

**Session 1: REO Closing 101**

12:10pm – 12:55pm CT

- STEPS IN AN REO CLOSING
  - What you need in a referral package and what to review. “More is always better.”
    - State contract – Give the local agents and attorneys something that they recognize.
    - Specific addenda required – Customize the transaction
      - By investor/lender
      - By jurisdiction
      - By property type (i.e., Mobile Home/Condo)
      - Insurable title vs. marketable title
    - Foreclosure deed provided vs. prior REO referral (pre-contract)
      - Pros and cons of each approach
    - Contact information for all parties is critical
    - Clear closing instructions and fee sheets
    - When should a Hold Harmless Agreement be prepared ahead of time?
  - Documents to prepare
    - Deed (Limited or Special Warranty Deed)
    - Seller’s affidavits – pros and cons
      - Liens
      - Property condition
      - Occupancy (post-COVID) – insurability questions
  - Expected timeframes “Fast, Cheap, or Accurate – Pick 2 of 3”
    - Based on jurisdictional and market expectations
    - Compressed timelines almost always result in errors
    - When dealing with a third-party Buyer’s Settlement Agent, you are not always in charge
    - Building in additional time via timely communication and provision of documents on the front end allows for pre-emptive responses to last-second issues prior to closing
    - Pick a deadline for CDs and HUDs and stick to it; don’t let exceptions become the rule
  - Most common documentation issues that arise. “Know the rules.”
    - Powers of Attorney – Are you on record and compliant with jurisdictional requirements? Know the answer before you sign anything.
    - Signing Authority – Who is signing the Seller’s documents and under what authority?
    - OFAC checks – Do you require them?
    - Corporate REO Buyers – What documentation do you require?
- DIFFERENCES BETWEEN FORECLOSURE TITLE AND REO TITLE, AND WHAT HAPPENS WHEN YOU ENCOUNTER A PROBLEM?
  - Different perspectives in Foreclosure and REO

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- Foreclosure Title: “Get it Right the First Time, Every Time”
  - Ordered upon receipt of the foreclosure referral
  - Must approach title with a forward-looking perspective: “What does the finished product need to look like if this property becomes an REO asset?”
  - No room for error
    - Identify title issues
    - Know the insurability standard
      - Marketable v. Insurable Title
        - Approach the curative process to meet the appropriate standard, depending on the loan type
          - FHA, VA, FNMA, FHLMC, Conventional
          - Title examination will reflect the appropriate insurability standard
    - File a title claim where appropriate
    - In House title curative measures, where appropriate
    - Title Curative Litigation (can delay the foreclosure or necessitate the need for a Judicial Foreclosure)
    - Ensure the foreclosure process conforms to state law to ensure there are no defects procedurally that would invalidate the foreclosure
- REO Title – “Tying up loose ends, move the process forward to closing.” At this point, the property is *Bank Owned* post foreclosure.
  - Did the foreclosing firm clear all title issues presented in the foreclosure title search?
  - Is the foreclosure valid? All state law requirements followed and handled appropriately by the foreclosing law firm, trustee? Does it need to go back to the foreclosing law firm for curative measures?
  - Any outstanding taxes that need to be paid? Get them paid!
  - Any municipal or code violations / fines that need to be cured before moving the file to closing?
- Two-Owner Search vs. Full Search
  - Based upon insurability standard
  - Search length will depend upon whether it’s a Two-Owner search or a Full Search (look to state law for marketable title act to govern, generally a 40-year search)
- Why required for insurability?
  - Title search length is predicated upon insurability standard
  - Insurable v. Marketable Title
    - Insurable Title – What is it?
      - Two-Owner Search
      - Letter of Indemnity (LOI) from title insurance company accepted for certain title defects manifested
    - Marketable Title – What is it?

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- Full Title Search
    - Look to state law – Marketable Title Act (40-year search)
    - Think “Perfection”
  - Most common title issues that arise
    - More owners, less mortgagors – “MOLM”
    - Metes and bounds legal description doesn’t close
    - Legal description missing critical data such as section or range
    - Mortgage legal description only includes part of the property
    - Breaks in the chain of title
  - Strategies for resolution
    - Work with foreclosing law firm
    - Work with title insurance company
      - File title claim
    - What can be fixed on an expedited basis in-house
    - Leave no stone unturned
- AN UNDERWRITER’S PERSPECTIVE ON HOW TO GET YOUR PROPERTY FROM UNINSURABLE/UNABLE TO CLOSE TO INSURABLE/CLOSED
  - Key documents to review in order to identify issues
  - Issues which can affect foreclosures / when to contact UW counsel
    - Borrower in possession
    - Significant equity
    - Procedural defects
    - The Servicemembers Civil Relief Act of 2003
    - Bankruptcy
    - Internal Revenue Service and Other Federal Liens
      - The IRS does have a right to redeem the property if it so chooses. It would have 120 days from the date of sale to do so.
      - Even if the IRS does not exercise its right to redeem, the right nevertheless is a cloud on the title to the property for 120 days from the date of sale. Therefore, in certain cases, it may be appropriate to submit an application to the U.S. Attorney in the jurisdiction that the foreclosure proceeding is held and request a waiver of the right of redemption.
      - Where the United States has a deed of trust or a lien other than an IRS Lien (e.g., judgment), the United States shall have one year from the date of sale within which to redeem.
    - COVID-19 & Impacts of the Moratoriums
      - Pandemic impact on the foreclosure process
      - Underwriting issues with moratoriums
        - Documentation needed to verify exceptions to moratorium
        - What records need to be maintained if questions arise?

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