

Selling your house to pay off your mortgage

If you have been through the Mortgage Arrears Resolution Process but have not been able to agree an alternative payment arrangement with your lender, your lender may then send you a letter telling you that your mortgage is unsustainable. They may also ask you to consider selling your house in order to pay off your mortgage. For more information on the Mortgage Arrears Resolution Process and the Code of Conduct on Mortgage Arrears, you can consult the MABS guide, also available on our website.

Negative equity

If your house is in negative equity, which means that you owe more to the lender than the house is currently worth, you will not be able to pay off the entire mortgage from the sale. You will also be responsible for paying back the balance to the lender, unless you have been able to agree a write-off or write-down with them. This means that the lender has agreed to accept less than you owe them and will not pursue you for the rest.

Advice and support

This is a very stressful position to be in. If you need advice and assistance, please contact the MABS helpline on 0761 07 2000. The Free Legal Advice Centres, or FLAC, also run a helpline on 1890 350 250. If the situation is starting to affect your physical or mental health, please see your doctor and/or contact the Samaritans on 116 123 for free, confidential support. It is vital that you continue to take care of your own and your family's health at this very stressful time.

Appealing under the Code of Conduct on Mortgage Arrears

If you believe you have grounds for an appeal of your lender's decision under the Code, you should

make one. The MABS helpline staff will assist you with information on this. For more information on appeals, please see the Guide to the Code of Conduct on Mortgage Arrears, on our website. In your appeal you will need to be specific about which provision of the Code you say that the lender has breached. If you are appealing the lender's decision to declare your mortgage unsustainable, you will need to be able to show the lender evidence that in fact it is sustainable.

If you have already appealed but your lender will not change their decision that your mortgage is unsustainable, you will then be asked to choose between voluntary sale, voluntary surrender, or trading down. Information on each of these options is set out below. Your lender may also offer a mortgage to rent (MTR) option and information on this is available in a separate MABS guide.

What is voluntary sale?

Voluntary sale is an agreement you make with your mortgage lender that you will sell your house and use the money to pay off your mortgage, or to pay off part of it if your property is in negative equity.

This is not a decision to be made lightly. You should talk to a solicitor and a financial adviser before deciding on a voluntary sale. FLAC can give you free legal advice (but cannot communicate with your lender on your behalf) and you can also avail of free financial advice from an accountant, which your lender will pay for. This only covers one session with the accountant. Always check with your lender in advance whether they will pay for this advice in your particular case, before you contact an accountant on the panel. The list of participating accountants can be viewed at www.keepingyourhome.ie

If, after taking advice, you have agreed with your lender that you will sell your house, they will then send you a voluntary sale agreement, which will be an agreement in writing that they want you to sign. Again, you should never sign this without taking legal advice on it.

What sort of terms will be in the voluntary sale agreement?

The agreement may cover things like:

- Who is to choose the auctioneer to conduct the sale - you or the lender
- Who is to be responsible for the legal costs of the sale (sometimes it is possible to agree with your lender that they will pay these costs, or to agree to split them between you)
- Whether or not the lender has the right to accept or reject offers on your property
- A timeline in which the property is to be sold
- A valuation of the property
- What is to happen with any shortfall owed by you after the sale (see "Negative equity" above)

Every voluntary sale agreement will be different, so it is vital that you take legal advice before signing.

Timeline for the sale

You should never agree to sell your property within a certain timeline. No one has any control over how long it will take a property to sell, or even whether any offers will be received at all. Properties are selling faster in some areas of the country than others. Your written agreement should include details on what is to happen if no offers are received on the property within a certain time frame, so that you will have clarity on this. What is a reasonable time frame in which to expect a property to sell will vary depending on which part of the country your property is in.

Independent valuations

If the lender has included a valuation of your property in the voluntary sale agreement, you should always ask them what this is based on, and you should always get your own independent valuation before signing a voluntary sale agreement, rather than just relying on the bank's valuation. A local auctioneer will carry out a valuation for you.

If you do not get your own valuation you may be forced to accept the bank's valuation, which may be a lot higher than the property is worth in reality. This means that if the property doesn't sell at the bank's valuation level, you will actually be left owing the bank more after the sale (if your property is in negative equity) than the bank has planned for.

You need to protect yourself in this regard by getting your own valuation from an auctioneer who is familiar with property values in your area. You can then send a copy of this valuation to the lender.

The only way you will know for sure how much you will end up owing the lender after the sale is to have contracts for sale signed and exchanged between you and the buyer. At that point you and the lender will know for sure what the property will sell for, and will have a much clearer idea of whether changes need to be made to the voluntary sale agreement. Your solicitor will take care of these negotiations for you if you ask them.

