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# NEI's Real Estate Report

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## **Pre-approval Means More than Just a Lender Letter**

by M. Anthony Carr

One of the most problematic pieces of the property-buying process these days is the financing contingency. Basically, this contingency says to the seller the buyer will buy his house contingent on the purchasers' ability to get a loan to finance it.

The financing contingency paragraph may give 7 to 14 days for the buyer to remove the contingency. If the buyer is successful, then the transaction moves toward closing. If not, the seller could have a null and void contract or he could be looking at a buyer in default.

The financing contingency paragraph (FCP) is very important. It's fraught with deadlines and I've seen a lot of agents get buyers and sellers wrapped around the axle on this one by mistake and cause some to lose money and others file lawsuits. It can be used as a means to hold the buyer to the contract, but it can also be used as a means by which the buyer can get out of a contract.

The FCP involves the buyer, seller and loan officer ~ and possibly more parties depending on what type mortgage product you're looking over. If the house being sold is involved in a short-sale or foreclosure, the FCP may need to be accepted by a third party, not just the seller, before the contract is ratified.

In most contracts, the buyer puts up an earnest money deposit ~ usually about 1 percent of the sales price of the house, but it could be more or less depending on the customary amount in your area. Nevertheless, if the buyer defaults on the contract (which could happen in various ways), the seller may have a right to keep the earnest money deposit. Again, this could be thousands of dollars.

One way the default could happen is through the FCP. So here are a few steps to keep in mind in removing this contingency and keeping your deposit safe and the transaction on track.

Apply for and get pre-approval for a mortgage before making an offer. This is so important in today's market. Even though you may have been watching home prices drop in the last few months, the price of money has not. It's been getting more expensive. Thus, if you apply for your mortgage before you've even gotten into the contract-writing process, then you'll already know your buying power, the lender will have already looked at the blemishes on your credit and verified your income and assets.

Name it and Claim it. Many contracts I've seen require the buyer to stipulate up front what type of loan will be used to purchase the house. This is so the seller can determine if the buyer is high risk or not and if they have generally good credit. Unless the property is being purchased with all cash, this part of the contract will most likely be filled out. It may stipulate if the loan is a conventional (or conforming) mortgage, or if it's a special type program such as FHA or VA (government-financed programs). Since you have to name the loan type of front ~ be sure to carry out step 1 above.

Be honest about your credit history, your income and your assets. If you make \$45,000 a year and UP TO \$10,000 in bonuses ~ that doesn't necessarily add up to a \$55,000 income. If the lender writes your letter based on your stated income of \$55,000, then only \$46,000 can be verified once you've written your contract, then you may not be able to get the preferred lending rate and terms ~ ergo, you may not qualify. While you may not be in default, it means you have to start all over again.

If your application starts going south, let the seller's agent know about it as soon as possible. The facts are the facts. If the lender starts letting you know you may not get your loan approved, don't keep it a secret. The seller needs to know so he can decide on whether or not to give the buyer more time or to cut bait and get back on the market.

In essence, get the money part of your home-buying process wrapped up early. If you know what you qualify for in the beginning and you know what credit problems you have, these won't be a surprise on the back side, leaving you with few options and possibly less money.



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## **Foreclosure Basics: Foreclosures, Short Sales and REOs**

by Diane Kennedy

On the face of it, foreclosures, short sales and REOs look like the same thing: someone can't pay their mortgage and is losing the property to the lender. They are attractive for investors looking to pick up a property for less than market value, and may well represent the next "it" thing in real estate investing.

However, it's not quite as easy as it seems. If you walk into the investor market wanting to "do foreclosures," without understanding the entire process, you could wind up in trouble. For example, while all short sales are foreclosures, not all foreclosures are short sales, and while REOs are not short sales, some short sales can wind up as REOs.

Let's start at the beginning, then, with three basic definitions:

### 1. What is a Foreclosure?

When a property is in foreclosure, the owner has stopped making payments, and the lender has given the borrower a written Notice of Default that the payments must be brought up to date or the property will be sold off. The notice is a public document (which is why so many websites offer foreclosure lists). It normally takes about two missed payments for a lender to issue a Notice of Default, but not always.

If the owner doesn't respond to the Notice of Default or make the payments needed to reinstate the mortgage, the lender can apply to the courts to take back the title the property so it can then be auctioned off or otherwise disposed of. This doesn't happen right away, though. Each state has a different time period during which the former owners can still rescue the property.

Foreclosure auctions are usually public ~ in fact in Reno, NV, foreclosure auctions are still done on the front steps of the Courthouse once a week.

### 2. What is a Short Sale?

A short sale happens once a home is in foreclosure, but before the property goes to public auction. Short sales are attractive to investors, because lenders often agree to take less than what is owed on the property. The idea here is that you are saving the lender time and money by stopping the legal foreclosure process and taking the property off the lender's hands.

But there are pitfalls to short sales. For example, if multiple mortgages are involved an investor must strike a deal with all lenders. That may leave little, if any, profit margin, depending on how heavily the property is mortgaged. And, even if a lender does agree to an offer up front, they can still change their mind. A real estate agent I spoke with recently told me that in her area, one lender was refusing to close on short sales at the last minute ~ wasting time and money for everyone involved.

### 3. What are REOs (or Real Estate Owned)?

If no-one bids high enough to meet the lender's price at auction, the foreclosure completes and title transfers to the lender. Real Estate Owned means the property is owned by the lender.

Some investors see REO homes as the best way to buy property because there are no emotions involved: it's strictly business between the investor, their agent, the lender, and its agent. And because most lenders aren't landlords (nor do they want to be), investors can often get a very reduced price.

But not always. Sometimes there are hidden fees, like unpaid taxes, penalties, etc., to contend with. Other times lenders aren't willing to negotiate the price down from market, or close to market. This is especially true in areas where home values have fallen further than lenders want to acknowledge.

As with any other kind of investing, education and experience will be crucial. Where foreclosure investing is involved, you may be wise to keep them in that order.

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