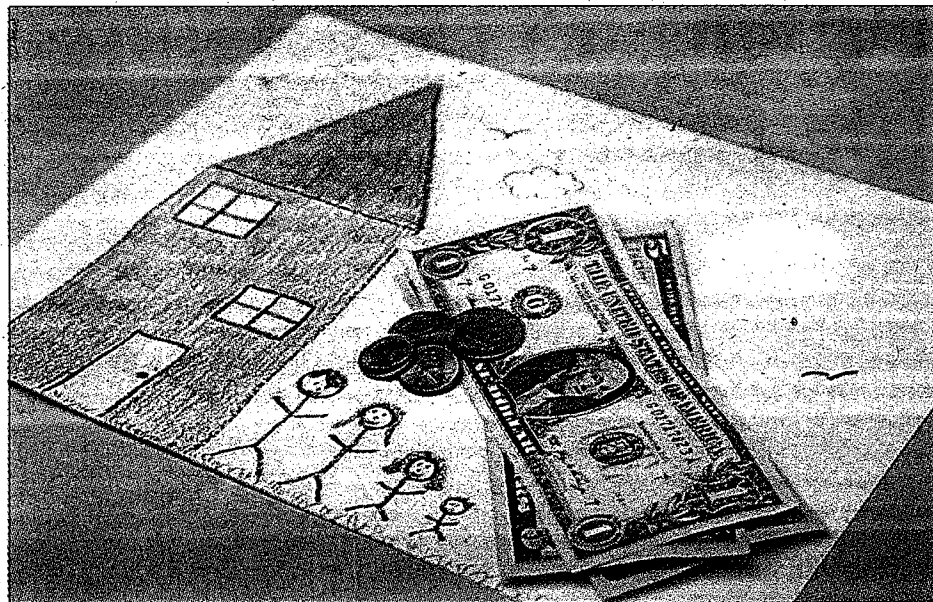


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Buying a Foreclosed Residence



Buyers must recognize and carefully consider the risks in today's market.

Nearly half of the residential real estate sales today are shortsales or foreclosed properties. That's a human tragedy for many, and a buying opportunity for others. The distressed sales have put negative pricing pressure on all homes. If you're in the market to buy, what should you consider?

Today, more than ever, the real profit in real estate is in buying at the right price. That is the easy part. Some of the risks have changed and, if you make a mistake today, price appreciation won't fix it anytime soon.

Shortsale risks for a buyer are very different from a conventional purchase. A shortsale buyer must be prepared to wait and can't count on closing in a reasonable 30- to 60-day

testing extremely important. The seller usually requires contract rider and disclaimer terms that they won't negotiate, but many of the foreclosure sale risks are eliminated if the buyer is represented by an experienced attorney who makes sure the contract includes appropriate terms for the buyer's protection.

A special set of risks exists when buying a condominium unit or a home that's subject to a homeowner's association declaration. An unfortunate reality is that many associations are already in or may be on the edge of financial trouble. A well-represented buyer will obtain and analyze the association's budget, reserves, litigation, and other financial information, making their satisfaction with the financial condition of the association a

discount from the mortgage debt, the deal you make with the owner is conditioned upon the lender agreeing to accept less than it's owed to release its mortgage.

There are real opportunities to buy homes at attractive pricing.

Economically, a shortsale may be in everyone's best interest. However, lenders and their loan servicers don't necessarily follow conventional logic where shortsales or foreclosures are concerned. Frequently, beyond the lender and servicer, there's an investor, and getting all of the necessary lender approvals can be like running a gauntlet – in slow motion. A shortsale can frequently take several months to close, or die. A shortsale buyer has to be able to handle the wait and the uncertainty of whether or not the deal will ultimately close.

Buying as a bidder at a foreclosure sale isn't for the inexperienced, faint of heart, or those who need financing. For the sophisticated cash buyer who understands the nuances and risks, real profits can be made, particularly on properties that merely need updating and cosmetics. Among the many risk issues are redemption and timing considerations, possible damage to the improvements before the buyer has possession, interim property and casualty insurance, title encumbrances not extinguished in the foreclosure, and the possibility of borrower bankruptcy.

Buying from the lender after the completion of the foreclosure has different risks. The deal will almost certainly be "as is." That makes a thorough professional inspection with all utilities and water services on for

terminate the contract.

For example, I recently represented a buyer who contracted to buy a very attractive condominium unit in a nice complex that was completed about ten years ago. The inspection confirmed that the unit was in good condition and the price was very attractive. However, the association's financial statements, budget, and other financial information indicated that the association has been borrowing from its reserves for several years to keep assessments low, and the percentage of unit owners whose assessments are delinquent already exceeds 15 percent. The buyer terminated the contract because of the known financial risks of ownership that were beyond his control.

There are real opportunities to buy homes at attractive pricing today, but this market also has risks that the smart buyer must recognize and carefully consider. The ones identified above are just an overview – not a comprehensive list.

S. Keith Collins is an attorney with more than thirty years of diverse experience, including all aspects of real estate, banking, lending, litigation, loan workouts, business transactions, and estate planning. Collins is a member of LawyersConnecting™ and the Illinois State Bar Association. His email is keith@collinslawyer.com and his office is in Northbrook. Learn more about Keith at linkedin.com/in/skeithcollins on LinkedIn™. This article is meant for general educational purposes only. It's not meant to offer legal advice and it does not create an attorney-client relationship with the reader. Neither a question from a reader nor a response creates an attorney-client relationship. Hire an attorney for legal advice.

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