Agreeing a write-down or write-off with your lender

If you have agreed a write-down with your lender, which means that they have agreed to accept a sale price that is lower than the amount you owe on your mortgage, you should ask to get this agreement in writing before you start on the sale process. If you have agreed a write-off with them, which means that they will not pursue you for any of the balance outstanding after the sale, you should also get this in writing. You can ask your solicitor or MABS for help with these negotiations.

Getting a solicitor

You will need a solicitor to conduct the sale of the house for you, just as you needed one when you were buying it in the first place. You should try and agree with your lender that they will either be responsible for all legal costs involved in selling your property, or that they will split them with you. Anything you agree with your lender in this regard should be in writing. Your solicitor can help you with the negotiations with your lender described above.

Voluntary sale or voluntary surrender?

Voluntary sale is usually a better option than voluntary surrender (see below) because your property is likely to receive higher offers on a private sale, where you sell it yourself, than it will on a bank sale, where the bank will be the ones selling it.

What is voluntary surrender?

Voluntary surrender is an agreement you make with your lender where you sign over the title (ownership) of your house to them, and then they proceed to sell it. Voluntary sale is usually a better option than voluntary surrender, for the reasons set out above.

However, in some cases your lender may be willing to write off some or all of your mortgage in exchange for you signing over the house to them, in which case voluntary surrender would be an acceptable option. This is always worth exploring with your lender.

Since the property is yours, you can choose to surrender it to the bank at any stage. However, you should never make this decision without taking legal advice.

What sort of terms will be in the voluntary surrender agreement?

The lender will expect you to sign a contract with them which will make them the new legal owners of your property. You should also make sure that the agreement deals with what is to happen to any shortfall that you will owe them after the sale of the property, if your property is in negative equity.

Another important consideration is to check when the lender expects you to actually move out of the house. You will need to make sure that you are given plenty of notice to find alternative accommodation. You may even be able to come to an agreement with your lender that you and your family can stay on in the house (even though the lender now owns it) as tenants of the lender for a small rent, for a specified period, or until the house is eventually sold.

It is in no one's interest to have the property vacant for long periods of time, since this contributes to a rise in damp and general disrepair, and may attract break-ins and vandalism.

However the decision whether to allow you to stay on in the house after the voluntary surrender has gone through will be up to the lender as the new owner.

Every voluntary surrender case is different, so you should always take legal advice on any written agreement before signing it.

As before, you should get your own independent valuation of the property, as the lender may have a different view of what it is worth. The lender has a duty to sell your property for the best price they can get. This cuts down on the amount that you will owe them after the sale, in cases of negative equity.

You should try and get the lender to agree that they will be responsible for all costs of sale, which includes auctioneers' costs and legal costs.

You should also try and agree costs of security or repairs to the property with the lender before

signing the agreement, to ensure that the lender does not employ the most expensive services afterwards.

Getting a solicitor

You will need a solicitor to assist you with a voluntary surrender agreement in order to protect your interests, as there will be a number of legal documents to be signed. Your solicitor can carry out negotiations with the lender on all of the points set out above.

Applying for social housing

If you have received a letter from your lender telling you that they consider your mortgage to be unsustainable, you are then eligible to apply for social housing. This applies whether you are making a voluntary sale or a voluntary surrender agreement with your lender. Please contact your local city or county council housing department for more details. You will need to bring them a copy of the letter deeming your mortgage unsustainable.

If social housing is not an option for you, you can get information on renting privately at www.prtb.ie. This site also contains useful information on making the move to new accommodation.

“Jingle mail”

Many people think that if they simply post the keys of their house back to the lender, they will no longer owe any money on their mortgage. This is incorrect. Under Irish law, it doesn't matter how many copies of keys you post back to your lender – unless you have sold the property or signed it over to your bank, you are still legally responsible for paying the mortgage, whether you live in the house or not.

Do not abandon your property

These situations are so stressful to deal with that it can sometimes feel as if the only answer is to move out of the property and get as far away as possible from the problem. Do not do this. If your property is left empty for a long period of time, it will contribute to a rise in dampness and general disrepair, and may attract break-ins and vandalism. All of this will lessen the value of the house. It is a much better idea to stay in the house as long as possible and keep it in good order and repair and keep it heated. This will help to maintain its value.

If your lender has told you they intend to take you to court

Please see information leaflet entitled "Facing Repossession" on the MABS website.

Referrals

MABS helpline 0761 07 2000
Monday to Friday 9am to 8pm
www.mabs.ie

FLAC helpline 1890 350 250
www.flac.ie

Samaritans 01 116 123
www.samaritans.org

Private Residential Tenancies Board (PRTB)
0818 30 30 37
www.prtb.ie



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The Money Advice and Budgeting Service has helpful information, budget sheets and sample letters available online at www.mabs.ie. Advice and information is also available by calling the MABS Helpline 0761 07 2000 (Monday – Friday 9.00 am to 8.00 pm.) and from over 60 offices nationwide.

