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## The Art and Science of Negotiating REO Contracts

It used to be that a contract was a contract in real estate investing. Today there are both REO and Non-REO contracts and the differences are huge! REO (bank-owned properties) still account for less than 1/3 of our wholesale deals, but consume most of our energy because of the middlemen in the transactions – the realtors.

I'll discuss the REO contracts in this "Insight" since they have the most "points" of negotiation of the two types. The asset managers who daily negotiate the final terms of these contracts have virtually seen it all – from investors who use guru contracts that are worthless, to investors who can't fill out any type of contract and many who don't know enough to negotiate for anything other than what they have been taught in investing courses that have no chance of getting approved.

Following are some of the contractual highlights of negotiating with REO asset managers and listing agents:

1. **Buyer** – forget using the ancient "and or assigns" after the buyer's name – this hasn't been used by the pros in 5 to 7 years. Also forget about asking for an assignable contract in the clauses of the contract. Bottom line – REO contracts are not-assignable 99.9% of the time. We have had two be assignable out of hundreds of contracts. Actually, this doesn't mean that you can't have another buyer step in and close the transaction, only that your contract can't be assignable. It may sound the same but it isn't.

**The Buyer's entity** – This can be an LLC, Sub-S corp., Land Trust, Living Trust, or any number of other entitles. It is STRONGLY suggested that you do not buy an REO in your personal name. The liability can be HUGE even if you don't own anything. We are closing 95% of our REO deals in land trusts so whatever you may have heard about them not working is untrue – unless the listing agent won't submit your contract to the asset manager.

2. **Seller** – Always use "Owner of Record" as even the lenders aren't really sure how to title the property correctly because of the slicing and dicing of the mortgage notes. The public record may show a specific lender on title but it is more for the mailing address than the actual ownership as you can see on the closing documents.
3. **"As Is"** – This is the only way the properties are sold, so don't bother too much if you request the appliances you saw during your inspection and later you find everything has been removed by vandals. Expect nothing and if you get anything worthwhile, you are blessed.
4. **Deposit** – This varies greatly but don't expect to even get noticed with less than a \$500 deposit. Some sellers are asking 10% or higher deposits so you have a

decision to make about whether to make an offer or not. It appears that the higher deposits have only translated into lower final prices for the properties. The only people helped by these excessive deposits are the listing agents who have fewer contracts to review, culminating in lower prices and lost listings. We are privileged to sometimes see the offers the listing agents get, and recently saw one where the novice buyer offered a 50% deposit – he got it but he also overpaid almost \$25,000 above the next higher bidder. Had he known how to bid on REOs he would have been able to make an additional \$15,000 to \$20,000 on this deal.

5. **Who Holds the Deposit** – This is a toss-up with some agents trying to hold the money themselves or their broker holding the money – to me, this is a classic breach of fiduciary duty and can be a mess if another broker goes belly-up. Always strive to have your escrow agent hold the deposit. Some investors have their closing agent take one escrow check and the investors use it against multiple offers – “not necessarily kosher” as they say but being done far too often by a very few closing agents. One realtor stipulates that an investor will not get his escrow back for at least 14 days if he cancels the contract in the inspection period – then why are they holding the money in the first place? Is it perhaps to be escrow scavengers? Is it to discourage any offers except their buddies, or just bad business practice?
6. **Cash Offer** – Don’t make any offer unless it is a cash offer – unless you want to live in the property in which case the seller (asset manager) would consider you for financing. Cash doesn’t mean the same to every listing agent. Most believe that proof of funds (POF) in the form of a bank account is real money. Monthly bank statements are easily forged and a specific group of local wholesalers use them constantly to impress naïve listing agents. Some agents don’t believe that a credit line, equity line or a letter of credit is the same as cash. If the investor closes on the deal or doesn’t close, what difference does the source of funds make? Having a POF does not mean the investor will close any more than his having an equity line, LOC, etc.
7. **Days for Counter Offer** – This can be any number because it is meaningless. Your contract is invalid 98% of the time when you get an answer from the listing agent because of the time for approval. This time is extended because the asset manager is waiting for more bids to come in to get the best price possible. Essentially you are in an open auction. If you get an immediate approval, especially with “help” of what price to offer from the realtor, you paid too much! The key to truly successful REO investing is to learn when you are the only offer, or the best offer, and use this to your benefit. This “insight” comes from our having made thousands of offers and filtering out the noise from the listing agents to get to the truth about the bidders for a specific property.
8. **Who Pays for Title?** – Generally, the seller should always pay despite what is usual and customary in your county. All counties in Florida, except Palm Beach,

the buyer usually pays. The seller pays in Palm Beach because a fire burned the courthouse records and they changed what was previously customary of the buyer paying for title. The asset manager will usually agree to pay because he will want to use his closing agent who did the foreclosure work. Watch out for the guys who want you to pay for title and they choose the closing agent.

Controlling the closing agent is a huge key to making the entire deal much easier to complete. If you are paying for title, ask to use your closing agent anyway and let the seller's closing agent issue the title policy – after being reviewed by your closing agent.

9. **Closing Date** – Some sellers are really getting “arrogant” about the closing period being very short, especially in Dade County. The reason is likely because they don't want the buyer to have time to do the title work and find out what type of time bomb the buyer is getting with the property. You should have 30 days from your contract signing by the seller to close. Always make sure you have a per-diem charge if you have to go past this date. The majority of the time the seller will give an extension if you ask for it early, especially during the inspection period.
10. **Liens, code violations and title issues** – Sellers are increasingly making the buyer deal with these issues and they can be deal killers or a pot of gold – if you know what you are doing. The Certificate of Use (“CU”) in a growing number of cities is something that legally should not be pushed onto sellers. However, the sellers are having the buyer waive their rights to receive this important document. Assume nothing, read the addendum carefully and whatever it says, it really means – as ugly as it is or sounds!
11. **Inspection Period** – I mentioned this last because it is very important for protection of the buyer's deposit and to give the buyer time to do the title work. Why should an investor do the title work if he can't be sure he will get the property under contract? In some municipalities the clerks are very cooperative, in others they are real pills. Some charge small fees and other charge unreasonable fees. The title work is more important than the condition of the property. When an investor understands this comment, he will begin to have a clearer vision of how to make more money investing in real estate.
12. **Returned Signed Contract** – Getting a signed contract back should take one day or less. However, sometimes a playful asset manager will take days to sign and return it. You'll see it is signed on a Tuesday and you get it back the following Monday. The reason is simple, he doesn't want the buyer to market it for re-sale. Again, if the investor is flipping the property to another investor he may not have time to sell it and he would have to give it back to the seller. This almost always results in another price reduction for the seller – seems like being cute can be expensive, but the money isn't coming out of the asset manager's pocket – maybe it should be.

**Negotiating the purchase price** – This is not part of the contract and it is more important than any part of the contract. This is where the money is made - not in the contracting of the property. REO negotiation is very much akin to a poker game with the dealer (asset manager and listing agent) knowing everyone's hand

but theirs are hidden. It's your job to outwit the dealer and it is done hundreds or thousands of times every day by using and understanding the psychology of the asset managers and the listing agents. I have detailed these tactics in a new e-book I have coming out that will be at **no cost to my readers**. I call it "*Insider Secrets of Crushing the REO Market*". It is in its final proofing and revisions and should be available in a week.

Hope this has given you some insight into REO bidding and that it will save you money in the future.

To your limitless success,

Dave Dinkel