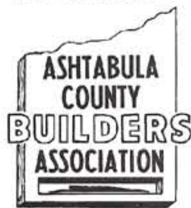
June 2010



BUILDERS PLAN

P.O. Box 745
Ashtabula, Ohio 44005-0745
Telephone (440) 997-1866
ashtabulacountybuilders@windstream.net
www.ashtabulacountybuildersassociaion.org

ASHTABULA COUNTY BUILDERS
"The Voice of the Industry in Ashtabula County"

MORE INFORMATION CONCERNING LEAD -BASED PAINT REGULATION

www.doors.org

International Door Association
Publications - Current Issue - Pgs. 32-34

MARK YOUR CALENDAR

June 10th	Steak Fry Elks
July 8th	OLD FASHION Golf Outing Hickory Grove
August 12th	Summer Social TBA
September 9th	Clam Bake TBA
October 14th	General Meeting TBA
November 11th	Annual Meeting TBA

Happy Hour is 6:00pm - 7:00pm
Dinner 7:00pm
RSVP by Sunday prior to meeting date and if you need to cancel please call by Monday evening.

PRESIDENT'S COMMENTARY

Hi Everyone,
I hope you are all enjoying the warm weather we have been having lately and I hope work is picking up for all. I would like to thank all that attended our last regular meeting at Casa Capelli. I thought Oscar did a great job for us. I look forward to future meetings here. I would like to apologize for the problems that occurred with our scheduled speaker but they were beyond our control. I want to thank Tim Vogel of Famous Supply for stepping up to the challenge and providing us with some of the information on a very short notice. This coming month is our annual Steak Fry. Your board of directors will be cooking the steaks for you and the Elks will be providing the rest. I look forward to seeing you all there. July is our annual Golf Outing and Bill Romanko of A Louis Supply is handling it again this year; to make reservations or to become a hole sponsor please contact Bill or myself. You can also contact Michelle at the Ashtabula County Builders Association. As always your association is here to assist you in any way possible.
Thank you,
Rick

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ANNUAL STEAK FRY

BOARD OF TRUSTEES
2010

Officers
Rick Miller, President
Joe Oros, Vice-President
Bill Romanko, Secretary
Rich Vanek, Treasurer
Frank Curtin, Immediate Past President

Trustees
Calvin Brown, Jr.
Bill Claycomb
Doug Spencer
Dan Theiss
Tim Vogel

Director
Michelle Laveck

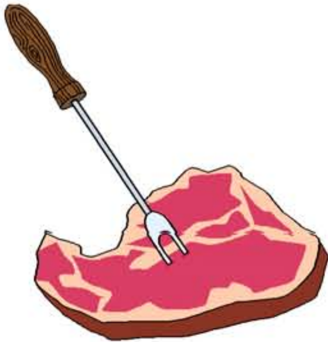
Thursday, June 10th

at

Ashtabula Elks Lodge

(Board Members doing the cooking!!)

$30.00 Per Person



Choice of:
12 oz. Strip Steak
or
Half Chicken

Dinner Includes: Salad, Baked Potato and Corn on the Cob

Open Bar 6:00p.m. - 7:00p.m.
Dinner 7:00p.m.
(cash bar after dinner)

Please RSVP by Sunday, June 6th

(440)997-1866 or ashtabulacountybuiliders@windstream.net

ASHTABULA COUNTY BUILDERS ASSOCIATION

Old Fashion Golf Outing

4-Man Scramble

Thursday, July 8th, 2010
at
Hickory Grove

11:00 Registration
12:00 Shot Gun Start

$90.00 per golfer
$360.00 per team
(if team pays prior to July 8th $340.00 per team)

1st Prize and Random Drawing for 2nd Prize
Door Prizes, Prizes for Skill Shots, Skins and 50/50

Lunch, Dinner and Beverages on Course Provided
Extra Dinners $25.00

Please Register at (440) 997-1866 or
ashtabulacountybuilders@windstream.net
by July 3rd

Rain Date Thursday, July 15th, 2010

What Builders Should Do When the FDIC Takes Over Their Bank

With 140 bank failures in 2009, and 2010 expected to see bank closings exceeding that total, home builders and developers face an increasing risk of their loans falling under the control of the Federal Deposit Insurance Corporation (FDIC). If you are faced with this situation, the dynamics of your relationship with your lender have changed primarily because the FDIC and possibly an acquiring bank are not seeking a long-term relationship. Navigating through this process will likely be challenging and time-consuming, but it may also provide you with a window of opportunity to restructure debt that may otherwise prevent you from continuing to develop your project.

What should builders and developers expect and do if their bank is taken over by the FDIC? First, find out who actually owns your loan. If the bank was a payout or if a bridge bank was formed, no acquirer is involved and your loan will stay with the FDIC as receiver for your bank until it is sold. If there was an acquiring bank, your loan was probably acquired, although that won't always be the case. Entities acquiring banks often do not take 100% of the assets despite FDIC efforts to include as much of the loan portfolio as possible.

Typically, the closing will occur on a Friday evening, leaving the weekend for the FDIC, its contractors, the acquiring bank and bank employees to work feverishly to begin the transition. This isn't a good time to contact them to find out who owns your loan. However, soon afterwards, this is the first step to determine how the FDIC takeover might affect your project and business.

