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Drowning in debt over mortgages? You have options St Pete Times, January 27, 2008 " . . . The quicker homeowners start dealing with problems and start to find a solution, the better," said Tampa lawyer Scott Stamatakis.

Drowning in debt over mortgages? You have options

By Helen Huntley, St. Pete Times Personal Finance Editor, Published January 27, 2008

It's the new version of the American dream: Give the bank the keys to your house and walk away with that load of debt off your back.

"I'm 26 years old and I feel like I'm going to have a heart attack," said Carmen Goodwin of Tarpon Springs. "I'm to the point where I feel like sending the key to the mortgage company and saying, 'Here, you take it.'"

She and her husband each owned a modest house before they married. Now one baby and two failed businesses later, both houses sit empty. The Goodwins are living with her mom, trying to find tenants for the houses even though previous renters stiffed them for \$3,000. Although each of them is working two jobs, she says they can't keep up. Their payments skyrocketed because their interest rate went up and they are being required to catch up on missed payments from the past. They haven't decided what to do next.

Many property owners can't sell their homes for enough to pay off their mortgages and are ready to throw in the towel. They face a set of difficult options, the best-known of which are foreclosure and bankruptcy. However, some lawyers and real estate agents are helping homeowners with two less well-known outs: short sales and deeds in lieu of foreclosure. The methods don't always work, mainly because some lenders won't cooperate. But when they do work, the outcome is likely to be less damaging to credit than foreclosure or bankruptcy.

"There is no snake oil here," said St. Petersburg lawyer Richard Dauval. "You need to pay for your debts or handle them in some way. We have found a way that has been quite successful to help people get from this horrible spot that they're in to a spot that's much more manageable."

His approach: deeding the property to the lender. He sends the lender the deed as part of a package that includes completed forms for a Chapter 13 bankruptcy filing, documenting the borrower's sorry financial condition.

"It's a really good way of seeing what this person is capable of paying," he said. "We're not saying we'll file bankruptcy if you don't accept it, but we're saying if we did, this is what it would look like. At the very least, it triggers the conversation."

The objective is to get the lender to consider the matter before the buyer is behind on payments, something many lenders routinely refuse to do.

"The quicker homeowners start dealing with problems and start to find a solution, the better," said Tampa lawyer Scott Stamatakas. "It's all about stopping the bleeding."

That's not to say it's easy. Stamatakas said many lenders won't consider a compromise until a borrower is

in default and until the property has been listed for sale for a certain number of days. And, he says, lenders really don't want your property. If you can find a buyer willing to pay a reasonable price for the property, even though it is less than the amount of the mortgage, the lender may agree to the deal, known as a short sale. Negotiations can drag on for months.

The lender's acceptance of a deed or agreement to a short sale does not cancel the borrower's obligation to repay the loan. However, both Dauval and Stamatakas said their experience is that most lenders cancel the debt under those circumstances.

If there is a second mortgage or other lien on the property, the lender typically will foreclose to legally wipe out those secondary interests. Dauval says that if you've already recorded the deed transferring ownership, you might be able to show the judge you are no longer the owner and keep the foreclosure off your credit record.

However, if the lender gets a court judgment against you for the balance of the loan, you'll probably have to bite the bullet and file for bankruptcy, he said.

If a lender does cancel debt, the borrower will get a 1099 form showing the amount as taxable income. However, a recent change in tax law makes mortgage debt forgiveness tax-free if the debt was to acquire a primary residence. Owners of investment homes face a tax bite unless they can show they were insolvent when the debt was forgiven.

What to do?

But what if you really want to keep your house even though you can't make the payments? Here's what to do next.

- Get advice from a pro. Go to www.hud.gov or call toll-free (800) 569-4287 to find a HUD-approved housing counselor near you. Or call the Project HOPE hotline at (888) 995-4673. The earlier you ask for help, the better. A counselor can help you evaluate your options and review your budget to see what's financially feasible for you.

- Refinance or ask your lender to modify the terms of your mortgage if that would bring the payments to a level you could afford and you can qualify. If you have an adjustable rate mortgage that recently reset or will soon, talk to any FHA lender about the FHASecure program to see if you can qualify. The drawback: If you have no equity in your home, you probably will have to put up some cash to refinance.

- Consider a Chapter 13 bankruptcy filing. You'll stop foreclosure proceedings and be put on a payment schedule for all your debts. Eventually you may be able to refinance. The drawback: bankruptcy stays on your credit report for 10 years.

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Stamatakis and Thalji, P.L. is a leading consumer debtor's rights law firm located in Tampa, Florida with lawyers practicing in Mortgage Foreclosure Defense, Bankruptcy, Fair Debt Collections, Fair Lending and Reporting Abuse, Truth in Lending, Real Estate Short Sales, and Deceptive and Unfair Trade Practices.

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