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When Should You “Just Walk Away” (From that House)?

by Anthony F. Earle, Esquire*

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Due to the general decline in residential housing prices, many people now owe substantially more on a loan secured by a residential property than the amount they can obtain by selling the property. The lender refuses, or is unlikely, to renegotiate the terms of the loan and is also unwilling, or unlikely, to forgive a portion of the secured debt so that the property can be sold for an amount equal to the balance owed on the loan. Bankruptcy is not a viable – or desirable – option. What should the homeowner do?

When, as the popular hit single suggests, should the homeowner just “walk away and close the door”?

According to The Wall Street Journal, “[f]ear, shame, and guilt” are preventing Americans from walking away from homes when their mortgages are underwater, even when walking away is the best decision, says a University of Arizona professor of law who studied the issue and wrote a paper on managing the crisis.

“Home owners should be walking away in droves,” writes Brent T. White, an associate professor of law at the University of Arizona.

“The real mystery is not – as media coverage has suggested – why large numbers of home owners are walking away, but why, given the percentage of underwater mortgages, more home owners are not,” said the professor.

“It is time to put to rest the assumption that a borrower who exercises the option to default is somehow immoral or irresponsible,” wrote White.

According to USA Today, some homeowners appear, albeit perhaps unwittingly, to be taking Professor White’s advice. “About 588,000 borrowers walked away in 2008, [which is] twice the number [who walked away] in 2007, according to a study by [the] credit management firm Experian and management consultants Oliver Wyman. Many more are expected to walk away, hampering the real estate recovery, economists say.

The mortgage unit of Citigroup says one in five borrowers default willingly, even though they’re able to pay the mortgage.

‘It’s increasingly a more important factor driving the foreclosure crisis,’ says Mark Zandi, of Moody’s Economy.com. ‘As we move forward, the job market will stabilize, and the big thing will be strategic defaults. People are going to determine it doesn’t make financial sense to hold on to their homes. That’s going to be a significant problem. Strategic defaults mean foreclosures could be high for a long time.’”

Please contact Earle Law Offices today if you would like to schedule an Attorney-Client privileged consultation to assist you in determining whether you should “Just Walk Away”.

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of business law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth

Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has served as a Judge Pro Tempore for the Santa Clara Superior Court, and is also a licensed Real Estate Broker.

Mr. Earle received his law degree from the Santa Clara University School of Law, where he served as an Editor of the school's Law Review, and where he received awards for academic excellence. He received his undergraduate degree, with honors, in business administration from the University of La Verne.

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