

Getting Back in Gear:

Finding Ways to Move Stalled and Vacant Foreclosures Forward

Barry Wides
Deputy Comptroller
Community Affairs

March 11, 2014



Overview

- OCC regulatory expectations for managing properties in default and foreclosure
- Public Welfare Investment authority
- CRA and stabilization-related activities

OCC Regulatory Expectations

- Comptroller's Handbook—Other Real Estate Owned
- Outlines 8 categories of risk:

Credit	Interest rate	Liquidity	Price
Operational	Compliance	Strategic	Reputation

- Explains bank/thrift requirements for management of properties in default as:
 - Owners
 - Servicers, or
 - Securitization trustees

Holding Period Restrictions

- Time restrictions on holding OREO—
 - Dispose as soon as prudent judgment dictates, but must dispose within 5 years
 - Holding period begins once ownership of property transfers or a redemption period ends
 - OCC may approve extension up to an additional 5 years, if earlier disposition detrimental
 - Rental for reasonable period (1 year or less) as part of prudent disposition strategy
 - Must have appropriate risk management framework
 - Document reasonable ongoing sales efforts

Minimum Obligations as Owner

- Assume former owner's responsibilities for—
 - Maintenance and security
 - Payment of taxes and insurance
 - Determine upkeep, maintenance, and security requirements imposed by localities, including homeowners' associations
 - Duties as landlord, if rental property
 - Protecting Tenants at Foreclosure
- Determine if Servicemembers Civil Relief Act protections apply
- Following foreclosure, record ownership interest
- Register property with locality, if required
- OREO appraisal and accounting requirements

Additional Issues

- Sufficient staff to manage foreclosed property portfolio
 - Policies/procedures to manage 3rd party relationships
- When disposing of foreclosed properties, consider:
 - Disposition costs and delays
 - Provision of financing
 - Negative reaction and potential reputation risk of policies that favor cash buyers over owner-occupants that need financing
 - Opportunities to participate in land bank programs, neighborhood stabilization, redevelopment programs, anti-blight programs, or to enhance owner-occupancy

Releasing a Lien Rather Than Foreclosure

- May decide to release lien due to financial considerations, e.g. cost exceeds market value
 - Ensure valuation provides best information
 - Abandoned property has potential reputation and legal risk
- Lender or servicer must:
 - Notify or attempt to notify borrower—
 - Not pursuing foreclosure and mortgage lien has been released
 - Borrower may continue to occupy property
 - Borrower is obligated to maintain property, pay taxes, and the debt is still owed
 - Make appropriate notifications to local jurisdiction

Servicer

- Obligations—
 - Advance funds for taxes, insurance, HOA dues
 - Maintenance, security, serving as landlord for rentals, and marketing property
 - Routine upkeep
 - Register vacant or foreclosed properties, if required
 - PSA or servicing documents outline specific responsibilities
- Additional Issues—
 - Sufficient staffing and 3rd party vendor oversight of property management
 - Rehabilitation or improvement should comply with local building codes, licensing requirements, and requirements in servicing agreements
 - When disposing of foreclosed properties, consider:
 - Contractual requirements for valuing and marketing properties
 - Even if following requirements, may involve reputation and litigation risks
 - Legal authority for OREO expenditures and meet FHA requirements
 - Opportunities to participate in land bank programs, neighborhood stabilization, redevelopment programs, anti-blight programs, or to enhance owner-occupancy

Securitization Trustee

- Primary responsibilities—hold lien on trust assets for investors' benefit and administer trust in conformance with PSA, trust agreement, or indenture
- Be aware of potential reputation and litigation risk, because trustee is named as secured party in foreclosure
- As permitted by PSA, trustee should work with servicer to ensure performance

Public Welfare Investment

- Use Public Welfare Investment authority to make a grant by transferring OREO properties:
 - To a Community and Economic Development entity for rehabilitation and sale or lease to LMI
 - To bank subsidiary Community Development Corporation
 - Must seek prior written approval from the OCC
 - Current appraisal must document FMV at time of transfer
 - OCC will review whether CDC (or a CEDE) has or can develop property management experience to rehabilitate and lease or sell properties
 - Post-transfer, properties not subject to 5-year holding period limit

Public Welfare Investment

- Use Public Welfare Investment authority to:
 - Make investments in community development entities that will rehabilitate and sell or rent properties to LMI individuals
 - Transfer OREO properties to a bank subsidiary Community Development Corporation
 - Must seek prior written approval from the OCC
 - OCC will review whether CDC (or a CEDE) has or can develop property management experience to rehabilitate and lease or sell properties
 - Post-transfer, properties not subject to 5-year holding period limit
- Current appraisal must document FMV at time of transfer

CRA and Community Stabilization

- Large Banks and Intermediate Small Banks (ISBs) can get CRA consideration for certain OREO disposition activities.

- Investment
- Lending
- Services

Must have community development purpose

CD Investment Test

- Property donation or below-market disposition of OREO or nonperforming notes
- CRA consideration for difference between fair market value (FMV) and the discounted disposition price of the property/note

CD Lending

- Loans to LMI borrowers to purchase or rehabilitate foreclosed properties
- Loans to nonprofit organizations serving primarily LMI housing or other community development needs for affordable housing acquisition or rehabilitation
- Loans to financial intermediaries, including CDFIs, CDCs or community loans funds/pools that primarily lend to (or facilitate lending to) promote community development
- Loans to state and local governments for community development activities

CD Services

- Capacity building for non-profit organizations
- Banks can offer technical services, such as:
 - Lending employees to a qualified community development organization
 - Providing management training or financial consulting to help organizations with their acquisition or rehabilitation activities
 - Provide assistance with marketing financial services, including development of advertising or promotions

Expanded Definition of Community Development

- Amended definition of community development in § __.12(g)(5) provides consideration for loans, investments, and services for projects or activities that meet “eligible uses” criteria and relate to approved NSP plans
 - Must be in designated target areas
 - Must be provided no later than two years after last date appropriated funds are required to be spent
 - May be outside AA as long as needs of AA are adequately addressed
 - Key change – may benefit middle-income borrowers or geographies

Expanded Definition of Community Development

- Expanded CD definition applies to “eligible uses” under NSP:
 - Financing mechanisms for foreclosed properties
 - Purchase & rehabilitation of abandoned or foreclosed homes & residential properties
 - Land banks for foreclosed properties
 - Demolition of blighted structures
 - Redevelopment of demolished or vacant properties

Questions