

How to Make More Sales with Foreclosures and Short Sales

By
Bobby Gaines

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4 Ways to Increase Your Sales

- Help a financially burdened homeowner
- Help a real estate investor
- Help a lender or governmental agency
- Help yourself

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Foreclosure in Georgia

- **Fore closure** - a legal proceeding that bars or extinguishes a mortgagor's right of redeeming a mortgaged estate
- If you don't pay . . . you don't stay!!

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Three Foreclosure Opportunities

- Pre-foreclosure sale
- At the sale on the courthouse steps
- Post-foreclosure sale

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Number of Foreclosure Opportunities



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Real Estate Purchase

- Pay Cash
- Finance the Purchase
 - Promissory Note
 - Deed to Secure Debt (Security Deed)

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**Security Deed
(Deed to Secure Debt)**

- Conveys *legal* title to the lender
- Borrower retains “equitable” title to property
 - To pay property taxes and insurance
- Recorded in the county records

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**Security Deed
(Deed to Secure Debt)**

- Date Security Deed is filed affects priority of debt
 - Earlier filed security deeds have priority over those filed later
- Legal title reverts to owner once debt paid in full

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Foreclosure Process

- Event of Default
 - Monetary
 - Non monetary
- Lender must make written demand upon borrower to cure the default (usually 30 days)

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Foreclosure Process

- Acceleration – if default not cured, lender declares entire debt due and payable in full within 30 days
- Lender invokes “power of sale” clause

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Foreclosure Process

- Foreclosure sale published in the legal organ of the county where property is located
 - http://www.sos.state.ga.us/corporations/legal_organs.pdf
- Published for four consecutive weeks prior to sale
- Non-judicial foreclosure

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Foreclosure Process

- Sale is first Tuesday of each month
 - If New Year’s Day or 4th of July, then sale held on first Wednesday
- 10:00 am – 4:00 pm
- At the Courthouse Steps

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**Pre-Foreclosure Remedies
for the Homeowner**

- Bring payments current
- Refinance
- Loan modification
- Borrow money from friends, relatives, etc.
- File bankruptcy?
- Sell the property
- Short Sale?

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**Benefits to the Homeowner
of Selling Prior to Foreclosure**

- Keep a foreclosure off of their credit report
- Fresh start
- Opportunity to get some cash for their equity, if any

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**What if the homeowner
is
“Upside Down?”**

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Short Sale

- Sale of property
- Sales proceeds are less than the total amount necessary to satisfy the mortgage obligation
- AND, the homeowner is unable to pay the shortfall from their own funds

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How do you know it's short?

- CMA
- Seller's net sheet

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If the homeowner has money to cover the shortfall, it is NOT a Short Sale

“Seller to Bring Cash at Closing” Sale

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Your Success in Short Sales

- Patience
- Persistence
- Problem solving

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Clueless Sellers

- Never heard of a short sale
- Don't know they're in a short-sale situation
- Don't know how to proceed

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Who's the *Client* in a Short-Sale Listing?

The Seller

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**Which came first, the chicken
or the egg?**

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Which comes first?

- Listing the property as a short sale, THEN getting lender approval
- Getting lender approval, and THEN listing the property as a short sale

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General Observations

- Notify the lender as early as possible of the potential short sale
- Don't waste time with customer service representatives . . . Get to the decision maker (loss mitigation department)
- Probably won't get serious consideration until a viable purchase offer has been submitted

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**Not every upside-down,
beat-up, pre-foreclosure
property is a candidate
for a Short Sale**

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Pre-qualify the Seller

- If the bank waives your arrearage, can you resume your monthly payments?
- What monthly repayment amount could you make to the bank?
- Have you tried to refinance?
- Has lender sent you a certified notice of foreclosure?

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Pre-qualify the Seller

- Can you borrow money from family, friends, church, or retirement savings?
- Do you have any unencumbered assets which you can sell?
- Have you spoken to an attorney about filing bankruptcy?

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Pre-qualify the Seller

- If I can get your bank to allow you to sell your property for less than the amount you owe, how much are you going to need to move on with your life?

