

Bank Owned Properties

Frequently Asked Questions

When initially negotiating, what terms should a Buyer pay special attention to?

Answer:

- 1) **Mortgage Contingency and Closing Dates-** The Selling Bank will want to close quickly. However it is important that appropriate Mortgage Contingency and Closing Dates are negotiated. The Selling Bank might request expedited dates, but these dates might not provide a sufficient amount of time for the Buyers to get a Mortgage or Close.
- 2) **Deposit-** Bank Owned Property Contracts are typically not standard Contracts and might not contain standard Buyer protections. Also, the Selling Bank usually does not allow the Buyers' Attorney to make any modifications or add typical protections. As a result, it is important that the smallest Deposit possible be negotiated.

What type of uncustomary Contract provisions are usually required?

Answer:

- 1) **Closing Date Penalties-** If the Buyers do not close by the Contract Closing Date, they could incur a penalty or lose their Deposit.
- 2) **Seller Attorney Travel Fees-** Often the Bank Owned Property Contract requires that the Closing be at the Seller's Attorney's office, which could be very far away. This could create additional expenses or timing issues for the Buyers. However, the Buyers' Attorney might have options available to avoid closing at the Seller's Attorney's office.
- 3) **Transfer Tax-** The Buyers are required to pay the NYS Transfer Tax (.4% of the Sales price). The Seller typically pays the Transfer Tax in a standard transaction.
- 4) **"AS IS" Condition-** The Buyers purchase the Property in "AS IS" condition and are responsible for all repairs of any kind.
- 5) **Municipal Clearance-** The Buyers are responsible to clear all Building Department violations and procure all required Certificates of Occupancy.

What does "AS IS" Condition mean?

Answer: Typically, the Property is sold in "AS IS" condition in all regards. If any repairs or improvements are needed at any time before the Closing, they are typically the Buyers' responsibility. Accordingly, the Buyers must immediately perform a full inspection and investigation.

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What dates do Buyers need to consider?

Answer:

- 1) **Mortgage Commitment Date-** The time frame for a Buyer to get a Mortgage Commitment is usually less than a standard transaction. Accordingly, it is important that Buyers consider applying for a Mortgage that will be expeditious.
- 2) **Closing Dates-** If the Buyers do not close by the Contract Closing Date, they might lose their Deposit or be subject to penalties. This typically applies regardless of the cause of the delay (including getting final Bank clearance or Building Department Approvals [see below]).

What type of Mortgage Commitment Letter should the Buyers procure?

Answer: The Buyers must properly apply for the Mortgage amount and type detailed in the Contract. The Buyers should make sure that their Mortgage Commitment Letter contains very few conditions. This is because the Buyers are bound once they receive the Commitment Letter and could be in default if not ready to close by the Contract Closing Date.

Who is responsible to procure Building Department Approvals?

Answer: The Buyers. Standard real estate transactions usually require the Seller to procure any needed Building Department Approvals. However, Bank Owned Property transactions typically require the Buyers to be responsible to procure all approvals and clear any violations. The Buyers are responsible even though they did not create the violations and will still be responsible for all delay penalties. Accordingly, before the Buyers sign a Contract, they must perform an investigation in the Town's Building Department and any related Town departments.

What uncustomary fees might the Buyer be responsible for?

Answer:

- 1) Transfer Tax- .4% of the sales price
- 2) Seller's Attorney travel fee- If required
- 3) Buyers' Attorney fee for additional services- If required

Should the Buyer procure a Survey?

Answer: Yes. The Buyers should order a Survey immediately since the Selling Bank typically does not provide one.

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