Picking up Pre-foreclosures In Good Neighborhoods Without Cash, Credit or a Bullet-Proof Vest

by Bill J. Gatten

Working Pre-Foreclosures

> "Great Compassion is all too often only perceived of as such during times of great supplication. Absent the supplicant's destitution, the most sincere magnanimity is too often regarded as no more than *cunning opportunism*."
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> **Author**

In the *pre-foreclosure* arena, a tried and true way of doing business is that of buying properties from owners in foreclosure prior to the auction sale date. However, in order that you understand the process from beginning to end, and so that you can make your own choices, let's take a look at how the process works.

When you read or hear the phrase "working" or "dealing" in foreclosures, be aware that those who use these terms are more than likely referring to going down to the court house steps on the first Tuesday of the month (the foreclosure auction day in most jurisdictions) and buying properties for all cash or buying those that have been foreclosed upon and taken in as "Real Estate Owned ("REO's)"[1] by lenders. At these auctions, one can often find some real bargains through buying from the lender (paying off the defaulted mortgage). However, the downside for many of us is that these properties must be bought with immediately negotiable funds: typically all cash, a cashier's check or (in some cases) a certified bank draft. Another drawback is that people really have to know well what they are doing before they start mixing it up with the seasoned pros.

For example, before jumping into an auction with both feet, one should research a few properties and attend an auction or two merely as an observer in order to see (and feel) how it all works…to get the hang of it all. Acquiring auction property without proper research, due diligence, and experience has prompted many a would-be investor to go back to the safety and comfort of rolling burritos at Taco Bell.

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[1] [1] REO: "Real Estate Owned," a term used by lenders when they take back a foreclosed upon property.

Overall, the process is handled as follows in virtually all areas of the country:

> After identifying a property that you think you might want to bid on, learn as much about it as you can before the sale. For example, drive by the property and judge its general appearance and that of the neighborhood in terms of desirability and conformity. Obtain a title search (or title abstract) on the property for a reasonable assurance that the title is clear: to determine if tax liens exist. Other liens (junior liens) or judgments are really of no concern**,** since they will be wiped out when you take title**.** That's why junior lien holders will often sell-out for pennies on the dollar before the sale to avoid being decimated by the process.
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> Do note, however, that if it were to be the junior lien holder initiating the foreclosure, then you would only be able to take the property subject to paying off of that lien**,** as well as the senior lien ahead of it. Note also (as an aside) that even though their legal recourse with regard to the property is stopped by the foreclosure, a junior lien holder can still proceed against the borrower personally. The debt can be collect in court. The failure of the security creates a fully enforceable unsecured promissory note once the foreclosure has taken place.

An exception to the above rule regarding liens that are wiped out by foreclosure would be tax liens (federal and local). Tax liens remain fully enforceable against the property despite the foreclosure…and an unwary buyer can be hit (hard) after acquiring the property at auction and never have seen it coming. It's also prudent to contact the trustee (or the official who will be in charge of the sale) and make sure the property hasn't already been purchased and that it is still scheduled for auction. And (very importantly) should your title report reveal the existence of a tax lien, ask the person in charge whether or not the IRS has been duly notified of the pending foreclosure. If the IRS has been notified (at least 25 days prior to the sale) they can seize the property in order to cure the lien at any time for up to 120 days following the sale. In such a case, you would be entitled to a refund of all of your money with interest. On the other hand, should the IRS not proceed with a seizure, their right to do so expires after the 120th day following the sale.

In the event that the IRS was NOT notified of the auction, their lien remains in place as long as it remains on file in the office of the county recorder. Should you acquire the property and the IRS was to subsequently enforce its lien against the property, you would not likely be compensated for your loss. Be cautious, and don't jump in until you've thoroughly tested the water for temperature, depth and the absence of anything lurking below the surface that might snag you in the britches (as it were).

When participating in the auction itself, it is important to show up early and watch the proceedings carefully in order to know what to do when the time comes (until you become an old pro at it). Also know that there are hundreds–if not thousands–of properties to be auctioned off, so it is important to know in advance who will be handling the properties you are interested in (i.e., call or go to the courthouse and, if you possibly can, speak to the person in charge of organizing the auction).

When your property comes up for bid, it is not uncommon for the auctioneer to read only the legal description of the property. So be sure you know the lot, block, tract, and assessor's identification number (i.e., Assessor's Parcel Number, Tax Key Code, Tax ID No., etc.). Have that information on the top page of your clipboard in bold print.

At the beginning of the bidding process, the auctioneer will generally submit the first bid him/herself on behalf of the foreclosing lien holder (the lender or creditor of record). That first bid will be in the amount of the loan against the property, and the open bidding starts at that point. Here you need to know exactly what your bid is going to be (or at least the maximum range) and not be intimidated or tempted to go above it (by the way, if you haven't already done so at this juncture, here is another opportunity to ask if the state or the IRS has been informed of the sale…assuming that you suspect there's a tax lien on the property).

In the case of conforming *VA, FHA or HUD* loans**,** the auctioneer will likely have been given a minimum bid and a maximum bid by the institution, which means he'll start at one point (say, 75% of the underlying unpaid loan amount) and keep on bidding against you until he reaches his maximum bid, which is most often the sum of the loan balance and related fees. After he stops bidding, if there are no bids other than yours, you own the property (if you have the cash ready to go).

Should yours be the highest bid, you'll need to come up with a cashier's check or (in some jurisdiction) a bank draft almost immediately: though most often you'll be given time enough to go to your bank to get the cashier's check. If you go to the auction planning to bid on several properties, for expediency take a cashier's check in the amount you're willing to spend made out to yourself, so that you can just endorse it over to the payee…they don't like to, but they will make change.

At the conclusion of the sale, you'll be directed to make arrangements with the trustee to receive the deed to the property in a day or so. At that time any "change" owed to you will be paid. You would then proceed directly to the County Records office to record the deed to your property. Ideally, for the best asset protection, you will have taken the deed in the name of your land trust rather than in your own name. Having title to real estate in your own name is always a big *No-No* (remember…you don't need to *own* it, you just need to *control* it)!

If after recording the deed you find that the property is still occupied, go to the address and give the tenants a notice to vacate (within, say 5-10 days). Usually just asking them to do so is good enough. If they don't move, however, you may have to bring an *unlawful detainer action* and the local constabulary will move them out for you. Do not try to move them out yourself, or you may end up with permanent

houseguests (Remember Michael Keaton's movie, *Pacific Heights*? If you haven't seen it, rent it today! You'll be a better person for it).

HOW MUCH SHOULD YOU BID? Good question (though I did ask it myself, didn't I?). 'Not a penny more than you personally know, with absolute certainty, the property is worth…*to you*. If you've done your homework (drive-by, comps, title search, a check on salability and/or rental values in the area, etc.), this is an easy question to answer when the time comes.

Pre-Foreclosures–Buying the Property From the Homeowner Before It Hits the Auction Block.

The advantages of acquiring properties out of the default phase of the foreclosure process (i.e., acquiring the property from a defaulting mortgagor prior to the actual foreclosure) can be quite simple and profitable. Many investors may see doing so as not profitable enough in many cases…or too risky. Still others ponder the moral issues of whether foreclosure buyers are actual helping someone or taking unfair advantage of them because of their financial ill fortune.

Do understand that when a foreclosure happens, there are seldom any winners. The homeowners lose their homes. The lender loses its anticipated yield and stream of income, and is forced to expend thousands of dollars on flooring (holding the non-producing asset while it is being re-marketed). Remarketing expense, refurbishment and repairs, and the exorbitant expense of the legal process itself it not pleasant for a mortgagee. In most cases, neither the homeowner nor the lender relishes the prospect of foreclosure, and both are logically motivated to stop the process by any legitimate means.

For the foreclosure investor, the "window of opportunity" opens the day the Notice of Default (or *Lis Pendens*: i.e., the public notice that a legal action for foreclosure is pending) is filed in the public record. That window then theoretically closes five days prior to the scheduled date of the public auction. Virtually all lenders will honor a serious proposal for a reinstatement of their mortgage, even up to the morning of the auction in many cases. The period of time between these two events (the filing of the notice and the end of the reinstatement period) allows a pre-foreclosure investor to identify highly motivated defaulting owners in order to work out a mutually agreeable and beneficial plan prior to the sale date.

The period of time during which the pre-foreclosure window remains open depends solely upon jurisdictional regulations (state and local laws). Some states set the auction date within 90 to 120 days from the filing of the Notice of Default (or Lis Pendens). In New York, the process can take a year or more, in other states (Texas, for example) only three weeks (21 calendar days). See the By-State Index in Chapter 22 for the foreclosure requirements in your state.

The process…

1. **IDENTIFY MORTGAGES IN DEFAULT** within, say, a particular county
2. **EVALUATE THE OPPORTUNITIES** and narrow you selection down to those situations that appear most profitable. At this point, you know the default amount: so you can estimate the property's "gross equity" by subtracting the loan balance from the estimated market value less the default amount. If there is little or no difference in the amount of debt and the market value, mark that one as a potential "hold." If there is a big difference, there could be enough equity in the property to make a sizeable profit by immediately remarketing it following (or even during) its acquisition.
3. **CONTACT THE HOMEOWNER**–in-person, by phone or by direct mail. We generally advise the latter to avoid being screamed at by a stressed-out homeowner in denial, and being whacked on the head with a board at the doorstep. However, this part is often easier said than done. The defaulting party is probably being bombarded with letters and calls from attorneys and bill collectors and has creditors showing up at his door at all hours. When this is the case, the only ways to contact the homeowner are by phone, mail or in person. E-mail addresses and fax numbers don't show up in the foreclosure records, so chances are that you will have a difficult time establishing contact any other way.