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Prepare the Seller

- Short Sale is a difficult consumer real estate transaction to approve
- Involves as much, if not more, paperwork than an original mortgage application!
- Seller will receive no money

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Prepare the Seller

- No guarantee that a lender who accepts a short sale will not legally pursue a borrower for the difference
- Lender can attempt to collect deficiency balance after the closing
- May require seller to sign unsecured promissory note as a condition to agreeing to short sale
- May agree to cancel the entire deficiency balance

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Tax Consequences

- Don't offer tax advice
- Notify seller in writing that they should seek professional tax advice regarding tax consequences of selling their home

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Mortgage Forgiveness Debt Relief Act of 2007

- Effective January 1, 2007 – January 1, 2010
- Certain discharges of mortgage indebtedness on a principal residence will be excluded from gross income
- Amount of indebtedness is limited to \$2 million
- To be excluded, debt discharged must be acquisition debt
- Exclusion only applies in situations where debt forgiveness resulted from a situation related to decline in value of property or to financial condition of the borrower

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**What makes a good
Short Sale candidate?**

- Homeowner has run out of options
- Homeowner's hardship caused by permanent or long-term consequence
- Homeowner has no cash or unencumbered assets
- Homeowner not represented by counsel
- Homeowner willing to work to get the sale done
- Homeowner wants out badly

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**What makes a good
Short Sale candidate?**

- Property is in poor condition
- Property's market value is less than the amount of debt owed on the property
- Property encumbered by only one mortgage
 - Unless the second mortgage is with the same lender
 - Otherwise, you'll have to negotiate with TWO lenders instead of one

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**What makes a good
Short Sale candidate?**

- Buyer with an all cash offer
- Buyer who is pre-approved (with a substantial down payment)
- Buyer with an ability to close quickly
- Sales contract with no inspection/repair contingencies
- Motivated lender with a large number of pending foreclosures/REO properties

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Short Sale is contingent on the homeowner's lender's approval

- Sales contract must contain a provision that the sale is contingent on approval of the mortgage company and/or mortgage insurer
- Just because property is listed with short-sale terms does not mean the lender will accept the offer, **even if the seller accepts it**
- Specify a deadline by which lender must provide written approval of contract

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Why Would a Lender Accept a Short Sale?

- Homeowner is delinquent and no longer making payments
- Market value of the property less than amount owed
- To avoid the cost of a foreclosure
- To avoid increasing its home inventory (REO)
- To avoid becoming a property manager

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Early Disclosure to All Parties

- Obtain written authorization from seller to advertise and list the property in the MLS as a "short sale"
- Essential for the seller, buyer, and participating brokers or sales agents to understand that the lender has right to approve or disapprove a short sale
- Disclose in MLS listing that sale is contingent on approval of seller's lender

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Your Commission

- Negotiated between seller and broker
- Seller has no money to pay your commission
- Expect the lender to ask you to cut the commission

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Your Commission

- Advise potential cooperating brokers in MLS listing that gross commission in the listing agreement is subject to lender approval and could potentially be reduced
- Specify how commission will be shared with cooperating broker if gross commission is reduced

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Your Commission

- You certainly are not required to reduce the commission
- The lender needs you more than you need them

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Common Lender Requirements

- Delinquency caused by permanent or long-term circumstances
- Submission of “workout package” to lender
 - Lender may require information submitted on their in-house forms
- Interior and Exterior Appraisal (BPO)

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Common Lender Requirements

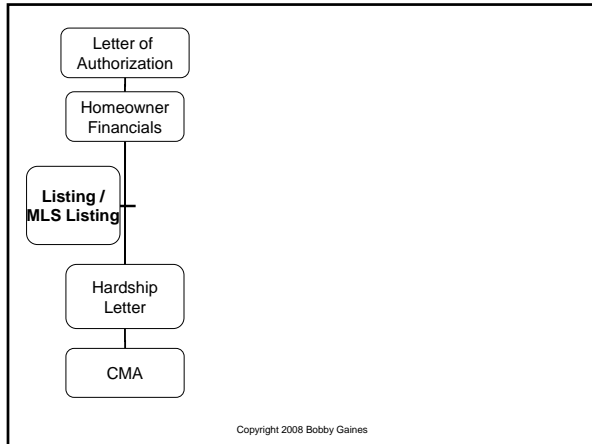
- Homeowner required to make maximum possible contribution in cash and/or promissory note toward any deficiency
- Property listed for sale at fair market value (to sell within 90 days)
- Credit report on the homeowner