If the FDIC Retains Your Loan

If the FDIC retains your loan, you may have a window of opportunity to work with them in arriving at a value that will enable you to refinance with a new lender or equity partner who is interested in participating in the continued development of your project. This process can be complicated and will require patience on your part. The FDIC (or more likely its contractors) will begin a period of due diligence to determine which assets the receiver has, their value and the condition of the loan documents. The due diligence process can take weeks or months. Part of this process includes ordering appraisals. They will also scan the loan documents to be placed on the website of the contractor assisting them in the asset sale.

A key point that should shape a builder's or developer's plan of action is that the FDIC's mission is not to be a lender or loan manager. Their goal is to dispose of assets while maximizing recovery to the receiver. Regardless of how you want to proceed, the important thing is to be proactive in finding out what has been decided about ongoing funding and disposition.

After some degree of screening, and the execution of a non-disclosure agreement, potential acquirers will have the ability to view the documents during their own due diligence process. Although they should not be contacting you directly, we have seen it happen. If that happens to you, know that you are under no obligation (nor is it prudent) to pass on confidential information. After the due diligence process, the loans can be sold in various ways.

Although we know that the FDIC used to routinely notify borrowers 30 days prior to the sale of their loan, it appears that this may no longer be the case. One reason for notifying borrowers was to give them an opportunity to settle their debt prior to the sale. If that option is available, it may give you the opportunity to bring your loan-to-value down to a percentage that will enable you to refinance the note elsewhere. Unfortunately, with the decline in real estate values and sales, in many cases this opportunity may be the only thing that keeps a borrower from a foreclosure or a bankruptcy filing.

If you are relying on draws to complete a project, you may have a problem. The FDIC will order an appraisal on your collateral. If it does not meet the loan-to-value ratio required, they will not advance funds. In addition, if the bank issued a letter of credit on your behalf, you have another problem because the institution that issued it no longer exists.

Even if your loan is current while owned by the FDIC, don't expect an automatic renewal. For example, if the loan is packaged and sold to a third party that is not interested in collateral in a certain geographic area, they may not renew your loan regardless of the loan-to-value ratio or your financial condition.

If your loan is delinquent, the FDIC may decide to foreclose on the property and sell the collateral rather than selling the delinquent loan. In addition, if there are personal guarantees involved, the FDIC will evaluate the guarantors' ability to pay and may pursue a deficiency judgment. If successful, it will sell the deficiency judgment. However, loan servicing does continue during the due diligence process.

The settlement process typically will take 90 to 180 days. You must be prepared to provide any operating cash required during that time even if sales indicate that you cannot meet loan release prices. Once a proposed offer is agreed upon in principle by the various levels of contract and FDIC employees at the receivership, it will typically, depending on the loan balance, go to a satellite and/or regional office for approval by one or two additional committees. A deposit may be required to keep the loan from being included in a bulk loan sale.

A settlement process, whether it's through the FDIC or the acquiring bank, will require the borrower to produce recent financial statements, tax returns and additional information. It is important to consider and discuss with your accountant the possibility of reviewing each asset for possible mark to market write-downs as well as the tax implications of forgiveness of debt. The process may be a bit daunting, but before you can tell the lender what you can and will do, you need to feel comfortable that you can meet any new obligations.

Most importantly, you should take every step to avoid the uncertain outcome of having your loan included in a bulk sale.

If the Acquiring Bank Purchased Your Loan

If the acquiring bank owns your loan, it is probably protected against a significant percentage of any loss it may incur. The FDIC has been utilizing a loss-share provision as part of the purchase and assumption agreement that typically provides for the acquiring bank to absorb a maximum of 20% of the losses on specific loans. The FDIC absorbs the remaining loss. This allows the FDIC to sell more assets to an acquiring bank. Reporting and collecting on the provisions of the loss-share agreements require a significant amount of administrative effort and in some cases, require the FDIC's approval for specific kinds of disposition. Our experience is that this has made the acquiring banks much more hesitant to work with the borrower to reach a settlement out of the concern that specific transactions will not be approved by the FDIC and they will then have to absorb 100% of the loss.

Herein lies the problem. In an ideal world, settlement negotiations would achieve a win-win situation for all involved. The builder/developer gets to stay in business and the FDIC or acquiring bank/investor maximizes its recovery of that asset. Experience has shown that the asset is always more valuable to the original builder/developer than to anyone else, motivating them to do all they can to make it work.

The loss-share provision is often a sensitive subject for the acquiring bank. It is not in your best interest to include it in your negotiations. The most important consideration for the borrower or their agent should be bringing about a best case scenario for all involved. When credit was flowing freely, borrowers were often courted, but times have changed.

Unfortunately, what may appear to be the ideal situation is not always an option available to the borrower. If the acquirer perceives that foreclosure and pursuit of personal guarantees is their surest course of action for preserving their loss share guaranty, the borrower may not be given an opportunity to settle and refinance even if it appears obvious that it will provide a greater recovery to the bank and the FDIC. This clearly was not the FDIC's intent when crafting the loss-share provision.