



So Your Home is Being Foreclosed

I just saw this advertisement: “There have been 9.3 million foreclosure filings since 2007 with 3.7 million more expected in 2011-12. Get help NOW! Yes, there are things that you MUST DO and things that you should not do (like drain your 401k, IRA, nest eggs et al.).”

Your lender is foreclosing on your home? Yes, the home that you have spent years building memories in and nurturing with your very own hands. But imagine purchasing it back at the foreclosure auction. How good would that feel? But is it even possible?

How Did You Get Here and Where Do You Go From Here?

It's no secret how you got to this point. Let's go through the steps: a lender is foreclosing on your home because you did not make your payments. That part is easy. Every state, province and country has different rules and laws, but I suspect they all look similar. In many states, provinces and countries, a lender must go through a judicial or court process to foreclose on the property. In some states, like California, the lender can proceed without going to court. But in the end, there is almost always an auction-type sale and an auction-type sale is where you can win. This is where your second step begins.

After the Panic and Tears: Setting the Stage to Win it Back

After the lender starts the foreclosure process, after you cry, after you panic, and after you contemplate doing horrible things to the lender, you realize that the lender is probably doing you a favor because you could not afford the loans secured by your property anyway. In other words, get over it. So now you have to put your strategies in place. You know that eventually the property will go to auction. If you get malicious and destroy the property, you are not helping yourself. Destroying the property takes too much time and energy--time and energy you could use to do something productive, like figuring out how to raise enough funds to buy the property at the auction.

You want the outside world to think the property has little value because you do not want competitors bidding at the auction. This means different things in different situations. I know this sounds funny, but one way to accomplish this is by doing something like breaking a window and boarding it up to give the appearance that the property is trashed on the inside (when you'll really keep it up perfectly inside). Maybe you let the yard deteriorate a bit, but, remember, you don't want important plants to die that could be costly to replace.

Affording the Auction

You've got to put together enough funds to buy at the auction. But, you say, I don't have cash lying around? Beg and borrow the money, do a joint venture with friends; be creative. No one knows the property better than you. Put on your selling face, be full of integrity, and show them how they can make money by investing in the property and in you. Make up a little business plan even if the plan includes that you are going to move back into the property and either lease it from the joint venture or make payments to your new “lender” or partner. Remember, you will likely buy the property for less than the loans at the sale. Your business plan will include the most you would pay at the auction and you would not pay more than the property is really worth, nor will the lender. If some fool is at the auction and pays more than it is worth, let it go; I believe in the “greater fool theory.” Don't you be the greater fool.

Most often, the foreclosing lender will get some type of cheap and dirty appraisal; the appraisal will be conservative; and the lender, which can credit bid at the sale (that is, it can bid any amount up to and including what it is due under the loan including unpaid interest, late charges, foreclosure fees, and sometimes even lawyers' fees), will likely not bid above the property's appraised value. If the lender representative does bid above the amount the lender is due under the loan, they must usually bring cashier's checks to the auction for the overbid. One of the primary reasons the lender representatives do not want to bid higher than the property's appraised value (which is likely considerably less than the amount due under the loan) is that most jurisdictions assess and thereafter tax the property based on the closing bid price at the auction. Thus, the lender may bid even lower than the appraised value. For example, assume a lender is owed \$200,000. Assume further that the property is worth \$130,000. If the lender bids at the auction and is the lucky buyer for the lender's full credit bid (the amount due under the loan), then the "assessed value" by the tax assessor will likely be \$200,000 and not something lower, like \$130,000. If the tax rate is 2% of the assessed value, then the difference in annual tax payments would be \$4,000 ($\$200,000 \times 2\%$) if the auction purchase price is based on the loan amount but only \$2,600 if based on the appraised value ($\$130,000 \times 2\%$). Assume further that you know the property is worth \$170,000 with a little TLC (I trust you know what that is); you might bid as much as \$150,000. (You may need to cover transaction, renovation and selling costs, like commissions.)