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Common Lender Requirements

- If homeowner is the selling or listing broker, he must not receive a commission from the sale
- Homeowner must not receive any proceeds from the sale

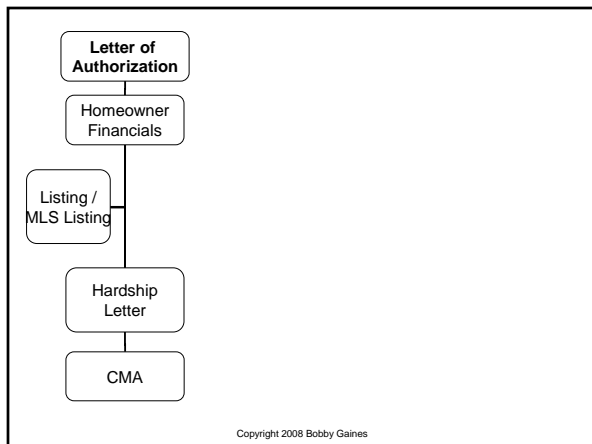
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Listing / MLS Listing

- Send copy of listing agreement to lender

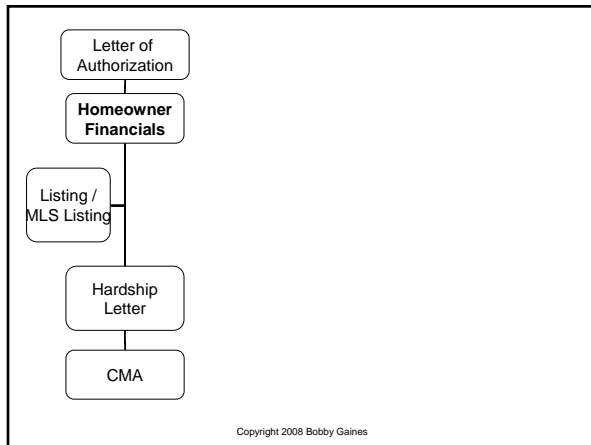
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Letter of Authorization

- Written authorization for lender to disclose information to you regarding the loan
 - Borrower's name and social security number
 - Property address
 - Lender's name
 - Loan number
 - Your name and contact information
 - Date

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Homeowner Financials

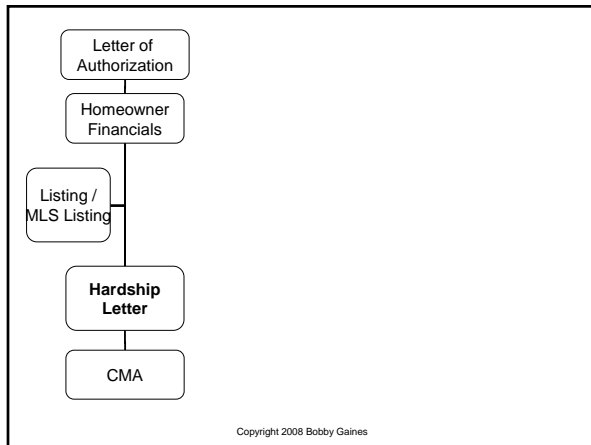
- Financials required often vary by lender and type of loan
 - 2 – 4 most recent pay stubs indicating year-to-date earnings (or a letter stating he/she is unemployed)
 - Last two federal income tax returns (with W-2's)
 - Self-employed – YTD & previous year's P & L
 - 3 – 4 months bank statements
 - 401k or other retirement account statements
 - Current financial statement
 - Most recent escrow analysis (if applicable)

