

## Negative equity – What can I do if I want to move?

### WHAT IS NEGATIVE EQUITY?

Negative equity is the term commonly used to describe the situation of owning a home that is worth less than your mortgage. There is no easy solution to the problem of negative equity. You may want a bigger house or need to move to a different area for employment reasons. The following points are suggestions of possible options to explore. There may not be a suggestion that is appropriate in your circumstances.

### ADVICE

It is a good idea to talk to your lender to see if they have any schemes that can help you.

### HELP FROM YOUR LENDER

- Contact your lender and ask if there are any schemes they run to help with negative equity. Some lenders may have packages for their existing borrowers but usually **only** if you have a good payment record. For example, you may be allowed to borrow up to 125% of the value of your home when you move. There may be a maximum amount of debt on your old mortgage that can be included in your new mortgage. Also you may have to pay off the old mortgage debt over a shorter time period than a usual mortgage, such as ten years rather than 25 years.
- This is not necessarily a cheap option as the interest rate may be higher and there may be a fee. You are also putting your new home at risk if you cannot keep up the total mortgage payments on the new home. Payments will be larger than normal because of the shortfall having been included.

### REMEMBER

You will need to pay solicitors, estate agent fees and the cost of moving as well.

- Some lenders may agree to accept less than the full amount of the shortfall debt by securing part of the debt on a new property as part of your mortgage and writing off the rest.
- Some schemes ask for a guarantor on the new loan (such as a relative) and may want the loan secured on their home as well as your own.

### WARNING

Be very careful, the guarantor's house would be at risk if you cannot make the payments.

- You may be able to clear the negative equity by obtaining an unsecured loan from your bank or building society. This will probably be more expensive than a secured loan because a higher rate of interest is usually charged, but an unsecured loan does not put your new house at risk. The loan may also be over a shorter period which would mean the monthly payments are likely to be larger.

- A limited number of lenders may run schemes that offer assistance to all borrowers. So you can apply even if your mortgage is with a different lender. Shop around high street banks and building societies and ask about these schemes. **HOUSING ASSOCIATION MORTGAGE RESCUE SCHEMES**

It is worth contacting local housing associations to see if they can help you. Housing associations are sometimes able to buy your home and rent it back to you under a mortgage rescue scheme. Each scheme will have its own rules so it is important that you check if you are eligible to apply.

- If you live in Wales the Welsh government has recently provided more money to housing associations to help with mortgage rescue schemes.
- If you live in England, a similar scheme is currently being considered. **Phone us for advice.**

### **INFORMATION**

For a list of housing associations in your area, contact your local council or The Housing Corporation. See the 'Useful addresses' section.

### **RENTING OUT YOUR HOME**

Another option is renting out your house with your lender's permission. Some lenders add an extra percentage on to the mortgage interest rate for allowing you to rent out the property. You could ask them to waive this if it will cause you hardship. You also need to check if your buildings and contents insurance will be affected by renting the house out. It can be difficult to deal with letting your house if you live far away. You may need to ask an estate agent or letting agency to act for you and find tenants. Your lender may say that you must use a specific agency and a particular type of tenancy agreement.

It is also worth approaching local housing associations. These are sometimes willing to take over renting out your property to people on their waiting lists.

If you rent out the house then you will have to find alternative accommodation such as a private tenancy or move in with relatives. This may be useful if your aim is to move to another part of the country. You may be able to buy another property with a new lender if your income is high enough. Most lenders are likely to be reluctant to do this except in very specific circumstances.

### **REMEMBER**

You will still be liable for the mortgage when your tenants leave, and the rent you get may not cover the whole monthly mortgage payment. You will also be responsible for repairs to your property.

### **SELLING YOUR HOME**

You may be able to sell your house with permission from your lender. You will need their agreement as they can stop a sale going through if the sale price will not cover the outstanding mortgage. You will need to persuade them that you have obtained the best possible price for the property. Point out that if the house was sold by your lender they would be likely to get a much lower price as the property would be empty and could fall into disrepair.

**The FSA Mortgage: Conduct of Business Rules** say that a lender must “deal fairly” with anyone in arrears. It also says the lender must “give consideration to the customer being allowed to remain in possession to effect a sale”. This means that if you cannot afford to stay in the house, the lender must look seriously at allowing you to sell the house yourself whilst you are still living there.

If your lender refuses to let you sell the house it is possible to apply to the county court for an order for sale under the **Trusts of Land & Appointment of Trustees Act 1996**. The court can order a sale on whatever terms it thinks reasonable, even if your lender objects.

In some circumstances you can use **Palk v Mortgage Services** which is a case where the lender was ordered to sell the property after repossession rather than rent it out indefinitely. This was because the rent would not have covered the interest being added to the mortgage so the debt was still growing.

In the **Halifax v Barratt** case the court let the borrowers sell the house for the “best possible price” even though the Halifax refused permission for the sale. The borrowers were also allowed to take the sale costs out of the sale proceeds before the money went to the lender.

