the keys to the buyer?

h. The purchase agreements often contain clauses that are difficult to understand, that are used in other states or are at odds with another clause in the agreement.

i. If a MAR purchase agreement is used, there will be a counter with an addendum that states that if a clause in the purchase agreement conflicts with any clause on the addendum, the clause in the addendum controls. As you go through the addendum you will see that the causes in the addendum conflict with

everything in the purchase agreement, or leave you with clauses in the purchase agreement that you cannot discern whether they are to be totally removed or just modified.

Purchasing a bank owned property can be an appropriate choice if the buyer understands the risks, is willing to take those risks and is able to deal with the cost of dealing with a risk that explodes. It is my experience that many buyers are not aware of the dangers of this type of a transaction. It is imperative for the buyer's agent to make them aware that this is not an ordinary purchase, that if anything goes wrong after the closing the buyer will not be able to go after the seller (even with respect to title), that these properties can have problems much different than you would find in a normal purchase, that the purchase agreement will be totally one-sided and the bank will never be bound to the deal until they actually close. If they are not willing to take these risks or hire the professionals necessary to manage those risks (i.e., an attorney, an inspector who does an inspection appropriate for this type of purchase and a title company who will protect the buyer), this type of purchase is not for them.

NOTICE

The foregoing is not intended to constitute legal advice for any specific circumstance, but is intended to reflect broadly applicable principles, under Minnesota law, relevant to a typical situation. Each set of facts and each contract is, or can be unique; the unique facts and specific language of the contract may require a different legal analysis and may result in a different outcome. Before proceeding in reliance upon this or any other general description of law, consult with an attorney competent in the field of practice relevant to your situation.

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