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Caution

- Original loan application and supporting documents may have been peachy
- Current financial condition is a rotten egg
- Homeowner may have intentionally misstated financial condition and assets to obtain the loan
- Possible case of Mortgage Fraud

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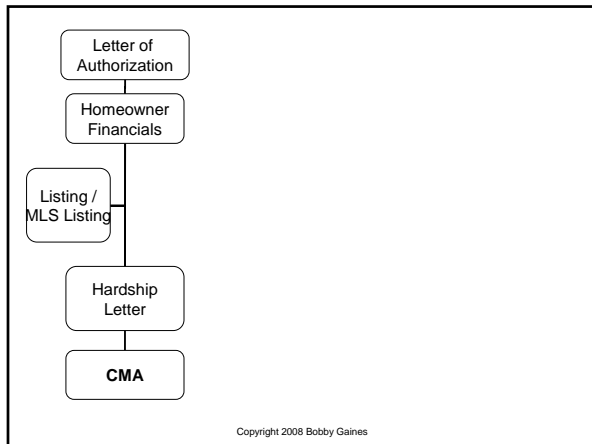


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Hardship Letter

- Written by the homeowner
- Details the tragic event or situation that led to the default
 - Loss of Job
 - Bitter divorce
 - Untimely illness or death of family member
- Conveys to lender that it is virtually impossible for the homeowner to recover (long-term)
- Bank's best interest to accept a short sale

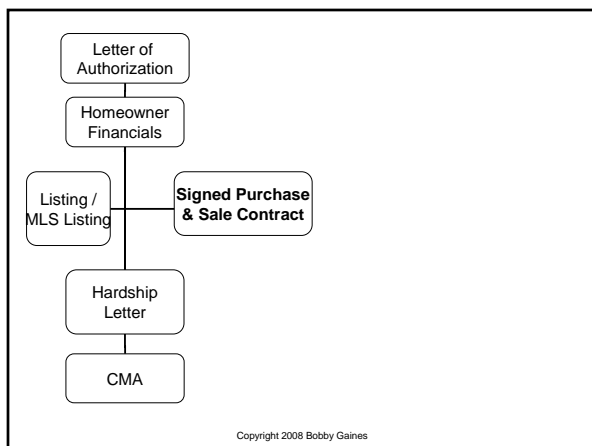
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CMA

- Prepare CMA and submit copy to lender
- Use “comps” which are indicative of property’s current value
- Prepare seller’s net sheet and submit copy to lender (no proceeds going to the seller)

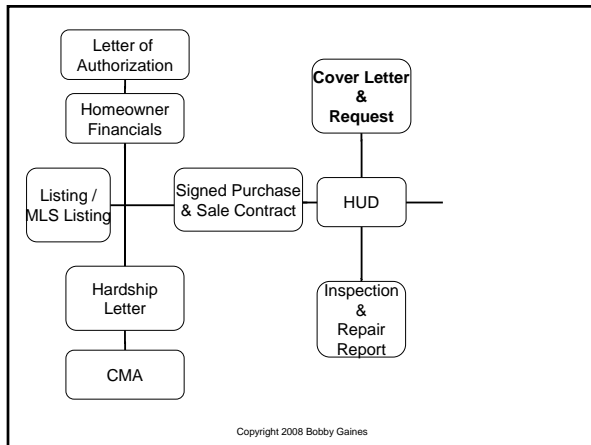
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Signed Purchase & Sale Contract

- Copy of earnest money deposit
 - Don't be surprised if they ask buyer to increase
- Buyer pre-approval letter and/or proof of funds
- Closing date clearly identified
- Ideally, "as is" contract with little or no contingencies (ie, inspection)

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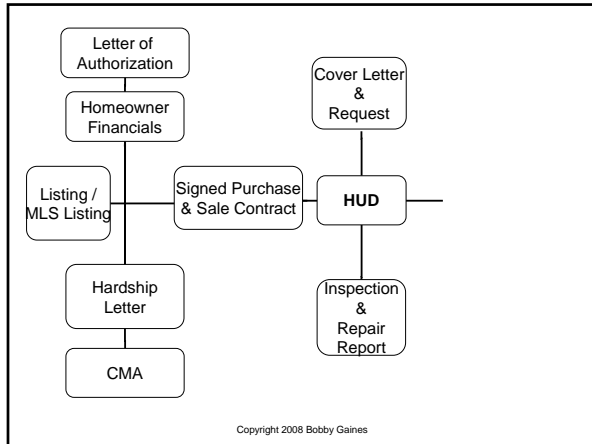


