

## CLIENT ADVISORY

## FACT SHEET: PURCHASING REAL ESTATE AND LOAN ASSETS FROM THE FDIC

As a result of the ongoing financial crisis, it is anticipated that the federal government will be looking for buyers of assets of troubled banks, including real estate and loans. One source is the Federal Deposit Insurance Corporation (FDIC) and, for investors interested in these opportunities, the following information from the FDIC website may be helpful in getting started.

### I. Real Estate Sales

The FDIC makes available through its website a searchable database of all FDIC-owned real estate for sale. The FDIC Real Estate for Sale database is available at: [www2.fdic.gov/drrore/](http://www2.fdic.gov/drrore/). Each property is assigned a contact name and phone number, with the name either being an individual from an FDIC office, or an individual associated with the sales initiative (e.g., auction company or real estate broker). If a property information package has been prepared on a particular property, it can be obtained from this individual. The following FAQs may be helpful to understand how to acquire real estate from the FDIC:

- **Listings.** These listings of real estate include preliminary information and are provided for the purpose of inviting further inquiry.
- **Update of Listings.** The FDIC will try to update the listing of properties by close of business each Monday.
- **Condition of Property.** All properties are sold in an “as is” condition.
- **Prices.** Listed prices are established by a variety of factors, which may include independent appraisals, brokers’ opinion of value, and current market conditions. All prices are subject to change without notice.
- **Seller Financing.** Seller financing may be available to qualified buyers on residential properties with a minimum purchase price of US\$500,000 or those sold as affordable housing and on all commercial and land properties regardless of price.
- **Criteria Used in Evaluations of Offers.** A number of criteria are considered when evaluating offers from prospective purchasers. These include, but are not limited to, net funds received after deducting brokerage commissions and sale expenses and payment terms considered in light of the applicant’s credit worthiness and ability to perform.

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*This summary is intended to be a general summary of the law and does not constitute legal advice. You should consult with competent counsel to determine applicable legal requirements in a specific fact situation.*

**[arnoldporter.com](http://arnoldporter.com)**

- **Listing on Website Only.** The FDIC does not maintain a mailing list of those interested in purchasing real estate. They expect potential buyers to review their website for listings. Auctions and sealed bid sales announcements will both appear on the Internet, under the Special Real Estate Sales Events, and will be advertised in local and regional newspapers.

See [www.fdic.gov/buying/owned/special/index.html](http://www.fdic.gov/buying/owned/special/index.html) for the link to Special Real Estate Sales Events.

## II. Loan Sales

A loan sale is a commonly used term for the sale of loans or loan pools. Loans acquired by the FDIC from failed financial institutions are generally sold in pools through sealed bid sale or auction. The list of failed financial institutions can be found at [www.fdic.gov/bank/historical/bank/index.html](http://www.fdic.gov/bank/historical/bank/index.html).

The FDIC markets loans through two loan sales advisors, with such loans described on such advisors' websites described below:

First Financial Network  
[www.firstfinancialnet.com](http://www.firstfinancialnet.com)  
+1 405.748.4100

Debt-X, The Debt Exchange  
[www.debt.com](http://www.debt.com)  
+1 617.531.3400

The loan sale advisors will provide approved bidders information on the loan pool(s) being offered for sale. Each advisor has the ability to offer both electronic due diligence on their website and hard copy due diligence. Each of their websites has an internet bid platform where bids on FDIC loan sales will be submitted. To gain access to those systems, you should request from each of the loan sale advisors an account on their website. Each advisor has their own requirements for granting access to their site.

Some Loan Sales Announcements are also available on the FDIC website at: [www.fdic.gov/buying/loan/loansales/index.html](http://www.fdic.gov/buying/loan/loansales/index.html).

The following FAQs may be helpful to understand more fully how to acquire loans from the FDIC:

- **Structure of Sale.** Typically, sales contain loans that have similar characteristics. The loans are refined into pools according to specific criteria. Pooling considerations may include loan size, quality, type, collateral, and location.
- **Documents for Review.** The storeroom provides documents for the sale offering and the individual loan pools. The documents that can be found in the storeroom are the: Invitation to Bid, Bid Instructions, Purchaser Eligibility Certification, Loan Sale Agreement, Loan Spreadsheets, and other relevant documents. Interested parties must contact the FDIC as instructed in the Notice of Loan Sale to schedule due diligence appointments. Prospective purchasers must execute the Confidentiality Agreement that is provided either online or in person at the due diligence location.
- **Performing and Non-Performing Loans.** The loan portfolios of failed financial institutions usually contain a variety of performing and non-performing loan products including mortgage, commercial, consumer loans, etc.
- **No FDIC Guaranty.** The FDIC does not guaranty or provide any representations concerning the loans being sold.
- **Closing Time.** FDIC sales are usually consummated within 20 business days after a bid is awarded. Each Loan Sale Agreement should be reviewed to determine if there are specified closing dates.
- **Bid Deposit.** An initial deposit must be received by wire transfer the business day prior to the bid deadline. Only one initial deposit is required from each bidder regardless of the number of bids submitted. The initial deposit is defined in the Bid Instructions for a given sale.
- **Earnest Money Deposit.** The earnest money deposit is comprised of the initial deposit and a final deposit. The final deposit equals 10% of the sum of all bid amounts for loan pools and loan pool combinations awarded the winning bidder less the amount of the bidder's initial deposit. The final deposit must be submitted via wire transfer within one business day following bid award.
- **Closing Documents.** The successful bidder will receive the executed Bill of Sale, Assignment and Assumption

Agreement, and Loan Sale Agreement at closing. All pertinent, available documentation for the loans such as the notes, collateral documents, and loan files will be delivered to buyer within a reasonable time after closing.

### III. General Information.

- **Purchaser Eligibility.** In order to purchase assets from the FDIC, the prospective purchaser must execute a Purchaser Eligibility Certification, a sample of which can be found at the following link: [www.fdic.gov/buying/loan/purchaser/purchaser.pdf](http://www.fdic.gov/buying/loan/purchaser/purchaser.pdf). This certification identifies prospective purchasers who are not eligible to purchase assets from the FDIC. The Purchaser Eligibility Certification is available on the website of the loan sale adviser responsible for a particular sale.
- **Historical Sales Summaries.** To review a summary of the historical sales of real estate assets and performing and non-performing loans since the 1990s, go to: [www.fdic.gov/buying/historical/loans/index.html](http://www.fdic.gov/buying/historical/loans/index.html). To review a searchable database for real estate sales from 1995 to present go to: [www2.fdic.gov/closedsales/oresales.asp](http://www2.fdic.gov/closedsales/oresales.asp). To review a searchable database for sales of loans sold from 1994 to present go to: [www2.fdic.gov/closedsales/loansales.asp](http://www2.fdic.gov/closedsales/loansales.asp).
- **Further information.** More information on FDIC asset sales is available at: [www.fdic.gov/buying/index.html](http://www.fdic.gov/buying/index.html).

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*We hope that you found this Fact Sheet helpful. If you have further questions, please contact any one of the following attorneys in Arnold & Porter LLP's real estate practice group:*

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