   We therefore suggest beginning with direct mail (the *multiple letter mailing program* described later in this chapter). State in each successive mailing that you are a *private investor* who is willing to "Buy Houses for Full Value—All Cash or on Terms," and indicate that you are ready to help in any way you can with regard to their situation. In other words, succinctly point out that you can stop the foreclosure, restore their credit rating with their lender and–in some cases–even provide cash for use in paying other bills and/or for relocation. The five-step mailer program is described below.
4. **INSPECT THE PROPERTY** and look over all loan, property tax and insurance documentation. Inquire about any other liens or judgments that may exist.
5. **ASCERTAIN THE DEFAULTING PARTY'S NEEDS** and wishes by asking: "What exactly would you like to see happen here?"
6. **DILIGENTLY DO ALL CALCULATIONS** re. Profit potential.
7. **WRITE UP A PURCHASE OFFER,** explaining within it that it is contingent upon:
   - …a thorough evaluation of the property,
   - …the favorable outcome of repair estimates,
   - …a title search

- …a check for building code violations,
- …condition of insurance and property tax and
- …a check on unpaid public utility bills relative to possible "silent" liens (liens that don't show in the public record, but which can thwart a transfer until they are relieved: water, power, garbage collection, etc.).

At this point it is suggested that the offer be complete, but not signed (yet); and that it accompany a *Non-Exclusive Purchase Option (NEPO)* proposal, which is signed and includes a *Memorandum of Option* to be recorded in the public record (i.e., go to the county recorder's office and have it entered). The non-exclusive nature of the option means that the seller can leave the property on the market and sell it to anyone he/she would choose should a better offer be received…so long as you are given, say, a *10-day notice* of such offer. This way, if the notice is forthcoming, you still have ten days during which to complete all due-diligence and locate a buyer, tenant or land trust co-beneficiary. The true purpose of the NEPO is to buy time to arrange your ducks (as it were) prior to making a personal commitment to take responsibility for the property and commence making payments on it.

HOW MUCH DO YOU OFFER THE HOMEOWNER? When offering "full price with terms," you can determine a conservative value for the property, itemize every anticipated expense (*offset*), show your calculations to the owner and then offer to split the profits when the property is sold. Or…you may opt instead to itemize the expenses and pay the owner the remainder of the bottom line at the end of your holding period (from 3 to 10 years is what I recommend if your are planning to "hold").

In so doing, you will earn your profit by:

- Renegotiating the lien (loans, judgments, levies, etc.) amounts…e.g., contacting lien holders for discounts, extensions, redrafting, streamlining or forbearances
- Saving on repair estimates by doing some or all of the work yourself (your time is as valuable as anyone else's)
- Selling the property on your own without a Realtor® (even though broker fees were included in your calculations for offsets…as anticipated remarketing expenses)
- Keeping all of, or sharing in, the future appreciation over your holding period
- Keeping all of, or sharing in, the equity build-up from the loan's principal as the payments are made

- Charging a tenant/buyer a premium upfront for your consent to finance your newly acquired income property (his/her home purchase) for them
- A positive cash flow received from your tenant/buyer that is more than your own aggregate monthly obligation on the property

Still others (like myself, for instance) will make offers based on the bottom-line only, and negotiate from there upward (i.e., "I'll just bring your arrearages current, pay all your penalties and [silently] take over your loan responsibilities"). When they balk, or seem discouraged or want more money, personally, I am always willing to negotiate upward, assuming that any payment of money (my own) can be either–1) deferred until the end of the trust term, when the property is sold, or 2) paid by someone else (e.g., my incoming, soon-to-be identified, partner or tenant/buyer).

8. **After the offer has been accepted, contact lenders of record** for possible forbearances and/or discounting (i.e., senior liens holders will usually defer payments or work out a payment plan to avoid foreclosure; whereas junior lien holders will often sell out their 2nd and 3rd mortgages for pennies on the dollar in order to avoid losing *everything* should the foreclosure take place and wipe them out).
9. **Close the deal**, and then either
    - …do all refurbishment and repairs and sell; or
    - …immediately begin advertising for a "tenant buyer" who will cover all costs of refurbishment and closing with its Lease Option Fee, or by payment into a contingency fund in an *Equity Holding Land Trust™ arrangement* for which this book is designed to feature and tout. I.e., an up front amount can be charged of a tenant/buyer, which is perhaps much lower than a down payment would be, but sufficient to cover arrearages, escrow fees, a Reserve for contingencies, and maybe put a few thousand bucks in your britches pocket).

Your "Acquisition" or *"Purchase"* Agreement

When an owner decides to sell, all parties whose names appear on the mortgage contract must sign an "Equity Purchase" or "Real Estate Purchase and Sale" Agreement of some type (or an *Agreement to Acquire a Personal Property Interest in a Land Trust*…if you love the Equity Holding Trust™ scenario as much as I do, after learning about it).

It is, of course, wise to check with an attorney before signing any contract. But do make sure that the attorney you select is knowledgeable in real estate equity purchases and/or land trusts, should a land trust turn out to be your chosen transfer or holding device (I think it will be).

All investing experts agree that the terms of the agreement must be clearly stated in the contract, leaving nothing to verbal understanding (i.e., "Don't Make Me Think"). Your best defense against future problems is always the manner in which you present your evidence if you ever have to do so. Therefore, be certain that you have everything documented carefully, properly and completely.

A well-drafted purchase offer should include the following:

1. An *exit clause* that allows you to bow out of the deal if something is not as originally agreed upon, such as: undisclosed damages, title faults, code violations, unpaid utilities, etc. Note that common *"Weasel Clauses"* simply tend not to stand up in court (e.g., "…this offer is contingent upon approval of my partner," "…contingent upon approval of my attorney," "…contingent upon my warts healing up by COE," etc.)**.** However, one should always have a way out (an *exit strategy*) if all of the original expectations are not present at settlement time.
2. A statement that allows you to show the property at any time, to anyone you would choose (with advance notice to the homeowner, of course, if they are still living in the property).
3. A statement indicating that the property has to appraise at a certain value (optional, but usually considered prudent).
4. A statement that the property must be vacant, with all tenants and their possessions removed by a specified date and time.
5. An agreement between buyer and seller that the payoff and payments for the current loans will come to no more than a specific amount.
6. A statement indicating whom the respective payers of closing costs, reinstatement, etc., will be: and which costs each party will pay.
7. A statement indicating that the seller shall deed the property to the acquiring party (or to a soon-to-be-nominated land trust trustee) and authorize the acquiring party to have said deed recorded at the appropriate time.
8. A statement indicating that the acquiring party is free to resell or otherwise dispose of the property in any manner that is legal and not to the detriment of the borrower…at *or below* market value.
9. An agreement that the selling party will leave the premises in good condition and pay for any damage occurring after the contract has been agreed upon and signed

10. An understanding that the relinquishing party ("seller") will pay for any damages or repairs necessary, as may be *later discovered* by home inspection.

11. A statement indicating that any payout of costs associated with the transfer will be paid at the time of closing (i.e., upon final settlement by the closing official).

It is true that in virtually every county in the United States today, hundreds if not thousands of real estate foreclosures take place every month of every year, whether the market is "up," "down" or sideways…whether it is a *sellers market*, a *buyers market* or a *stagnant market*. This fact provides untold opportunities for the diligent creative real estate investor who would be willing to help him/herself by helping a defaulting property owner out of a painful situation. The concept is very simple: locate a property owner who can no longer afford to make his or her mortgage payments, take over the property, and make up the back payments and penalties. Then manage the property as a rental, or dispose of it for a profit as you see fit. In doing all of this, you may not only have saved the seller from certain disaster and destruction of his/her credit; but you will also have saved the lender from a mess as well. And, of course, you will have done a good thing for yourself in the process.

Simple. Right?

Well…the disturbing—but easily solvable—fact of the matter concerning taking over payments on someone else's mortgage is that there are some challenges.

First off, despite a common and pervasive belief to the contrary, lenders are not fond of being deceived by someone with whom they've entrusted hundreds of thousands of their dollars, even though they often tolerate it for a while in order to avoid the negative impact of taking back as a non-performing asset ("flooring" an REO…*Real Estate Owned* by the lender). In "flooring" non-income producing real estate, these properties end up on the pinker side of the lender's balance sheet (i.e., "in the red"). And this impediment to the lender's cash flow and salable stock value remains in place for all the days, weeks or months that might be required to repair, maintain and re-market the foreclosed-upon non-performing asset—the property being "floored" by the lender. Obviously, anything that negatively affects the lender's balance sheet is something the stockholders and investors do not like very much, as a bank's decreasing stock values don't instill a lot of confidence by other lenders, investors and depositors.

"So why," you might ask, "wouldn't any lender appreciate having someone assume their defaulted loans, if the back payments are being brought current and are being made on time?" The honest answer is that sometimes (maybe even much of the time) they *do* like it, and will even "close their eyes" after an unauthorized assumption has occurred (although they can't sanction doing something like that in advance). Such loan takeovers are wholly "unauthorized," and the bank must disallow any such intent by an unauthorized and unapproved payor if asked for their permission. AFTER the

transfer and payment stream has been reestablished, however, it is unlikely that *most* lenders would call their loans due and payable, assuming all payments were arriving on time and no other provisions of the original contract had been compromised.

More often than most intrepid subject-to investors realize, lenders are only silent and tolerant until they become flush again (wealthy and in charge) and until the winds of the national economy shift a bit in their favor. When that long anticipated shift takes does take place, and quick and easy profits are possible once again, lenders begin *dumping* multi-million-dollar blocks of loan portfolios by selling them to other investment institutions at very profitable discounts. Lenders regularly make these portfolio transfers in order to *roll* (replace) their most profitable, well-seasoned, long-term receivables with immediately usable cash to purchase more loans at higher interest rates. The whole idea is to season these new loans to a point of re-salability, roll them out to their investors, and begin again.