What if you are in the common situation of having two loans or more secured against your property because you got a second loan to cover expenses? Assume the first loan starts a foreclosure and the second is "sleeping" (i.e. not moving forward with its own foreclosure action). If the first forecloses and you buy at the sale, you wipe out the second. Please understand that some states and situations allow the second to go after you personally as the "sold out junior." And, in some places, if a lender forecloses (any lender) and there is a deficiency (that is, the lender does not recoup all its loan and costs resulting from the foreclosure sale), then the lender can go after you personally. This can be true despite the fact that the lender could bid \$130,000 and be successful at the foreclosure sale and then turn around and sell the property for \$200,000, the entire amount due under its loan, not losing a dime. Obviously these would not be fun results, and the legislature does not care about little ol' you and is probably sleeping with the lender. Therefore, you must get a handle on the entire situation and consult with an attorney about all the effects of a foreclosure in your state, county, province or country. You should also speak with your tax advisor.

When you go to the auction, foreclosure sale, or whatever it is called where your property is having its little head chopped off, you probably need to bring cashier's checks. Sometimes a lender will provide the amount its credit bid is going to be at the sale in advance of the auction, and you would then know the minimum amount you need to bring in cashier's checks. The checks should be issued to you personally and you will endorse them over to the "crier," or auctioneer, at the sale (the person auctioning your property). Yes, you may be a cryer too, but not the same kind; this person is shouting out the bids. I personally recommend that you do something like the following: Assume you believe the property will sell for no more than \$152,000 at the auction (remember that your once-bidding competitors think the property is trashed and will cost them \$20,000 in repairs, so hopefully no one else is bidding against you). Bring at least a \$100,000 cashier's check (don't bring more because what if the lender opens up the auction at \$120,000? You'd prefer paying only \$120,000.10). Then, bring at least three \$10,000 checks, and the balance in \$5,000 checks or maybe even a few in \$1,000 checks. You do not have to have "exact change" because you'll get a refund of any amount you pay over your bid. However, you do not want to wait the several days, or maybe even weeks, for reimbursement; hence the reason I suggest having smaller increments of cashier's checks.

What to do at the Auction

The big auction day is here. You have no clue what to do except to show up. Most of the people there probably don't know what they're doing either, except some of them love hanging out at these auctions; so act like them – confident and ready to win. While you're waiting around, and you will do that, listen secretly and intently to the conversations around you. If you see someone nice who does not seem likely to be bidding on your property, ask him or her simple questions. There could be several auctioneers, so make certain you are at the right auctioneer. Hopefully your sale does not come up first. As soon as the auctioning begins, watch and listen intently. When your property comes up, you will need to show the

auctioneer that you have cashier's checks and he or she will probably ask your name. The auctioneer is usually not related to the lender and is relatively impartial--his or her job is just to sell the property. The process is usually not like bidding on a male stud bull at a livestock auction where the crier is really talented at raising each bid. This person just wants to get through the process, so be nice but don't let your competitors, if any, know what you are bidding on, what you think about your property, how much you are willing to bid, what your strategies are, etc. Assuming there are other bidders for your property, there are techniques about bidding; but that is a subject for another newsletter or class.

Let's assume that you are the successful bidder; what happens then? The auctioneer will hand you papers to complete and you have to write who the owner will be (which could also be a topic of another newsletter) and some general information. Be patient; the auctioneer is handling lots of sales.

Upon Being Reunited...

I am confident that when you go to your home after having successfully bought it back at the foreclosure sale that it will smile at you and be happy to see you. You know how happy your car is after you wash it really well? Your property loves you and not your lender. It wants you to own it even if it means that you will simply flip it and make a profit, because your property wants you to make money on it and it does not want the evil lender to do so. Read *The Creature from Jekyll Island* if you are still feeling sorry for your lender.

Enjoy!

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