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Cover Letter and Request for Short Sale

- One page document requesting a short sale
 - Contract sales price
 - Major provisions of contract, including closing date
 - State the seller's hardship
 - Identify the accompanying documents
 - Identify the closing date
 - Request an interior/exterior BPO
 - State the amount the bank can expect to "net"
 - Your contact info, loan number, borrower's name and property address

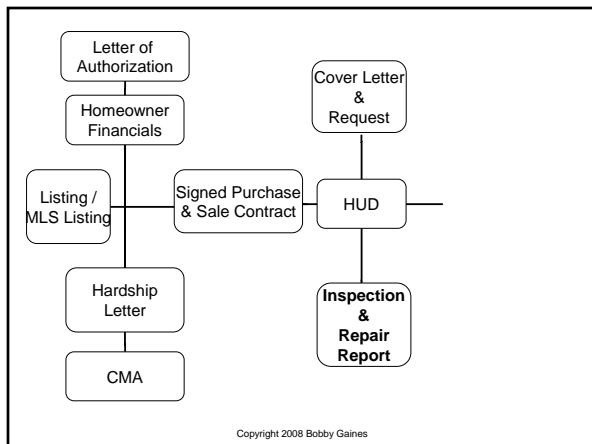
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HUD

- Submit copy of preliminary HUD-1 Settlement Statement to lender

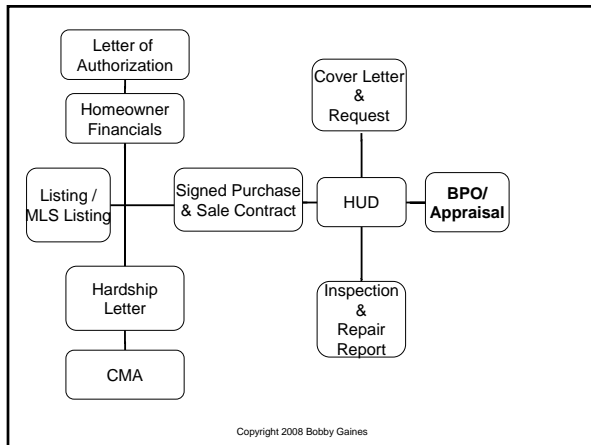
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Inspection and Repair Report

- Proper maintenance and repairs have probably been neglected
- Include an extensive repair and cost report performed by local and licensed general contractor
- Include extensive labeled pictures of interior and exterior
- Include recent home inspections, if any

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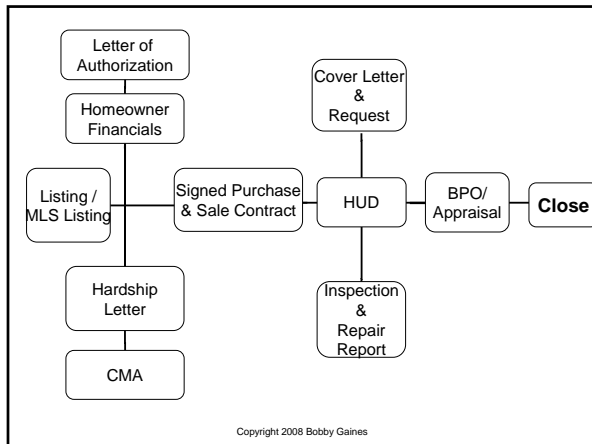


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BPO/Appraisal

- Lender will contact another broker to perform BPO
- You need to be actively involved
 - Present when they come to evaluate
 - Provide them with a copy of your CMA
 - Provide copy of repair and cost estimate
 - Point out every problem point
 - Be helpful, courteous, and aggressive (don't argue)

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**Help Yourself!!
Become a Real Estate Investor**

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What am I looking for?