Now, honestly, ask yourself: "If I were a lender or the responsible party in a stockholder-supported banking institution, would I want anything happening to my loan portfolio that might jeopardize my sale to another financial institution of, say fifteen, twenty or thirty-million dollar blocks of home loans?" The acquiring entities tend to look at a block of loans a little like you or I would look at a basket of apples at a roadside stand. So think about it…what do *you* do when you look at a basket appearing to be heaped with ripe, fresh and crunchy red apples, but find that it's only the top layer that is ripe and fresh, the lower layers being comprised of a few (maybe only one or two) smaller apples with bruises and worm-holes? Do you just sort out the good ones and leave the rest? Or, might you more likely reject the entire basket in favor of moving on to another fruit stand?

When purchased in bulk, loans work pretty much the same as apples do. One or two bad or misrepresented samples and the whole batch can be "kicked back." This means that lenders must exert their best efforts in assuring that the loans they are selling as "Grade 'AA' Paper" are just that. Therefore, assuring that the paper is top quality involves running checks on all the titles, and culling-out poor performers, lower yields, near-terms (retiring) loans and…***unapproved and unauthorized title transfers.*** All of this brings the due-on-sale clause into clearer focus: it therefore becomes something to be concerned about, if not feared, irrespective of the words of certain gurus, whose books and tapes depend upon your willingness to chance what a bank "might" or might not do should they feel like doing it, or have an incentive to do it.

Okay, how can we work foreclosures safely without *ticking off* a lender? The best way I know of is to silently bring all arrearages current and take over the borrower's payments and contractual responsibilities without a "sale" ever taking place, without putting the property's title into our own name, and without alerting the lender and/or invoking its wrath in the first place.

In my opinion, the ideal thing to do is:

> Rather than "buying" the property per sé, consider buying only an interest in the inter vivos land trust that owns the property; you would set up this trust for the seller in order to shield the property's title and to accomplish your (and the seller's) objectives. In other words, you can approach the defaulting homeowner with an offer to bring all of his/her arrearages current, if they will but place the property into a title-holding land trust, move out of it, and assign a portion of the trust's beneficiary interest to you. Then, upon vesting the title with the nominated trustee in full compliance with federal lending regulations (specifically *12 USC 1701-j-3*) no due-on-sale violation or compromise has occurred.[2]

At this point**,** you are free to deal with the trust property itself in any manner you might choose. You can lease it out. You can lease-option it. You can offer it for sale. You can equity share it with a third (resident) beneficiary who will live in it and make all the payments, in exchange for income tax benefits and a share in future profits. Or you can sell it under a "Contingent Sale" arrangement, wherein your buyer agrees to leave the title in the name of the trustee until ready to make a down payment and obtain a new purchase-money loan, with which to buy the property from the trustee.

"Unconscionable Advantage" and the Prevailing Attitude

Some laws will apply, should you opt to work residential pre-foreclosures. Many states are now leaning toward the lead established by California's Civil Code regulations *(i.e., 1695-1695-17 and 2945-2945.11)* by instituting or tightening up on regulations designed to protect homeowners in foreclosure from being abused. The intent of this legislation is to protect stressed-out homeowners against the many unscrupulous opportunists out there who would deign to exploit the helpless in their time of duress and confusion. Obviously, it is not a difficult trick at all to get the upper hand on someone being beaten up and buffeted from every angle by employment worries, financial, legal and perhaps serious personal or health problems ('might'a even been there m'self a time 'er two). People in these distressed circumstances often will unwittingly give away tens–if not hundreds–of thousands of dollars worth of assets to the first smooth-talking con artist who offers a quick fix and maybe even a chance for the homeowner to hang on to their property a while longer.

In my opinion, the sleaziest trick of all (and it's done every day) is to loan someone money to cure a default with a high interest rate second mortgage on the

[2] This is not to say that a lender couldn't *perceive of* the transfer being a violation; however, the fact is that the federal law ("Garn-St. Germain") specifically exempts transfer into inter vivos trusts from being considered due-on-sale violations by institutional lenders.

property, knowing all along that the borrower most likely won't be able to service the original mortgage payments (that's why he's in default in the first place). And, therefore, won't be able to handle the burden of the new second with its exorbitant interest either. In this kind of arrangement, at the first sign of imminent default the homeowner is foreclosed upon by the *bailout specialist* and booted off the property. Obviously, that party then keeps all of the profits that were effectively "stolen" from the deceived and embittered former homeowner; the "lender" then sells the property for much more than is owed on it...the devious intent all along.

Another shifty variation (in my opinion) of that same theme is where a private investor cures the homeowner's default, requiring no payments for a year but that the entire loan be retired in one lump sum at the end of that year with a handsome built-in profit (e.g., 18 to 20 percent yields are not at all uncommon with these wing nuts). However, should the distressed homeowner be unable to arrange for refinancing (which they usually cannot within the time allotted), that's even better for the so-called "investor." The property and all of its equity belongs to him, while the naïve homeowner and his family are on the street eating pork and beans with a plastic spoon, vowing to get better counseling next time.

There is a distinct need for protective legislation—no argument there. However, why detonate an atomic bomb just to get rid a few cockroaches? In essence, barring specific exceptions, both pertinent California Code Sections (CC §§1695 and 2045) allow for a complete rescission and cancellation of the "bailout" arrangement at any time within two years following its concoction *without the necessity of a refund of moneys to the "bailer-outer."* That may be all right within itself; but why try to push (or scare) away honest investors who would deal fairly with unfortunate folks who truly do need their help? That question is mostly pertinent to California: other states seem to have more legislative brains, though perhaps fewer consumer protections. Even in California there are good rules–and exceptions to them–within which we can work and earn a living in the pre-foreclosure business…we simply must take care to: *Show up; Pay Attention; Be Honest' and Remain Unassociated with the End-Result*…and seek to take advantage of no one.

Let's take look at some of the referred-to *exceptions:*

1. Anyone who acquires a property from a party in foreclosure and intends to reside in the property does not fall under the civil code restrictions. Note: *Saying* you originally "intended to live in the property, but that you changed your mind" won't cut it, unless you're willing to go to a whole lot of trouble on just one property. In court you will be required to show that you changed your address with the post office, the Department of Motor Vehicles, the police department, the IRS, the Voting Registrar, the newspaper and *Cosmopolitan, Hustler Playboy (Girl)* and *Penthouse*, etc. If you

have children, and their home address and school district didn't change as well…you lose.

2. Anyone who acquires the property by a *Deed in Lieu of Foreclosure*, relative to a voluntary lien or encumbrance is excluded; assuming such *deed in lieu* cannot be disproved to have existed within a reasonable period before the foreclosure notice to capitalize on the curing of a mortgage in default. I know what you're thinking: "Loan 'em a dollar then foreclose for non-payment and take a deed in lieu in order to perfect your ownership." I don't know what the "reasonable time" is either, but you'd lose in court if you couldn't…

    - … show a payment history
    - …show a loan for a reasonable amount with a payment history
    - …prove the loan was created within six months of the assumption of ownership
    - …prove the loan had been created shortly before or *after* the filing of the public notice of the default or pending foreclosure. "Sure…just back-date the notary's acknowledgement," right? Not a problem…assuming the notary has a desire to spend some time in jail, and you don't mind having put them there.

3. Anyone buying the property at a trustee sale or foreclosure auction is excluded.
4. Anyone buying at a sale authorized by statute is excluded.
5. Anyone who acquires the property by a judgment issued in a court of law is excluded.
6. Also excluded is anyone buying the property from one who is a blood relative of the party in foreclosure. You might get around this rule by having your sister marry the guy in foreclosure. That might do it, assuming the availability of your sister—and, in my own sister's case—how discriminating the guy in foreclosure might be. If he needs thick glasses badly and can't afford to buy a pair, my sister might be acceptable. *(No…I'm just kidding! I love my sister…but then again, so could just about anyone else for a couple bucks*[3]*)*

[3] I really don't have a sister. I'm and only-child, which is probably the basis of why I'd go to about any length for a bad joke. Sorry 'bout that.

Might an unwritten *exception Number Seven* come into play here? *What if* no one had taken "unconscionable advantage" of the defaulted party (the homeowner in foreclosure)? *What if* all dealings were at full Fair Market Value? *What if* we don't take *any* of the homeowner's equity? And *what if* the property is not in foreclosure when we exercise our control, remedies and profit potential in the first place? Are there still ways to make good money, working occupied residential foreclosures? Well, I think so! Think about the following in terms of a so-called "Foreclosure Bail-Out":

Whether in default or not, couldn't virtually any homeowner transfer his or her own property's legal and equitable ownership to a trustee in a bona fide inter vivos trust, and then lease the property from the trust? Wouldn't they then be leasing from a trustee as the owner of the property (i.e., therein becoming the lessee of a property they no longer own…a *lease-back*)? The answer is "Yes"…so long as income tax benefits are not altered or enhanced in the process.[4] As we've discussed in other chapters, federal lending regulations fully authorize the creation of inter vivos trusts of all types, requiring only that the borrower creating such a trust remain "A" beneficiary (a very important indefinite article, that *"a"*). Federal regulations also authorize the leasing of the property to anyone (not excluding the party creating the trust) assuming that such lease would continue in effect for no more than three years and that it would not contain, be accompanied by, or involve an *Option to Purchase*.

Therefore, couldn't a benefactor (i.e., *you*, the investor) agree to provide the distressed homeowner with the amount required to bring his/her loan current, if he/she will then have the property deeded to a land trust with a neutral third party trustee? Couldn't this trustee then be directed to lease the property back to the homeowner (i.e., the *former homeowner:* since in a land trust, it is the trustee who is the sole owner of the trust property)?

