



Writing an offer on a Foreclosed Property

This is a guide to writing an offer on a "Bank Owned" or corporate property, (Otherwise known as an REO). By understanding the process, you will reduce the stress on everyone involved and greatly increase your odds of completing a successful transaction.

Review these items with your buyer prior to submitting and offer.

Also, review this with your staff, escrow coordinators, assistants, managers and loan officer. Everything you need should be in this document. If, *after reading this*, you have further questions, please contact First Buy Texas.

The foreclosure process is much different than a typical retail sale. In any market, the seller calls all the shots. Some terms will be deleted from the usual contract, some terms may be added that are not familiar. Please understand this. The Listing Agent (REO Broker) is simply a conduit between the Buyer's agent and the Seller. The Listing Agent does not have any power or say as to what the terms are and has little or no negotiating power or influence.

Do not cause this sale to be extended. Close of escrow date is extremely important to banks. Typically a financial penalty is imposed upon buyer and buyer's agent if escrow does not close on time. It is imperative that you stay on top of all inspections, appraisals and the lender to get duties performed in a timely manner.

The Seller will not normally negotiate after they accept your offer. Negotiate all terms *prior* to acceptance to minimize problems during escrow.

Sellers appreciate serious Buyers. Please be absolutely sure the Buyer is *ready and willing* to go through with the purchase.

Avoid writing significantly low or questionable offers. We understand every buyer's desire to get a "Super Deal". Unless you can **document** why the Seller should take significantly less than the asking price, please don't write the offer. The Seller has at least two different Broker Price Opinions (BPOs) and probably several appraisals.

THEY ARE NOT INTERESTED IN LOOKING AT SERIOUSLY LOW BALL OFFERS OR BUYERS ATTEMPTING UNLAWFUL OR "SHADY" DEALS.

Pre-Approval. Start the loan process prior to making an offer. This avoids surprises and will save the Buyer from paying the per diem penalty or even losing the Earnest Money Deposit (EMD).

Proof of Funds. Send Proof of Funds with your offer.

DO NOT CHANGE LENDERS, LOAN TERMS OR PROGRAMS WHILE IN ESCROW

Submitting an offer – The bank will require that we submit all offers to them on a summary form, which is called the "Offer Worksheet." This is aimed at simplifying the process for the Asset Manager, who will more often than not, have a large number of properties under management and often in multiple states with vastly different real estate contracts. This worksheet will have the "basics" only (Price, Terms, Concessions, Closing dates, etc.).

ALL offers must be submitted as follows

1. **One to four family TREC contract and or any promulgated TREC forms**
2. **Copy of deposit check**
3. **Loan APPROVAL letter. (a printed commitment from automated underwriter is preferred)**



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4. **ALL offers must be submitted on state contracts, the lenders are not interested in having us present them offers sent as letters of intent.**
5. Deposit checks should be made payable to the listing broker, it is very rare the sellers contracts, and counter offer addenda will not stipulate the deposit being held by us, or their title company. Usually the seller requires the deposit in certified funds made payable to the title company. You will learn the name of the title company when the contract is accepted. Please be sure that buyer has deposit funds available **NOW**. If offer is accepted, the seller and real estate law, require the deposit money to be deposited within a short period of time.
6. **PLEASE DO NOT ENTER ANY NAME(S) FOR SELLERS ON ANY DOCUMENTS. TAX RECORDS DO NOT ALWAYS REFLECT THE CURRENT SELLER OF RECORD**
7. We prefer that all offers are emailed to REO@firstbuytexas.com If you are not familiar with this process you can fax offers to 888-873-6580.

What form should I use? Standard Texas One to Four Family contract and any TREC promulgated forms.

Specifics for the contract/s to follow;

1. **Paragraph 1:** Seller leave blank
2. **Paragraph 5:** Title company must be the same as specified on MLS print out. If Title Company is not stated, leave blank or state "Sellers Choice" NO EXCEPTIONS
3. **Paragraph 6C:** Check box #2. Buyer to pay for Survey (Banks don't pay for surveys nor do they have previous surveys)
4. **Paragraph 7B:** Check box 3. Because this property is a foreclosure, the Texas Property Code does not require this Seller to furnish the notice.
5. **Paragraph 11:** Must include the following language. "**Pursuant to section 28 of the Real Estate Purchase Addendum, this document is subject to all terms and conditions set form in the Real Estate Purchase Addendum.**"
6. **Paragraph 16:** check "Will Not" box, as most lenders will not mediate.
7. **Paragraph 22:** Check "OTHER" and state "Real Estate Purchase Addendum"
8. **Paragraph 23:** Both blanks should have "NA" in them as foreclosures typically don't allow option monies.
9. **ADDENDUM for HOA:** Section A, box 3 must be checked. Section B (Transfer Fees) should read "All". Seller will NOT pay any transfer fees

IF the offer is for a FANNIE MAE property;