- A property with existing value
 - **Equity** – the spread between market value and the debt on the property

OR

- A property where you can easily create value
 - Cleaning & minor cosmetic repairs (non-structural) may substantially increase the value of the property

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What am I looking for?

- Properties under \$125,000
- Middle-class “salt of the earth” neighborhood
- Worst home in the best neighborhood
- A real “dog”

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Is it possible to locate a foreclosure property before it’s advertised in the newspaper?

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The Newspaper Foreclosure Notices

- Date
- Amount of Debt
- Property address
- Name of borrower
- Deed book & page of security deed
- Lender name
- Attorney information
 - (name, phone, file number, website)

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The Net

- Online county property records
 - www.qpublic.net
 - www.gaassessors.com
- Georgia online deed & lien index
 - www.gsccca.org

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At the Steps

- First Tuesday of the month
- 10:00 am – 4:00 pm
- Cash or certified funds for full amount of bid
- All junior liens are wiped out
 - IRS liens
 - Property tax liens
- No right of redemption
- 30 days to deed (Deed Under Power)

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At the Steps

- More competition
- “Revival-like” atmosphere
 - Be careful not to overbid
- Might waste the entire day waiting to bid
- Many properties will not sale
 - Refinance
 - Family member/friend may loan them money
 - Sell home prior to foreclosure sale
 - Win the Georgia lottery!

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Tips for Bidding

- Confident in your research
- Get comfortable
- Call attorney's office to see if property is selling
 - www.foreclosurehotline.net
- Attorney makes opening bid on behalf of lender
- Opening bid is total debt plus late fees, penalties, and attorney fees

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Tips for Bidding

- Competitive bid (no chilling)
- Insurance binder prior to bid
- Deed in 30 days
- All junior liens wiped out

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Tips for Bidding

Know your maximum bid prior to auction

After repair value
Less repairs
Less carrying costs
Less selling costs
Less profit margin
Your Maximum Bid

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Tips for Bidding

Bring more than one certified check

Don't bring cash

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If you're the successful bid

- Get a receipt from attorney
- Exact time of the bid
- Call your insurance agent
- Get owner's title insurance

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Visiting the property & telling the *tenant*

- Win-win if possible
- Make a demand for the property
- If necessary, begin dispossessory action

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Post-foreclosure

REO's

Real Estate Owned

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**If there is no other bid
the property goes to the lender.**

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Banks & Lending Institutions

- Horrible property managers
- Usually don't upkeep or make repairs to the property
- Not good in the eyes of federal regulators to have non-performing assets on the books

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**Banks & Lending institutions do
NOT
want to take these properties back!**

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One Major Exception

Individuals who have provided
owner financing and are foreclosing

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REO's

- Fewest number of foreclosure opportunities
- Easy to locate
- Listed through real estate agents
- Regular purchase
- Closing with a real estate attorney

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REO's

- Normally purchased “as is”
- Proof of funds normally required
- Goofy “book size” addendums
- Your profit potential may be limited on the resale within a certain time period

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“Gold mine” of REO's

- Multiple listing service (MLS)
 - Search parameters
 - “Bank owned” “REO” “Foreclosure”
“handyman special” “investor special”
 - By area
 - By price range

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Additional Resources

- www.homesales.gov
- <http://www.hud.gov/homes/homesforsale.cfm>
 - Great site for links to various REO's owned by various Government entities
- www.bidselect.com – Georgia HUD listings
- www.williamsauction.com – listing of auctions by Williams and Williams

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Two keys to successful investing

- See lots of houses
- Make lots of offers

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A quick word to agents

- Why aren't you buying these things?
- Investors are your friends
 - Sure, they make low offers
 - Use you to buy, use you to sell
 - Repeat business

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Get Started Now!

- Get today's newspaper
- Attend next month's auction sale
- Try your hand at research
- Contact at least three homeowners
- Get a list of REO properties
- Look at a minimum of 3 REO properties
- If you find a deal, the money will follow

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Make an Offer!

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“Begin to weave . . .”

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Thanks for coming!

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