In so doing, an agreement among the co-beneficiaries would specify that in the future the benefactor/investor (*investor co-beneficiary*) would receive a full refund of the "contribution to the trust (i.e., the cash that brought the loan current)". That would accompany a reasonable percentage of the net profits derived upon sale or refinance of the property at the trust's termination and the end of the related lease agreement. Perhaps the investor beneficiary may even have been receiving a positive cash flow along the way.[5] Such increased monthly payment obligation on behalf of the tenant beneficiary would hardly be prudent for, say, twelve to eighteen months, after the problem had been completely eliminated and the tenant beneficiary's financial problems had been rectified (or at least have had a chance to have been rectified).

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[4] Enhancing one's income tax benefits, or an attempt to avoid income taxation, would fall under the "Doctrine of Stepped Transactions," nullifying any such advantage. In the scenario described here, one's placing his/her home into a land trust is a prudent estate planning move, and does not alter income tax liability or benefit; nor does doing so negatively affect the lender's right or ability to foreclose for breach of contract.

[5] Though there is no particular law against collecting a positive cash flow from the inception of such an arrangement, the courts, quite likely would not be real lenient with an investor who had been accused of taking an unconscionable advantage, if higher payments than the defaulted loan payments had become mandatory from the start.

The question that should arise at this point is: "Yeah, but wouldn't the resident party still be seen as having been deprived of his equity if he defaulted again and got evicted?" The answer would be affirmative if that were all there was to it. However, that's not what happens in an Equity Holding Trust arrangement…assuming the process is carried out properly.

It works (*should work*) like this: the Beneficiary Agreement that is a part of the Equity Holding Trust documentation structure states that: *In the event of an eviction for cause of any tenant who is also a beneficiary in the trust, the eviction within itself shall serve as constructive notice to the non-defaulting beneficiary/ies of the defaulting party's intent to sell its beneficiary interest to the remaining (non-defaulting) beneficiary/ies…at full Fair Market Value.*

At this point, such offering price by the acquiring (non-defaulting) parties could be just the loan amount plus a dollar or two. But should the defaulting party challenge the offer as being insufficient, the challenger must prove it within thirty days of constructive receipt of the offer. Parties mutually agree by contract that this *proof (of more money owned)* is to be procured by, and provided at the sole expense of, the defaulting party if the amount offered is deemed insufficient. And as per the contract, such proof must be by a full *M.A.I.* (*Member American Appraisal Institute) Appraisal.*[6] Further, any such amount verified by the appraisal to be owed to the defaulting party is to be paid--*less* a reasonable default fee that is specified within the Beneficiary Agreement (e.g., $2,000.00 is standard); and less all past-due payment amounts, late fees, other penalties, unpaid charges or special assessments. The standard Beneficiary Agreement stipulates that any such amount proven to be owed to the defaulting beneficiary is to be paid…<u>in the form of an *unsecured* promissory note, which note shall be retired only upon disposition of the property at the trust's termination.</u>

Although it may seem to some that the default provision described here is weighted in favor of the investor beneficiary; it actually is not. It is this same provision that protects the defaulting party from having its equity taken away simply because a payment was missed or because of some other dispute or abrogation of the Occupancy Agreement (damage, neglect, etc.). Obviously, were one to face losing a large sum of money due to missing a lease payment or two, it would be well worth the cost to arrange for payment of the Default Fee, to bring the payments current and rightfully claim the amount owed. However, the same clause prevents a defaulting party from maliciously and unlawfully detaining the property under the guise of having an "equitable interest ('claim of equity')" in it in order to forestall eviction, buy time and free rent. Recall that such "equitable interest (equitable title)" was relinquished to the trustee at the inception of the trust. That is the unique nature of the land trust and one of the primary reasons it was used.

Need a clearer understanding of this? Let's say that in order to raise money (for *any* purpose, including getting his home out of foreclosure), a defaulting homeowner

[6] An MAI Appraisal in analogous to an audited financial statement: warranted as accurate, very precise and quite costly.

places his/her property into a bona fide title-holding land trust…thereby giving up 100% of the legal *and* equitable title ownership to a third-party (the trustee nominee… that's what land trusts do). An escrow is then opened to sell or assign a partial personal property beneficiary interest in the trust, wherein an investor (you) brings in enough money to acquire the beneficiary interest in the land trust in anticipation of future profits (i.e., analogous to buying shares in a corporation that wishes to raise money to get out of debt). Obviously, the sum required for your participation will be sufficient to cover all current arrearages, reinstatement fees and penalties.

The former homeowner (now the *settlor beneficiary* in the trust, having relinquished ownership of the property to the trustee) names you as his/her co-beneficiary, specifying that some percentage of beneficiary interest will be held by you (e.g., you may be given from 10% to 90%). Upon closing, the former homeowner (now beneficiary of the trust and no longer in default) executes a "triple-net" lease agreement[7] between himself and the trust. At this point as the *triple-net lessee* he/she assumes the full responsibility for all repairs and maintenance (the" burden of ownership"). In this procedure, the formerly defaulting borrower has not *sold* the property; and still has full income tax benefits, future appreciation potential, equity build-up from principal reduction, and *some*—if not *all*—of his/her equity has been salvaged and shielded.

The homeowner, by accepting an investor as a co-beneficiary in the trust, has covered all arrearages, penalties and fees and reinstated the loan. But note carefully that the property has not been *sold*; the owner's equity is still intact; and from this point on, any default by the former owner (who is now a lessee in the trust property) will result in a simple eviction. And his/her dispossession from the trust will be at full *Fair Market Value* vs. being forfeited or relinquished under duress. Voila! No sale. No deception. No "unconscionable advantage." And no dealing with anyone at less than Fair Market Value.

Of equal importance, after the establishment of the co-beneficiary land trust, the property itself is now very effectively shielded from the impact of either beneficiary's Probate, lawsuits, bankruptcies, marital dispute actions, creditor claims, state and/or federal tax liens and other legal proceedings against the beneficiaries. In addition (the list of benefits goes on), the same hazard insurance and title insurance remain in effect. Since no sale or unauthorized transfer has taken place, there is no compromise of, or threat by, the lender's skulking little due-on-sale clause: i.e., *1) the borrower has transferred his property to an authorized inter vivos trust; 2) the borrower is, and shall remain, a beneficiary in the trust; 3) the trust is revocable; and 4) the trust itself does*

[7] The term *triple-net lease* refers to a leasehold wherein the lessee accepts all costs, risks, burdens and responsibilities that an "owner" would. For example, a tenant in a triple-net lease assumes the full "burden of ownership" by paying the mortgage's loan principal and interest, all property tax, insurance, and any other incidental recurring costs (e.g., trustee fees, homeowner's association dues, special assessments, etc.). This is one of the tests under IRC §163(h)4(D) that entitles a land trust beneficiary to income tax deductions for mortgage interest and property tax.

not relate to the granting of occupancy rights to anyone (that's done by a separate lease agreement). [In re. Garn St. Germain 12 USC 1701-j-3]

AUTHOR'S COMMENT: Zis cool, or what?

Without a doubt, this same concept works equally well when the defaulting party has no intention or desire to remain in the property. The only difference? *You, the investor,* become the lessee in the property, leasing from the trust…with the irrevocable right to sub-lease and/or sell your interest to someone else. You can assign all or a portion of it to a third [resident] co-beneficiary who would cover all your costs and live in the property. This co-beneficiary remains responsible for mortgage payments, repairs and maintenance—in exchange for income-tax benefits and/or a share in future profits, mortgage principal reduction and pride-of-ownership.

Finding These Defaulting Sellers

Every notification of pending foreclosure in your county, and every county in the country for that matter, is recorded in the public record. It's yours for the copying…for free…at the office of the County Registrar (Recorder). And further, in virtually every region in the country. Either a foreclosure recording service or a countywide legal publication service publishes lists of pre-foreclosures as they are recorded in the public record by lenders who are no longer receiving their mortgage payments.

Simultaneous with the filing of a pre-foreclosure notice, a letter sent to the borrower by the lender indicates that unless all payments are brought current within the allotted time, the property (their security for their loan) will be sold at auction on a specific date in the near future. This can be up to a year in some cases, and as little as 3 weeks in others. [See Chapter 22 for a by-state reference]

With *most* lenders, should all arrearages be brought current before the auction date, the loan can be reinstated and continue as if nothing ever happened. However, it is very important to note that a lender is not obligated to reinstate a defaulted loan after the statutory reinstatement period has lapsed.[8] Instead, the lender can opt to refuse to accept further payment, or can apply any monies received to a reduction of the loan's principal balance, and just continue with the scheduled auction of the property. Therefore, for the sake of prudence, always require that the borrower obtain a letter from the lender stating that satisfaction of the default will, in fact, reinstate the loan.

> As a side note: A few years back, we (my wife and I) sent a cashier's check to Countrywide Funding to cure a default of some 20 past-due payments on a $500,000 property we had acquired in Hollywood, California. The auction date was 3-4 weeks away at the time. Neglecting to have obtained a "reinstatement quote," we sent in the money. Out of

[8] This period varies from state to state: 3 months in California; 3 weeks in Alabama, Texas, Mississippi; Missouri, and So. Carolina; 1 month in Georgia; 45-60 days in Colorado; 6 weeks in Washington DC; a year or more in other states…for your state, see the By-State Reference Chart in Chapter 22.

> the goodness of their hearts, Countrywide graciously applied the entire $35,000 to the loan principal and proceeded with the foreclosure as if I were some *Doofus* fresh off a boatload of dumb. Three years and many thousands of dollars later, we finally prevailed in our action for reinstatement. They settled with us, because it was deemed that our possession of the property was legal, we had acted in good faith and that we'd been bullied and screwed-around-with quite long enough. I now have a new respect for the power of the salaried $37,437 per-year head clerk in the foreclosure department (not a *higher* respect necessarily, but certainly a 'new' one*).*

A common problem with working foreclosures in any area: those confronted with a *notice of default* or *lis pendens,* informing them of the impending auction sale, too often tend to go into immediate depression and denial. In the beginning, most of these folks seem to have difficulty perceiving their predicament as real. (Take my house away from me? You crazy? I'm an American citizen. You can't do that! It's where I live! They often think that the problem will cure itself somehow: "Manna can still drop from Heaven any day now." "We can just sell and be rid of it." "The plant will be hiring again soon." "If worse comes to worse, we'll just dig in until they send the artillery"… and so on.

