

Article

SALES OF REO PROPERTY

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In Texas, commercial real property loans are generally secured by a deed of trust under which the borrower grants a lien on the real property in favor of the lender. The deed of trust allows the lender to foreclose the lien and sell the real property if the borrower defaults under the loan documents. Upon foreclosure, the lender takes title to and becomes the owner of the real property if it is the highest bidder at the foreclosure sale. When the lender becomes the owner of the property, the property is often referred to as REO (real estate owned) property.

The property acquired by the lender through foreclosure is often in a distressed situation, which can be for numerous reasons. For example, if the property is an office building or retail center, the tenant leases may not have been generating enough income to cover the debt service on the loan, perhaps as the property is not fully-leased, or tenants themselves are in distress and cannot pay rent or have filed for bankruptcy. If the property is under construction, perhaps the borrower could not meet its funding obligations under the construction loan or market circumstances have changed which made construction and pre-leasing of the property unfeasible. If the property is raw land, the loan may have matured and the borrower could not sell the property or find refinancing. It is also often the case that when the borrower defaults on its obligations to the lender, it also defaults under obligations with other third parties, such as contractors, management and leasing companies, tenants, and taxing authorities.

By acquiring the property, the lender steps into the distressed property situation often with incomplete information and must determine what it has acquired, what events have impacted the property and may presently be impacting the property, and what the lender must do to manage and sell the property in order to recoup losses under the original loan.

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