1. Have buyer read, initial each page and sign the addendum located in Media section of listing. Populate ALL required fields.
2. If asking for Seller concessions such as closing costs or home warranty, please write in paragraph 38 of the addendum.
3. Please advise the buyer that an offer is to be made in writing, but the offer will be negotiated verbally. Once there is a verbal acceptance of offer, the time frame goes into effect. At verbal acceptance, you will schedule inspections, surveys, etc. **DO NOT WAIT** on the signed contract. **Per the addendum, buyer has the right to terminate the contract within the first 10 calendar days of verbal acceptance. Notice of Termination is required.**
4. Please notify buyers lender that the Title Company and FANNIE MAE must have closing documents 72 hours prior to closing for review, otherwise, your buyer will be assessed up to a \$100 per day charge.
5. Per the addendum, the buyer will be charged for re-keying of the property at closing time. (NO EXCEPTIONS)
6. Per the addendum, the buyer is responsible for de-winterization and re-winterization of property for inspections.



Where can I get a property disclosure form? There are no disclosures. Bank owned properties are exempt from Disclosure/Disclaimer laws, so there are is no disclosure, or disclaimer needed with the offer. There is no previous owner to tell us how old the roof is, or if everything is working as a result we have NO information specific to the property your client is interested in, nor does our client.

How soon will the Seller respond? We have no control over the bank's decision-making process. On rare occasions they will respond in the first 48 hours. However, more than likely they will respond in 3 to 5 days. Please be patient and do not call the listing agent to check on progress. The listing agent will notify you immediately when they get a response. Some banks do not look at offers until the property has been on the market for 5 to 10 days. Please be considerate, we are all working towards the common goal of closing on the subject property. There have been occasions when a counter has taken well over a week. The Asset Manager is dealing with 100's of properties, and they receive 10, 20 or more offers in a day it takes some time to go through them.

DO NOT ATTEMPT TO CONTACT SELLER or ASSET MANAGER. THIS WILL JEOPARDIZE YOUR TRANSACTION. ALL CONTACT MUST BE MADE THROUGH LISTING AGENT.

Will I get a response over the weekend? No, any offer submitted over the weekend will be presented the following business day. Do not expect the Banks or us to be available on weekends.

How does the Bank counter? Since all offers are submitted to the seller on the worksheet, your counter offer may come back in the "worksheet" format, but more often or not will be delivered to you verbally (Simple details of what the bank is willing to accept) on rare occasions counters will come back via an unsigned Counter Offer. If there are multiple offers, the bank will typically verbally counter all with "highest and best". This means come back with all you got and the bank will choose at that point. They will likely not counter after that.

PLEASE read the counter offer completely and be sure your buyer understands ALL terms. It looks like the Seller didn't sign the Counter Offer - You may receive a Seller's Counter Offer with no signatures. These forms are generated by the bank's Asset Manager or the outsource company (and often come to the Listing agent as an email attachment). Once an offer is accepted, the entire "package" (which may include the Offer as well as Counters, Addendums, copy of the check, et.al.) is sent to the bank for signatures. This includes the buyer's signature on any counter offer addenda. Most of our clients no longer provide these addenda until all terms have been agreed to.

Are these verbal agreements? Once you are informed that your offer is accepted, it is. REO departments and Asset managers give the "ok" and then go to their managers for signatures. (It is highly unlikely to have an Asset Manager "unaccept" an accepted offer. Yes, you could be the first, but it is highly unlikely.) We realize it is an unusual business practice to agree to offers orally, but the banks have their own way of doing business and we appreciate your understanding.

IF YOU ARE NOTIFIED THAT YOU HAVE AN ACCEPTED OFFER, PLEASE FORWARD THE OFFER TO YOUR LENDER SO THEY MAY BEGIN THE LOAN PROCESS. AT THIS POINT THE CONTRACT MAY NOT BE SIGNED BY SELLER, AND IT MY BE A FEW DAYS OR LONGER BEFORE RECEIPT OF A FULLY RATIFIED CONTRACT. IF YOUR LENDER HAS A PROBLEM WITH THAT, INFORM THEM THAT THIS IS AN REO SALE. THAT SHOULD SATISFY THEM IF THEY ARE FAMILIAR WITH THE PROCESS. IF NOT, HAVE THEM CALL FIRST BUY TEXAS.

Despite any delays in returning the contract the bank does expect you to make the contracted close date. Any delays may cause the buyer to pay a penalty.



Who chooses the Escrow and Title Company?

The reality is, when buying a bank owned home there are "gives and takes". One of the items that your buyer will need to be flexible about is that the bank will, more than likely, choose the title and escrow companies. (The Listing Agent has no say in the matter either - I have my favorite Escrow companies and Escrow officers too, so we are all in the same boat.) This is due to the fact that they have significant amounts of title work done during the Foreclosure process. ESCROW COMPANY CONTACT INFORMATION COMES WITH THE SIGNED DOCUMENTS FROM THE SELLER. While you may be anxious to send in the buyer's deposit check to escrow, the Listing Agent MAY NOT HAVE this information prior to receiving the documents back from the bank. You will be notified when we are informed whom to use. Continued multiple and/or daily queries slow down the process for everyone involved. Please be considerate, we are all working towards the common goal of closing on the subject property.