Upon being confronted with the penalties of a breach of a mortgage contract, a defaulting homeowner goes through five phases and it's important to know them:

1. Denial;
2. Formulation of a plan that either works or doesn't and leaves them right where they are;
3. Lingering but waning hope;
4. Acknowledgment of all their tried, but thwarted, efforts; and…
5. That final rude awakening to the reality of the situation.

We do, of course, hope that all involved in a foreclosure predicament can work out <u>their</u> problems to <u>their</u> best advantage, whether the solution involves us or not. However, for those for whom we are the best solution, we can provide some excellent options. Think about it…how many of our competitors are honestly out to help these folks, versus exploiting them and compounding and capitalizing on their problems? That's what Coyotes do…"Oh good, there's an injured rabbit, let's all jump on it and eat it. Why prey on healthy stuff? That's way too much like work."

For example (some options at our disposal when dealing with foreclosures):

- We can purchase the property (maybe even at a good discount) from the owner by obtaining a new loan and taking it off his/her hands
- We can wait out the process and buy the property at auction
- We can approach the lender about acquiring the property by a loan assumption prior to the auction date
- We might even consider paying a blood relative of the defaulting party to buy the property, making us a partner in it: or allowing us to take over the loan payments without the bank's knowledge or consent, and then selling or lease-optioning the property back to the original owner
- We could wait until the lender takes the property in, and buy it as an "REO"[9] from them (involves paying cash or making a down payment, qualifying and getting a new mortgage loan)
- AND certainly…we can loan the defaulting parties enough money to cure their default and hope they never change their minds about paying us back. (They'd have two years in which to do so, should they so choose after the crisis has passed…in California anyway.) There are some real horror stories about good people who tried to help someone in foreclosure, and ended up being sued. In many of these cases they lost not only their profit, but also their entire investment plus thousands more in expenses on the property and court costs

Let's now take a look at the following not-so-atypical California case *(Onofrio vs. Rice, 1990*):

The *Real Deal* – Onofrio Vs. Rice
California Superior Court, 1990

On one Friday morning in 1990, after months of non-payment to her mortgage company, a Ms. Evelyn Onofrio had run out of any real options to save her home from foreclosure. The auction date was set for that same day. She had been unable to qualify for a loan to cure the delinquencies on her first and second mortgages; her homeowners' association assessments were severely delinquent, and the Association was threatening foreclosure as well. She had very little equity in the home; she had already filed bankruptcy; AND the creditors had already obtained their relief from the automatic stay of action.

On the morning of the foreclosure auction, a man by the name of Rice, a licensed real estate broker and general all-round "good guy," was on his way

[9] REO: "Real Estate Owned," a term used by lender's when they take back a foreclosed upon property.

to inspect the properties that he had planned to bid on that afternoon at the foreclosure sale. When he arrived at this particular property, a woman stood on the porch. As Mr. Rice approached her, she introduced herself as Ms. Onofrio. At that point, Mr. Rice asked if she knew that the house was set for foreclosure sale that afternoon, and informed her that he was interested in looking inside the house because he might bid on it. She told him flatly that he could not enter the house, and besides that, there was not going to be a foreclosure sale that afternoon or on any other afternoon.

The two met again that afternoon before the courthouse steps, when Mrs. Onofrio and another woman gave the auctioneer a written request for a 24-hour postponement of the sale *(at the time, the Ca. Civil Code still allowed for this procedure: it no longer does)*. So, the sale was indeed postponed until the following week. But upon receiving the postponement Onofrio approached Mr. Rice and asked for one of his business cards. The card identified him as a licensed real estate broker and a real estate investor. No more was said.

On the following morning Mr. Rice received a telephone call from Ms. Onofrio, whereupon he learned that the other woman at the sale was a so-called mortgage consultant trying to find a loan that would avert the foreclosure. However, Ms. Onofrio indicated that she had lost all confidence in the woman and asked Mr. Rice if he might be able to help her with a short-term "bridge loan" to allow her the time necessary to finalize a new mortgage, for which she supposedly had already been approved. Mr. Rice was told that she only needed $12,000 to bring all arrearages current, and that his loan to her would need to be for 90 days *at most*.

Mr. Rice agreed to make the loan at a very reasonable interest rate and told Ms. Onofrio that she could take up to a year to repay him if she wished. Ms. Onofrio refused the longer term, insisting that three months would be more than adequate. The two then met at the property on that same day, and then again the following day (Sunday) in order to further discusses terms and settle the loan.

The next day, Mr. Rice contacted Ms. Onofrio's mortgage company and in one telephone conversation was able to obtain a further postponement of the foreclosure, so that he'd have time to get all of his paperwork in order: he needed time to get a reinstatement quote from the second lender; to obtain a reinstatement quote from the homeowners' association; and to assist Ms. Onofrio with an appeal to the bankruptcy court to allow her to further encumber the property with a third loan. Within the week, the loan to Mr. Onofrio was funded, although it required a total outlay of $16,000, rather than the $12,000 originally requested and agreed upon. Mr. Rice was happy to oblige.

Then for the next three months, the three months of the agreement, there was no attempt by Onofrio to make a single payment on the loan. After that, then came several more months of silent unconcern and insolence in refusing to return calls.

At last, eleven months later, toward the end of the year, and the end of Mr. Rice's patience, and following enumerable attempts, he was still unable to reach Ms. Onofrio. So he wrote her urging her to begin work on her refinancing, and to let him know how things were coming along. By this time, he had been forced to advance a year's worth of payments to the first and second lenders, and to the homeowner's association, in order to stave off their foreclosures (while Onofrio remain in the property rent free and expense free). Then he waited. Then he wrote some more letters. Then he waited some more. Then, having no other options, he finally initiated foreclosure procedures on his note.

Mr. Rice's foreclosure went well and resulted in his obtaining the property's title in his own name: following which, all that remained to be done was going through the eviction process to remove Ms. Onofrio from the property. Mr. Rice presumed it was all just about over with (except for the fat lady's singing, of course), and maybe even worth all the effort and expense after all. However, unbeknownst to him 'the Schlitz was about to hit the fan… with gusto' (as an old brewer's phrase goes).

Upon receiving the eviction notice, poor Ms. Onofrio had no choice but to seek out the assistance of a true "rogue alligator" attorney who filed a Superior Court action, charging:

> EIGHT separate violations of Regulation Z (12CFR, 226.1 et. seq.);
>
> SEVEN separate violations of the California Business and Professions Code (B&PC Sec. 10231.1 et. seq.) relating to duties of brokers when making loans, and
>
> ONE violation of state and federal usury laws

Onofrio and her attorney (whom she could now easily afford, since she had no house payments to pay) demanded of Mr. Rice that he just *give up* and walk away from his loan and all of the payment he'd made on Onofrio's behalf, because of all the "violations" alleged in the lawsuit and the likelihood of his being 'eaten alive' in the course of events that would surely ensue.

After refusing the kind offer, heated litigation was unleashed against Mr. Rice, during which he doggedly continued making all the payments on the property (1st, 2nd and HOA) and paying his own attorney…through the proverbial 'nose.' All the while, the house remained comfortably occupied by Ms. (Rent-Free) Onofrio.

As the preliminaries progressed, the entire case was, at one point scheduled to be set-aside on a summary judgment. The court had dismissed the "Regulation-Z" causes of action and the claims of usury violation. At this point, it appeared that the court would also terminate the remaining causes of action, as well. However, out of nowhere, came a factual question about Mr. Rice's status

in the transaction, and because of that question trial was set.

By the time the trial date rolled around, Mr. Rice's $16,000 had grown to an investment of over $110,000, and it had been three years since the loan was made. Moreover: let's take a wild-guess at who was *still* living rent-free in the property. The court flatly refused to require Ms. Onofrio to pay a single dime for her occupancy.

Enter the Abstruse California
Foreclosure Consultant Law

A "foreclosure consultant" is any person who makes any solicitation, representation, or offer, to any owner in foreclosure relative to performing (for compensation), or purporting to perform, any of the following:

- Stopping or postponing the foreclosure sale *(Does this include one's Priest, Minister or Rabbi?*
- Obtaining any forbearance by any beneficiary of record. *(Does that include the banker him or herself?)*
- Assisting the owner to exercise or obtain the right of reinstatement *(my wife can't help me get my loan reinstated)*
- Obtaining any extension of the reinstatement period *(I can't call my mother's blind neighbor's lender and try to help her out?)*
- Assisting the owner in obtaining a loan or advance of funds *(So if I co-sign for my son to borrow money to bring his bills current, I'm in trouble?)*
- Avoiding impairment of the owner's credit *(So if a credit repair company takes on a new customer, they first have to make sure his house payments are current?)*
- Saving the owner's residence from foreclosure by secured parties

From these admonitions, it would seem that Mr. Rice did set out to qualify under as many of them as possible: yet all he accomplished was having done the necessary work to make a loan. Consider for a moment, if you would, the activity that led up to a *ruinous damage award* (for Onofrio) was nothing more than the usual broker activity in trying to close a loan, and yet it qualifies under this statute as a violation of foreclosure consultant regulations.

There are some exceptions to the seemingly all-inclusive definition of a *foreclosure consultant*. For example, the *California Civil Code Section 2945.1(b)* states that attorneys (surprise!) are not foreclosure consultants if they are performing legal services for persons in foreclosure. Also excluded are real estate licensees, IF they are making "direct loans" or when the actions of the licensed individual require a license or do legitimately entitle them to compensation relating to the sale of the residence or the arranging of a loan. The licensee in such a case may not receive or charge for any compensation until all of its duties have been fully performed...such compensation also may not include the licensee's taking any form of title interest in the residence *directly from the owner in default*.

