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## **your money**

# **Walking Away From Your Loan**

*Ron Lieber*

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If you're among the millions of people who will not qualify for the Obama administration's program to help troubled homeowners, you're probably wondering what you're supposed to do now.

In an economic environment like this one, the consequences of giving up on your mortgage may not be as painful as they were a few years ago. Yes, it's almost always preferable to negotiate a better deal on your existing mortgage than to walk away. But if you can't work things out with your lender, you probably won't be sued. You shouldn't receive a major tax bill either. And the damage to your credit will not be permanent or insurmountable.

Let's look at these last three in order.

### **YOUR LENDER**

First off, let's define what we mean by "giving up" on your current mortgage. It may mean trying for a short sale, where the lender allows you to sell your home for less than the mortgage amount. You may also hand over the deed to the home in exchange for the lender agreeing not to start foreclosure proceedings (a "deed in lieu" in industry terms). Then, there's foreclosure itself, and the possibility that bankruptcy judges may soon have the power to adjust the terms of primary mortgages.

That said, just because you're ineligible under the Obama plan doesn't mean that your lender or servicer won't ultimately adjust your mortgage, anyhow. Collectively, there are enough people in trouble or under water on their loans that they have plenty of leverage if they're willing to play chicken with their lender and threaten to stop paying.

The problem is, the lender can play chicken, too, by threatening to come after you for the balance of any money you owe - whether it's the difference between what you sell the property for yourself and the remaining mortgage, or the loan amount left over after the lender sells your property in foreclosure.

The lender may not follow through, though. "What our membership is telling us is that it can be cost-prohibitive to chase down a borrower who is already in financial distress," said John Mechem, a spokesman for the Mortgage Bankers Association.

"You can't squeeze blood from a stone."

They may, however, still come after people with high incomes who walk away from jumbo loans that are way under water or loans on investment properties.

The biggest challenge here may simply be finding someone at the bank to help. Having a second mortgage will also complicate matters.

## **YOUR TAXES**

You also need to consider the taxman.

Often, forgiven debts are taxable as income. Recent legislative changes, however, eliminate the federal tax burden through 2012 on most primary residence debt that a lender has reduced through loan restructuring or forgiven during foreclosure.

Mark Luscombe, principal analyst for CCH, a tax information service, said that people who sell their home through a short sale or give up the deed in lieu of foreclosure can also qualify for tax relief if they use a special tax form, 1099-C, that reflects the amount of debt that the lender has forgiven.

## **YOUR CREDIT**

A short sale, deed in lieu or foreclosure itself will almost certainly damage your credit report and score, and the black mark will last for up to seven years. But the amount of damage it does will depend on how much other credit trouble you've gotten yourself into with other lenders.

Todd J. Zywicki, a law professor at George Mason University, predicted that FICO may have to adjust its credit scores to lessen the impact of a foreclosure or similar incident. "It just seems obvious that a foreclosure in 2008 or 2009 doesn't have as much information value as a foreclosure five years ago," he said.

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