- Talk to the lender about selling your home yourself.
- You may have to prove to your lender that sale is the last resort and the sale is in everyone’s financial interest.
- Provide your lender with full information about your financial circumstances.
- You will need evidence from several independent estate agents that you have found the best sale price for your home.
- The lender may ask you to sign an extra agreement saying how you will repay the shortfall debt.
- Consider handing the keys in and making an arrangement to clear the shortfall once the house is sold by your lender. This is only an option if you do not want a new mortgage in the near future as your details will be on the Mortgage Possessions Register for six years.
- You will also have a problem with being re-housed by the council as they could treat you as having made yourself homeless voluntarily.
- Make sure you keep any valuations from estate agents and keep adverts for sales of similar properties in your area in case there is a dispute in the future over the price for which the lender sold the property.
- You will still be liable for the regular mortgage payments until the house is sold. You will also be liable for interest charges, costs for the estate agents, legal fees, repairs and insuring the building.

## **WARNING**

You need to think very carefully about the options before handing your keys back.  
**Phone us for advice.**

## MORTGAGE INDEMNITY INSURANCE

Get legal advice about the terms of any mortgage indemnity insurance policy you may have on the mortgage. There have been arguments put forward that the policy which you pay for should cover you in the event of a shortfall, rather than just your lender. Following a court of appeal decision, it appears that this argument is **very** unlikely to succeed but you could ask for details of the policy from your lender and see if the terms could be interpreted as covering you as well as your lender.

## OTHER OPTIONS

- Borrow the amount needed to clear the shortfall from another source such as a personal loan, savings or from a friend or relative.
- If you have an endowment mortgage you could check with an independent financial adviser to see if the value of the endowment could be offset against the negative equity.

## INFORMATION

For a list of independent financial advisers in your area you could contact IFA Promotions. See the 'Useful addresses' section.

- If you have the means, payments on an endowment policy or other investment scheme could be increased to build up enough cover to pay off the negative equity when the house is sold.
- You could check the surrender terms of any investments you already have. Have any policy valued by both an insurance company and second-hand policy brokers.

## INFORMATION

Brokers should be registered with the Financial Ombudsman Service. See the 'Useful addresses' section for details of the Association of Policy Market Makers.

- If you have an endowment it may be worth discussing with your lender the implications of swapping to a repayment mortgage. The advantage of doing this is that with a repayment mortgage you would be paying part capital and part interest every month. This would mean you actually reduce the balance you owe on the mortgage over time and therefore reduce your negative equity.

## WARNING

Be very careful to get independent financial advice when considering changing from an endowment to a repayment mortgage. You may lose out on payments you have made on your endowment if you surrender the policy early on, as it may not be worth as much as you have paid in.

- It is also possible with a repayment mortgage to make extra lump-sum payments off the mortgage that reduce the balance owing. You have to be careful that the lender accepts the payments off the capital balance and not just as advance payments off your monthly instalments. Check with your lender or **phone us for advice**.
- If you want to move because you need more space, look at whether you can convert your loft or build an extension. In this way you may be able to stay in your home until house prices improve.

## WHAT CAN I DO IF MY LENDER IS UNHELPFUL?

- From **October 31 2004** the Financial Services Authority (FSA) has taken over the regulation of mortgage lending and problems with existing mortgages. This applies to all mortgages where the lender has a first charge over the property and at least 40% of the property is occupied by you and/or your immediate family. It does not apply to secured loans regulated by the **Consumer Credit Act 1974**.
- If your secured loan is taken out under the **Consumer Credit Act 1974**, then the FSA will not regulate the loan. The Office of Fair Trading (OFT) deals with licensing lenders under the Consumer Credit Act and will investigate the lender's fitness to hold a licence when things go wrong. You can still take up your complaint with the Financial Ombudsman Service. If your lender is unhelpful you should first complain to your lender in writing. If you are not happy with their response you can complain to the Financial Ombudsman Service. The Financial Ombudsman Service will look at whether your lender treated you fairly and acted reasonably when dealing with your situation. For example, they may look at whether your lender agreed to let you stay in your home and sell the property yourself. They may also look at situations where your lender has refused permission for you to sell the property for less than the mortgage, but then gone on to sell the house themselves for a lot less after repossession.

## USEFUL ADDRESSES

### **Financial Ombudsman Service**

South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR

**Tel: 0845 080 1800**

[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

### **Financial Services Authority (FSA)**

25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

**Tel: 0845 606 1234**

[www.fsa.gov.uk](http://www.fsa.gov.uk)

### **IFA Promotions Ltd**

2<sup>nd</sup> Floor  
117 Farringdon Road  
London  
EC1R 3BX

**Tel: 0800 085 3250**

[www.unbiased.co.uk](http://www.unbiased.co.uk)

### **The Association of Policy Market Makers Ltd**

PO Box 6717  
Sturminster Newton  
Dorset  
DT10 9AR

**Tel: 0845 011 9406**

[www.apmm.org](http://www.apmm.org)

### **The Housing Corporation**

Maple House  
149 Tottenham Court Road  
London  
W1T 7BN  
**Tel: 0845 230 7000**  
[www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)