The Moral of the Story? Whether you are a broker or an investor, get good legal counsel and know the law (and/or local prevailing attitudes of the courts) before getting involved.

Seemingly, our Mr. Rice in this story came under all the right exceptions. The court, however, made every effort to bring him within the definition of a foreclosure consultant. He learned through all of this that he should have assigned the loan and the security instrument to another lender in order to avoid the "direct loan" exception. He should also have been familiar with the law and given the required disclosure (Re. CA. CC §2945.3). Since he was not familiar enough with the law, he obviously did not review the section in question. Nevertheless, even if Rice had known of the law, it is not clear that he could have determined that his activities would not have been exempt.

At trial, as an expert witness for the defense, a Professor Roger Bernhardt testified that he had reviewed the statutes in question and he found them virtually incomprehensible, to not only the nonprofessional, but to the academic community as well. Sigh…

Working Pre-Foreclosures…Let's Run Through the Steps Again!

As an adjunct to the steps and cursory direction provided at the beginning of this chapter, let's take another look at the concept of working pre-foreclosures. The steps are simple enough, but may seem somewhat time-consuming in the beginning. However, if you want to pursue one of the best courses of action, and one of least resistance overall, pre-foreclosures may well be your ticket. By doing it the "Gatten" way, they call *YOU* and try to sell *YOU* their bill of goods, rather than it being the other way.

1. **PUBLIC RECORDS.** Carefully peruse your pre-foreclosure list…the one you subscribe to, or the one you compile yourself each Monday morning down at the Office of Public Records at the County Court House. Note that there are also pre-foreclosure lists available online for a fee (e.g., www.foreclosure.com; www.Beforeclsoures.com and www.Land Partners.com, to name a few).

EXAMPLE

Address:	7390 El Verano Dr.	**Buena Park**	90620	**TG**	767 H3	**No. Ex**	0
Trustor:	Dorothy J. & Angelo Marquez		**Use:** Res	**Rms:** 6+3+1		**Stories**	1
Owner:	Same	**Sq Ft:. 976**	**Lot:** 6,000	**Yr blt: 1976**			
Beneficiary:	Countrywide	714 4812 9121	**Tx Val.:** $123,210	**Tx. Yr:** 1986			
Legal:	Lot 87, Tract 2017	**WOD**	00-302469	**Purchased:** 3/21/92			
APN:	136 154 10	**Tax ID:** 98-112615		**Scheduled Sale Date**	08/21/01		
Loan No.	107330497	**Default Amt:**	$5,404	**As of:**	4/07/01	**Since:**	04/01/01

2. **CHOOSE THE HOMEOWNERS YOU WANT TO MAIL TO, THEN:** A) Upon checking scheduled foreclosure auction dates, seek out those that are far enough in the future to give you time to wade through the homeowner's denial phase but still have time to consummate the transaction in time to beat the auction date. B) If you are limiting your mailings, organize them by date-of-purchase. (The oldest dates are best, as principal reduces fastest on older loans and the properties are likely to have some decent equity.)

3. **YOUR MAILINGS.** Next, complete five separate mailers to go out to each listed owner in default at weekly intervals (or every 3-4 days in states with short window periods: e.g., Texas, Virginia, etc.). For example, send post cards for the first two mailings, and then send three follow-up letters following the post cards. We suggest weekly mailings in those states where the standard foreclosure period (time from notice of default to the auction date) will allow it, and bi-weekly mailings in areas which provide far fewer days between the posting of the Notice of Default in the public record and the Auction date: such as, say Texas, Utah, So. Dakota, W. Virginia, etc.*

* For a by-state list of prescribed default limits, see the appendix in Chapter 22

The concept for the multiple mailings is obviously for name recognition, but it also helps in circumventing that period of "denial" that besets most

defaulting mortgagors in the beginning: *"I just know God is going to handle this for me, and bushels of money will be dropping from Heaven any moment now."* Perhaps the foreclosure is *God's doing* in the first place. He may simply have decided that despite all the prayers and good intentions, since they couldn't pay their bills anymore, this might be as good a time as any for them to cut their losses, get some free rent, and get into something more affordable.

SUGGESTED FIRST MAILING–A POST CARD

Dear Mr. and Mrs. Marquez,

Please call me.

I Buy Homes **Full Price**, **All Cash** or Terms…Any Condition Physical or Financial!

- Foreclosures - OK
- Bankruptcy - OK
- Large Arrearages OK
- Fast Close
- No house too rundown or ugly

Respectfully,
Bob Smith, investor

Call my private line: (818) 831 9912

SUGGESTED SECOND MAILING - POST CARD

Dear Mr. and Mrs. Marquez,

This my **SECOND ATTEMPT** to get your attention relative to buying your home. PLEASE note that as a real estate investor in your area, I do Buy Homes for Full Price: all cash or on your terms…the current condition of the home or the loan are unimportant.

- Foreclosures - OK
- Bankruptcy - OK
- Fast Close
- No house too rundown, ugly or in arrears

Respectfully,
Bob Smith, investor

Call my private line: (818) 831 9912

SUGGESTED THIRD MAILING (The First Letter)

November 1, 20XX

Bob Smith, investor
123 Conifer Ave.
Northridge, California 19326

Angelo and Dorothy Marquez
7390 El Verano Drive
Buena Park, California 90620

Dear Mr. and Mrs. Marquez,

This is my THIRD attempt to contact you with regard to (hopefully) acquiring your property at 7390 El Verano Drive, should you be willing to sell. As you are aware, public county records list the mortgage loan on the property as being in default. Should this be the case, I can very possibly be of valuable service to you.

Please understand that I am not an opportunist seeking to capitalize on your current situation. I am a private investor, fully willing to discuss acquiring your property at full price, with all cash, or on terms suitable to both of us. Our prompt payment record will, over time, serve to restore your credit record with your lender as well.

Please do call me at your earliest convenience.

Respectfully,
Bob Smith, investor
Private line: (818) 831 9912

SUGGESTED FOURTH MAILING (The Second Letter)

November 8, 20XX

Bob Smith, Private Investor
123 Conifer Ave.
Northridge, California 19326

Angelo and Dorothy Marquez
7390 El Verano Drive
Buena Park, California 90620

Dear Mr. and Mrs. Marquez,

This is now my FOURTH attempt to reach you concerning the El Verano Drive property. If you have found a buyer for your property, or have made other arrangements, please disregard this correspondence. Otherwise allow me to re-state my sincere objective with regard to the property.

As a private investor, specializing in foreclosure properties, I am most interested in paying you full value for your property (i.e., less costs of transfer, repairs, refurbishment, etc.) Once again, please understand that because of the entry in the public record concerning the mortgage default, you are probably 'besieged' by many trying to "steal" your house. I am not one of those, and I do not work that way. I am willing to buy your property for full value, perhaps even all cash at the right price, or on suitable terms (the 'terms' option may allow for greater benefit on your part: higher selling price, reestablishment of your credit with your mortgage lender, etc.).

Please call me. I can be of service to you.

Respectfully,
Bob Smith, investor
Private line: (818) 831 9912

SUGGESTED FIFTH MAILING (The Third Letter)

November 15, 20XX

Bob Smith, Pvt. investor
123 Conifer Ave.
Northridge, California 19326

Angelo and Dorothy Marquez
7390 El Verano Drive
Buena Park, California 90620

Dear Mr. and Mrs. Marquez,

This is my FIFTH AND FINAL attempt to discuss your property, recorded in the public records as being in pre-foreclosure. Once, again…should you have found a buyer or made other arrangements regarding your property, please disregard this letter. However, as I mentioned in all my previous letters, should you have indeed exhausted other options and now find that you are ready to sell, you need but call me at (818) 610-8801.

A call to my private number will take no more than a few minutes, and our next step will be to meet at the property. I will then need your authorization to contact your lender for appropriate verifications of the amount needed to bring your loan current. You would then execute an Option Agreement with me for from 4 to 6 weeks (to give me time to check the clarity of title, verify loan and tax data, charges, potential for governmental ordinance compliance, etc.). Upon satisfactory verification of all the information (usually within a few days), I will arrange to pay you the agreed-upon price for the property and take over 100% of all of the responsibilities relative to it. From the time of our option agreement to my actual purchase, there will be no time that you could not change your mind, should a better alternative present itself in the interim.

Mr. and Mrs. Marquez, I so hope you call me this time. I truly may be your solution.

I offer my sincere best wishes,

Bob Smith, Investor
Private line: (818) 831 9912

4. **WHEN THEY CALL**. When the calls begin coming in—and they will—understand that some callers won't need your help. Others will be beyond help. Still others will reject your offer due to fear or misunderstanding. Another group will opt to remain in their denial phase a little longer (waiting for that manna from Heaven). However, as you become comfortable in your dialogue with these folks, your success ratio will climb from 1 out of 10 or 15 to 1 out of 5. In no time, you can have created a lucrative business for yourself, assuming you don't weaken or allow yourself to be beaten by the first several disappointments. Always remember that *failure* is a major part of success. In our business the very best of us can only hope for one success to every five failures (but that's probably as good a ratio as the best might have in, say, diving for pearls or mining for diamonds or gold).

   When you receive a response to your mailing, the first thing to do, after ascertaining who is calling, is say: *"Pardon me for just a moment if you wouldn't mind, while I get to a private phone."*

   You then put them on hold, count to six, and pick up the phone again. This seemingly vain little exploit works wonders in giving your caller a feeling of privacy. They will reveal far more of their plight than they might otherwise. An excellent device. Use it (I learned that from Paul Simon, my equity share mentor of the 80's).