Time frames?

- Generally you will have 30 to 45 days from mutual acceptance (even if verbal) to close the transaction. Often the proposed closing date on the original offer is unrealistic due to the elongated negotiation and acceptance process with the REO departments. The Asset Manager knows that you can't close in a week and a half (unless your offer is cash). They are not here to work against you. Asset managers know that appraisal, inspections and the loan process take time. They will assume that you have taken the time prior to making an offer to become preapproved for the loan and that there will be no trivial delays beyond the 30 to 45 day closing period.
- Read the Bank Addendum carefully – there is often a per diem late fee assessed for tardy closings. The bank will not suffer delays due to the Purchaser's Lender not performing in a timely manner.
- Begin your inspections upon being alerted that your offer is accepted.
- Do not write an offer with a settlement date later than the 26th of the month. This allows the bank time to close out the property before the first of another month, making your offer more favorable. Middle of the month settlement dates are best, and you will find even on your retail transactions they result in less delays.

Can the Buyer do Inspections? Just like any other sale, your buyer has the right to fully inspect the property within the time frame of the purchase agreement. Seller will not order or pay for any inspections. Some sellers (few) will not provide utilities for inspections. All sellers require the buyer to dewinterize the home for inspection. It is also the buyer's responsibility to rewinterize the property.

How do we set up inspections? It is *Highly Recommended* that you give us 3 BUSINESS DAYS NOTICE PRIOR to scheduling your inspection. Some utilities (such as electricity) will likely be on prior to your making an offer; others will not (such as gas or propane). The Listing Agent will not be responsible for re-inspections and/or associated fees. It is not a bad idea to visit the property a day PRIOR to the inspection to check if systems are on and working.

Can the Buyer cancel if they find something wrong? The buyer has the right to cancel the contract and receive their deposit back *if they do so within their contractual time.*

Will the Seller pay for repairs? Please notify your client this home is being sold "AS-IS." If the bank has rehabilitated the home, their scope of work has already been determined and cannot be changed. Therefore FHA/VA offers present obvious problems. It is rare that a bank will accept an FHA or VA offer, and often time will only consider the offer with the understanding that the buyer will be responsible for any lender required repairs.

Will the Seller pay for and get Pest (termite) inspection? No. If this is a requirement of your buyer's lender then you should expect to order and pay for that inspection. The same for any other lender required inspections.



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What if there is evidence of infestation on the Pest report? Your buyer's lender may have a stipulation that these items must be corrected prior to close of escrow. Please be aware that your buyer will, more than likely, be responsible for correcting those, not the bank. We suggest you get your termite inspection done well within your contingency period to determine your obligations.

Does the Seller offer Financing? Not usually. If they do, it will be noted in the MLS. Some sellers require that your buyer have a pre-qualification letter from one of their loan officers, though there is no obligation to use that lender.

Contingency Periods? Your buyer must adhere strictly to the contingency periods or they risk having their contract canceled **and** lose their deposit. This is a business transaction and banks don't like excuses or delays. Most banks institute a "per diem" charge for delayed closings. Please pay attention to these time frames and provide contingency removals to listing agent in a timely fashion.

Will the Seller accept Contingent Sales? It is highly unlikely that any bank would accept an offer contingent upon the sale of another home. If the bank accepts your offer then finds out that the buyer really does need to sell a home in order to purchase (and you haven't disclosed that) the sale will be immediately cancelled and the buyer will lose their earnest money deposit.

Disclosures? Bank owned properties are exempt from disclosure in all jurisdictions where we work. Therefore you will not be provided with a disclosure, or disclaimer. You may fill out and have your buyer sign a lead based paint addendum, but the buyer has no knowledge, and I have never had a client order a test to be able to provide results.

Can I add or delete Buyers once in Contract? All changes must be made in writing and ASAP. There are many levels and channels to go through to an REO sale. Everything takes time. This still does not guarantee that the seller will agree to any changes, and they never allow assignment. If your buyer is married and plans to buy as married be sure to write contract with both husband and wife prior to submission. If you are working with an investor that is planning on taking title in the name of an LLC, or corporation they will either have to form the entity prior to writing (to provide documentation to the bank the entity exists, as the banks are required to verify this under federal law) or they will have to transfer the property after settlement.

Everything you need to know is answered here. If by chance you have additional questions or concerns, please start with my assistant Shana Myers at 972-849-1530 reo@firstbuytexas.com She is also a licensed agent, knows the process and can answer just about any question.

Please read this document fully prior to contacting us.

Telephone: 972-849-1530 Facsimile: 888-873-6580

Thank you for your interest. We look forward to working with you toward the successful completion of this transaction.