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# Buying or selling a house that is under power of sale



## Jacques Robert REAL ESTATE LAW

Everyone is always looking for a deal, especially in a real estate market where prices are soaring. When buyers find a Power of Sale property, many jump at the chance to scoop up the property, which often is priced very competitively.

A Power of Sale is exercised when the owners of the home have defaulted in their mortgage payments and the lender (bank) has forced the sale of the home to recover its loan. While the price may be good, there are certain conditions and clauses of a Power of Sale transaction that a buyer should be aware

of. Sellers also need to be aware of unique steps in the transaction.

It is in the bank's interest to sell the property quickly. Every month the house sits empty, the bank accrues more losses through missed mortgage payments and insurance costs. Therefore, the bank may list the property for sale at a very competitive price, perhaps below market value in order to attract buyers quickly.

As a trade-off to the lower purchase price, the bank will not warrant or provide any assurances that the items in the home are in good work-

ing condition. The bank is only a conduit for the sale of the home. The bank is simply taking control to sell the house and does not have knowledge of the house and what has occurred in the past. The bank will sell the home in "as-is" condition.

For the buyer, this means they are taking the risk that they might have to repair or replace several items in the home, which could negate the savings the buyer is receiving.

Further, when it comes to the adjustments on closing, the bank often will not guarantee that the property taxes and water account are paid. This means that the buyer's lawyer needs to ensure that a property tax certificate is ordered to ensure that property taxes have been paid. If the property is a new construction, the property taxes

may not have been assessed. If there needs to be any readjustment on the part of the bank once the property taxes are assessed, the buyer will be out of luck and will have to absorb the cost. The bank will not re-adjust after closing.

The buyer will likely have to act quickly. The bank wants to close the transfer as soon as possible so they can recover their debt. Therefore, the buyer should be able to:

- close on short notice,
- have their mortgage pre-approval in place,
- contact a home inspector quickly
- handle the inevitable stresses of a quick closing.

On the flip side, the owner/seller under a Power of Sale transaction has unique steps

to follow. In a normal resale transaction, it is the owner who accepts the buyer's offer. Under Power of Sale, it is the bank that accepts the buyer's offer and negotiates the terms and conditions of the offer with the buyer.

The seller must also work with the bank over the payout of all the debts. These include unpaid income taxes, any executions against the owner (any amounts owing as a result of being sued), property tax arrears, the mortgage, the lawyer and the real estate agent. Once all these debts are paid, the owner will get the remainder of the sale proceeds, if there are any. If there are not enough funds to cover all the debts, the bank will have to approve the payout of the debts and may enter in to an arrangement with the owner to forgive part of the mort-

gage debt so that the mortgage can be discharged and the property sold.

Like the buyer, the seller will have to be prepared for a quick closing. The bank will set the closing date and the owner will have to be prepared to move the household items out of the property quickly. It may mean that the owner/seller would have to find a new place to live and arrange the move in a short amount of time.

If you are able to handle the unique demands of a Power of Sale transaction, it may be an opportunity worth investigating.

*co-authored with Robin Goski, associate lawyer*

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