   Following are the questions to ask when they call (after having established rapport with some small talk…e.g., "How are you?" "How did you find out about us? "Those warts about cleared up?" …And so on…):

   a) "So…tell me…how far down are the payments now?" *(Take care not to use personal terms, such as: How far behind are you? How many payments have you missed? How does it feel to be a deadbeat, etc.? Keep it wholly impersonal)*

   b) "I see, and how does that equate to a dollar amount?" *(They will nearly always try to give you the number of payments they have missed, rather than the dollar amount they are behind…this is because "4 or 5" sounds like a lot smaller number than four or five thousand." Getting them to state the dollar amount is the first step in beginning to uncover their "pain"...for which you have the cure, which is why they called you)*

   c) "I see, and what are the current monthly payments…and are they adjustable or fixed?" *(If adjustable, you'll want to inquire as to what the adjustments are based on (the "Index"): i.e., do the payments 'float' with certain prime lending rates; LIBOR (London Inter Bank) rates; 1-year treasury securities; national cost-of-funds averages for savings and loan institutions, etc.?*

d) "What does all that include?" *(Does the figure given include principal, interest, property and insurance…or just principal and interest? Does the figure also include the payment on junior liens?*

e) "What do you suppose the current real value of the property is?" *(Here, they'll always over estimate, but they do so knowing that you will give them the correct value later, after doing your due diligence)*

f) "I see…do you have a recent appraisal, or is that pretty much an estimate of what you know about the neighborhood?" *(It will usually be a 'PFA' estimate ("plucked from air") based upon what another house on the next street over sold for***.** *Or some Realtor® gave them a high figure in order to get their listing, knowing that the seller would have little aversion to a steep price reduction once the listing agreement was signed and the auction date drew nearer)*

g) "About what would the current mortgage balance be, if I might ask?" *(Here, they'll usually lowball the estimate, unless they have the paper work in front of them. If so, this will give you a negotiating point later on, and will serve to create a more acute awareness within the prospect of his/her "pain")*

h) "Do you know of any other liens against the property? And, what are they?" *(If there is a second loan, back taxes, utility or mechanics' liens, the prospect will often fail to mention them until you ask. And the presence of a second mortgage can turn out to be a boon for you: any note holder afraid of losing everything because of the impending foreclosure may agree to a sizeable discount for an early payoff once you've made your deal with the seller…often pennies on the dollar)*

i) "Have you spoken with the lender about forbearances, forgiveness or a workout plan of any kind?" *(Usually, they have not, and don't intend to. Often they may have been given a workout plan by the lender, and subsequently allowed the property to slip back into default…the lender is justifiably no longer willing to cooperate).*

j) What condition would you say the property is in now…physically? (*At this point they will tend to minimize any repair work or refurbishment to be done—and perhaps there is none. But being as meticulous an investor as you obviously are, you will no doubt find work to be done. The anticipated cost of which work can be deducted from your full price offer along with your remarketing costs and anticipated profit margin, when the time comes)*

k) "What do you personally think someone would have to spend in order to bring the property to maximum market value?" *(Again, this question is designed to further illuminate the caller's "'pain" and force him/her to acknowledge that they need you)*

l) "Well, Angelo, tell me: Exactly what would you like to see happen here?" *(This is the most important questions of all: it's at this point that they'll reveal more of their discomfort (their "pain"), make their concessions, or try to price themselves out of your market. This is where you can see what they are expecting, hoping for (or praying for)…and modify your plans accordingly. Many times the response is "I just want out from under it," and that's when you're real glad you didn't already offer to pay them a chunk of money up front or a big bunch of equity later re. a lease option or equity share scenario)*

m) "Well, let me ask**.** If the property doesn't comp out to what we hope it will, what's the maximum amount you might be able to come up with to get those arrearages and back taxes brought current…if you had to?" *(This question is asked when the property has very little or no equity, or when the payments are larger than you need them to be in order to generate a good positive cash flow for you. More often than not, when the seller is shown the relative cost of his/her only other options, and what it will cost to 'do nothing,' he/she will gladly agree to pay you to help him out of their predicament)*

n) "Well…that might be possible. Let me get a good look at the property and run some comps and do my homework. What's a good time to meet you there?" *(It is important not to appear overly anxious at this point…"remain unassociated with the end-result"…or at least try to 'appear' to be so)*

5. **THE OPTION TO ACQUIRE.** If all looks good after running comps and viewing the property, make an offer to enter an *Option Agreement* for from, say, 30 to 60 days if time to auction allows.

a) When making the presentation, present the ***Option Agreement*** and the ***Memorandum of Option.*** (The "M.O." is the only form to be recorded with the County Recorder, notifying the public of the existence of the option.)

b) Along with the option document, also prepare and present a fully completed—but unsigned—***Purchase Offer*** (preferably a standard state approved real estate purchase offer form), and in the event that an Equity Holding Trust™ is contemplated, replace the term *"Purchase Price"* with the expression *"Mutually Agreed Value"* throughout (i.e., simply overwrite the term in ink with all parties initialing the change). Also, if the offer pertains to an Equity Holding Trust ™, include the following statement in the Remarks section of the form:

> *"This offer is being made pursuant to acquisition of a personal property beneficiary interest in a title-holding (Illinois-type) land trust, the trustee for which holds legal and equitable title*

to the subject property. This is not an offer to purchase real estate."

c). Add to this presentation package (i.e., the Option, the Memorandum of Option and the unsigned Purchase Offer) an *Authorization to Release Information* (displayed on the next page).

Next, paperclip or staple a ten or twenty-dollar bill to the packet. When they ask what the bill is for, reply: "Oh, that's just to make it legal…an option needs to have 'legal consideration'." *(We've found that attaching the bill and making that statement will almost invariably prevent further questioning about the absence of a large option fee. Personally, I used to use hundred dollar-bills, but one day after having relinquished several "green hundies" on properties I chose not to take, I didn't have that particular dead president handy and had to attach a Ten instead: and dad-gum, if it didn't work just as well)*

AUTHORIZATION
TO RELEASE INFORMATION

TO WHOM IT MAY CONCERN:

I/WE,_____

hereby give permission for _____

to receive all information, both now and in the future, either personal or financial, concerning Loan #_____ and the property located at

_____

Lender/Lien Holder: _____

Lender's Address: _____

Lender Phone Number: _____

Please afford this party your full cooperation, whether requests are in-person, by telephone or by written correspondence, just as you would if you were dealing directly with me.

ANY PHOTO COPY OR ELECTRONIC FACSIMILE OF THIS FORM SHALL BE CONSIDERED VALID, AND SHALL SERVE AS THE ORIGINAL.

_____

Signature Soc. Sec. Number Date

_____

Signature Soc. Sec. Number Date

6. **RECORDING/ADVERTISING**. Upon obtaining the Option, the next two steps are–1) record the Memorandum of Option at the County Recorder's office, and 2) place an ad in the local newspaper (Friday, Saturday and Sunday are best).

> **Think of it this way:** You picked up a $150,000 property by taking over a $125,000 loan, with a total monthly payment of $1,100. The loan was three months in arrears at the time. You brought in a tenant/buyer at, say $1,400 per-month with an up-front cash contribution of $12,000, (with which to cover your arrearages, closing costs, leaving, say, $5-6,000 for your pocket book). Given your positive cash flow of $300 per-month and your up front profit of $25,000 in equity: should you hold the property for, say, three years and it were to appreciate by 10% per-year your gross profit at termination would be a bit over $93,000.00.
>
> But, let's say there was no appreciation. What then? In such a case, you would only have made $44,000 (for a property you didn't have to qualify for, for which you paid no down payment had no upkeep or repair costs or payments). Can someone make a decent living this way?

THE *NON-EXCLUSIVE PURCHASE OPTION*

On the following page is our *Non-Exclusive Option Agreement*, a boon to many of our students and myself when it comes to avoiding the use of cash in real estate acquisitions. Rather than having to explain or justify why there is no option fee–or having the option fee stand in the way of a transaction–the Non-Exclusive Option allows the property owner to sell the property to anyone else at any time during the option period…so long as he/she gives the optionee (us) a 10-day notice of his/her intent to accept another offer, and the right to exercise our option to purchase at any time during that ten days. If the 10-day requirement, though seldom used, were in-fact invoked, you would have that additional time to advertise for, and locate, your tenant/buyer, cash partner or investor…or to just walk away.

The idea behind using an Option in the first place is to provide the time needed to position your buyer (or co-beneficiary) with the cash you need for closing… before you have to commit to the purchase of the property. Note that the Non-Exclusive Option affords the optionor ("seller") the right to sell to anyone he/she would care to, who might provide a better price or terms during the option period. However, the agreement clearly stipulates that if such buyer prospect is located, the optionee (you) must be given ample notice to *do something or get off the podium (*as it were).

It is recommended that when presenting the Non-Exclusive Option to the optionor for review, it be accompanied by:

1. An UNSIGNED but fully completed Appendix #1 (See the Process of Documentation Manual contained herein) to be signed when/if the Option is exercised
2. At least two Authorization forms for access to loan information (form contained herein)
3. A $10.00 or $20.00 bill (stapled to the packet of documents in plain sight). This is so that if you are asked about the reason for the bill or about there being no option fee, you can explain that since the option is of a "non-exclusive" nature, the currency is simply there to provide for nominal legal consideration (i.e., a contract needs *consideration* to be valid).

Recordation of the *Memo* (Memorandum of Purchase Option) is recommended, even though such recordation can theoretically alert a mortgagee to a suspected Due-on-Sale violation. Be cautioned that absent the recordation of the memorandum, a seller could disregard a duly executed option agreement: and any subsequently recorded document takes precedence over an unrecorded one.

NON-EXCLUSIVE OPTION TO ACQUIRE BENEFICIARY INTEREST IN A TITLE-HOLDING LAND TRUST

THIS OPTION AGREEMENT ("Agreement") made and entered into this **23rd** day of **March,** 20 **02**, by and between **Claude Bawels**, whose principal address is **17929 Chatsworth Street, Northridge, CA**, hereinafter referred to as "The Optionor" and **Ivan P. Freely and Susan C. Freely**, whose principal address is **123 Fir Street, Anytown, CA** hereinafter referred to as "The Optionee":

WITNESSETH:

WHEREAS, The Optionor is the fee simple owner of certain real property being, lying and situated in the County of **Murgatroyd**, in the state of **California**, such real property having the street address of **456 Oak Lane, Boomville, California** ("Premises") and such property being more particularly described as follows:

Legal Description:

See Exhibit "A," attached hereto and made a part hereof.

Whose street address is:

456 Oak Lane, Boomville, California ("The Property")

WHEREAS, The Optionee desires to obtain an option to acquire a **NINETY (90)** percent beneficiary interest in a residential title-holding (Illinois type) land trust into which title to the Property has been vested, upon the terms and provisions as hereinafter set forth;

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties hereto and for the mutual covenants contained herein, The Optionor and The Optionee hereby agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings:

   (a) **"Execution Date"** shall mean the day upon which the last party to this Agreement shall have duly executed it;

   (b) **"The Option Fee"** shall mean the total sum paid for an option to enter into the acquisition of beneficiary interest in the land trust to which title to The Property has been (will have been) vested during the Option Term and prior to the ending date shown in (C) below. The Fee for the Option shall be the sum of $**Nominal**

(c) **"Option Term"** shall mean that period commencing upon the Execution Date hereof and terminating on or before the date of **05/01**, 20 **02**;

(d) **"Option Exercise Date"** shall mean that date, within the Option Term, upon which the Optionee shall forward its written notice to The Optionor, exercising its Option to acquire beneficiary interest in that land trust to which legal and equitable title to the Property has been vested;

(e) **"Closing Date"** shall mean the last day of the closing term or such other date during the closing term selected by The Optionee.

(f) **"Non-Exclusive Option"** shall mean Optionor retains the right throughout the term of this agreement to sell, trade or transfer the subject property to any party whose terms and conditions or acquisition price would be deemed superior to those offered by Optionee; but that Optionor would agree, upon receipt to such superior offer, to notify Optionee hereunder, giving Optionee hereunder five (5) full working days to exercise this Option to Acquire under the terms and condition herein stipulated.

2. **GRANT OF OPTION.** For and in consideration of a nominal Option Fee payable to The Optionor as set forth herein, The Optionor does hereby grant to The Optionee the exclusive right and option ("Option") to acquire a beneficiary interest in the land trust holding legal and equitable title to The Property upon the terms and conditions as set forth herein.

3. **UPON EXERCISE OF ACQUISITION**. The Optionee agrees to either (circle one and initial):

A: (init:) Pay the Optionor a down payment of $**N/A** constituting **N/A** percent (**N/A** %) of the total purchase price of the Premises, plus all closing costs upon the Execution Date; OR …

B: (init: ELF/SPF) Cover all costs of trust set up and closing of the subject acquisition relative to entering a Co-Beneficiary NARS Equity Holding Trust transaction, which costs are estimated here to be $**12,133.00**. Of these costs, The Optionor agrees to contribute the sum of $**2,133.00.**

4. **EXERCISE OF OPTION.** The Optionee may exercise the right to acquire interest in the land trust that holds (shall hold) title to the Property pursuant to this Option, at any time during the Option Term, by giving written notice thereof to The Optionor. As provided for above, the date of sending of said notice shall be the Option Exercise Date. In the event the Optionee does not

exercise its exclusive right to acquire interest in the land trust holding title to the Property granted by the Option during the Option Term, The Optionor shall be entitled to retain the Option Fee in full, and this agreement shall become null and void and neither party hereto shall have any other liability, obligation or duty hereunder or pursuant hereto.

5. **TERMINATION OF OPTION BY OPTIONOR**. It is agreed by parties that this Option Agreement can be terminated by Optionor hereunder at anytime during its stipulated term with advance--express and constructively delivered--Notice of Intent to Terminate Optionee at least five (5) working days prior to the intended termination date. Following receipt of such notification Optionee hereunder shall have five working days to exercise its Option under the terms specified herein, or forever relinquish the rights conveyed by this Option, and be responsible following the stipulated termination date hereof for the removal of any cloud on the subject property's title that was brought about by the recording of this Optionor or a Memorandum thereof.

6. **CONTRACT FOR ACQUISITION AND/OR DELIVERY OF A BENEFICIARY INTEREST IN A REAL PROPERTY TRUST**. In the event that the Optionee would exercise its exclusive Option as provided for in the preceding paragraph, The Optionor agrees to deliver, and The Optionee agrees to acquire a beneficiary interest in the land trust holding title to the Property, and both parties agree to execute the appropriate contract for such acquisition in accordance with the following terms and conditions:

   (a) **Mutually Agreed Value.** The Mutually Agreed Upon Value (MAV) of the subject property, re. acquisition of a beneficiary interest in the land trust holding title to the Property upon exercise of this Option, shall be the amount of **One Hundred and Twenty-Two Thousand, Nine Hundred and Ninety-Five and No/100th Dollars ($122,995.00**); in addition it is understood that the Optionee hereunder shall receive full credit toward such sum in the amount of the total of all closing costs and the Option Fee paid thereby: as well, optionee shall receive credit for any/all other non-recurring costs relative to such acquisition: thus, the Optionee shall pay through Escrow at closing, the total sum of **Ten Thousand and No/100ths Dollars** (**$10,000.00**);

   (b) **Closing Date.** The closing date for acquisition of the beneficiary interest in the land trust holding title to The Property shall be on **06/01**, 20 **02,** or at any other date during the Option Term as may be chosen by The Optionee;

   (c) **Default by The Optionee; Remedies of The Optionor:** In the event The Optionee, after exercise of the Option, fails to proceed with the closing of the acquisition pursuant to the terms and provisions as contained herein and/or under the Contract, The Optionor shall be

entitled to retain the entire Option Fee as liquidated damages, and shall have no further recourse against The Optionee;

(d) **Default by The Optionor; Remedies of The Optionee.** In the event The Optionor fails to close the subject conveyance pursuant to the terms and provisions of this Agreement and/or under the Contract, The Optionee shall be entitled to A) sue for specific performance of the real estate purchase and sale contract, or B) terminate the entire Contract and sue for monetary damages.

7. **MISCELLANEOUS.**

(a) **Execution by Both Parties.** This Agreement shall not become effective and binding until fully executed by both The Optionee and The Optionor.

(b) **Notice.** All notices, demands and/or consents provided for in this Agreement shall be in writing and shall be delivered to the parties hereto by hand or by United States Mail with postage pre-paid. Such notices shall be deemed to have been served on the date mailed, postage pre-paid. All such notices and communications shall be addressed to the Optionor as Settlor Beneficiary at **17929 Chatsworth Street, Northridge, CA**, and to The Optionee at **123 Fir Street, Anytown, CA,** or at another such address, which either party may be specified to the other in writing and which would be constructively delivered.

(c) **Fee Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of **California**.

(d) **Successors and Assigns.** This Agreement shall apply to, inure to the benefit of, and be binding upon, and enforceable against, the parties hereto and their respective heirs, successors, and or assigns, to the extent as specified at length throughout this Agreement.

(e) **Time**. Time is of the essence of this Agreement.

(f) **Headings**. The headings inserted at the beginning of each paragraph and/or subparagraphs are for convenience of reference only and shall not limit or otherwise affect or be used in the construction of any terms or provisions hereof.

(g) **Cost of this Agreement.** Any cost and/or fees incurred by The Optionee or The Optionor in executing this Agreement shall be borne by the respective party incurring such cost and/or fee.

(h) **Entire Agreement**. This Agreement contains all of the terms, promises, covenants, conditions and representations made or entered into by or between The Optionor and The Optionee and supersedes all prior discussions and agreements whether written or oral between The Optionor and The Optionee with respect to the Option and all other matters contained herein and constitutes the sole and entire agreement between The Optionor and The Optionee with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and executed by both The Optionor and The Optionee with the formalities hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under proper authority:

As to The Optionee this **First** day of **March**, 20 **02**.

Witnesses: " The Optionee"

Ivan P. Freely *Ivan P. Freely*
The Optionee

Susan C. Freely *Susan C. Freely*
The Optionee

As to The Optionor this **First** day of **March**, 20 **02**.

Witnesses: "The Optionor"

Claude Bawels *Claude Bawels*
The Optionor

MEMORANDUM OF
OPTION TO PURCHASE REAL ESTATE

The undersigned on this day personally declares that:

1. An agreement for the Option to Purchase interest in real property described in the attached Exhibit "A" was entered into by and between the Affiant, as The Optionor and **Ivan P. and Susan C. Freely**, as The Optionee on this, the **FIRST** day of **March**, 20 **02**.

2. Acquisition of said interest in real property, per the terms of a related Agreement, is to take place on or before the **First** day of **May**, 20 **02**, and no option to purchase shall remain in effect after 5:30 PM, in the time zone of the subject property on such date.

3. A copy of the subject Option Agreement of interest in said real property may be obtained by contacting **Claude Bawels**, at **17929 Chatsworth Street, Northridge, CA**, whose telephone number is **818 831 3312**. (secondary no: **818 831 9912**)

This Memorandum of Option to Purchase is executed and dated on this, the **First** day of **March,** 20 **02**.

Claude Bawels
AFFIANT

_____
AFFIANT

ATTACH NOTARIAL ACKNOWLEDGEMENT

EXHIBIT "A"
To Memorandum of Option

DESCRIPTION OF REAL PROPERTY

Address:

456 Oak Lane, Boomville, California

Legal Description:

TRACT 2344, LOT 16, AS DESCRIBED IN BOOK 433, PAGES 63 TO 65, AND RECORDED IN THE PUBLIC RECORD ON FILE WITH COUNTY REGISTRAR, MURGATROYD COUNTY, CALIFORNIA.

Assessor's Parcel Number: 456 678 8901