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**RELATIONSHIP ADVICE FROM A REAL ESTATE
ATTORNEY – WHEN TO “WALK AWAY”**

If you have ever spent a few hours with me, then you would agree: No one is a better relationship expert than I am. No one gives better relationship advice than I do. I am not good at many things, but I have figured out the great mystery of relationships. No one has experienced more successful relationships than I have. Because of this great success, I routinely offer sound advice that you can apply to your own relationships.

Valentine's Day, and the days that immediately follow, are popular days to assess your relationship with your partner. But I warn you: Your partner is lying to you; your partner is cheating on you; your partner plans to end the relationship with you.

Now that you have the information, what will you do? You have just spent all that extra time and money in an effort to keep your partner happy. But you have discovered that they no longer appreciate you, and want someone else to take your place. How could they do this to you? And how do I know so much about your partner? Quite simply, it is my job to know what your partner did (and will do) to you.

Before any of my thoughts result in you negatively-confronting your spouse, significant other or exciting new person that you just met, allow me to clarify my warning: Your partner that I am referencing is your residential lender.

The intelligentsia that write for the coloring book, known as The Arizona Republic, recently published an article about distressed borrowers deciding to “walk away” from their residential mortgages. They even got some quotes from an Arizona law school associate professor (Are you kidding me, silly coloring book? Is that the best you could do?). (Editor's Note: Associate law school professors serve two purposes: 1) teach the classes that the tenured professors do not want to teach; and 2) publish a specific number of scholarly articles and textbooks. They must publish, or they will soon be fired. And being quoted in the coloring book does not count as published work towards tenure.)

In defense of the associate law school professor, he made one good point: guilt or a sense of obligation to pay your mortgage should not drive your decision to

continue paying your mortgage. But as with many in the academic community, he failed to offer Arizonans currently facing this dilemma, any practical application of his advice. In law school, his superiors would tell him, "right church, wrong pew," or, "you cannot see the forest from looking at the trees." But everyday, hardworking people require a better explanation in order to make the best decision for themselves and their families. I am happy to fill-in some gaps, using a combination of Arizona and federal law, lessons from American economic and political history and good old fashion, Midwestern common sense. When contemplating whether to "walk away" from your home, please consider these questions that only you can truly answer:

1) Why did you buy the house where you live?

Never forget, the primary reason that you bought your house is shelter for you and your family. Too many people are obsessed with this idea that they should "walk away" from their home because they are "upside down" on their mortgage.

Often I will meet with young families that are passionate about "walking away." When I ask them why they initially purchased the home, they tell me that their home is in a nice neighborhood, located in a safe area and close to their children's schools. Then I ask them, "how old are your children?" Without failure, most often the youngest of the children has at least ten years remaining before they graduate high school.

Even though the young couple would never sell their home for at least ten years (good or bad economy), the fact that this year the young couple is "upside down" on their home compels them to contemplate "walking away." There is nothing more traumatic on children than moving, and starting over at a new school. Under that analysis, who cares if you are "upside down" on your home? Remember – "Family First."

2) Did you realize that your home is worth the sale price on the day you sell it minus the price you paid for it, not the "cocktail party" price?

Remember all those cocktail parties, charity events, barbeques and picnics where everyone would exclaim the how much their home had appreciated in value. You may have envied those people, but did it really matter? Were you less of a person because your neighbor's property appreciated more quickly than yours? There is not a single Arizona homeowner that ever believed their home's value would increase by 40% each year. By contrast, and more applicable for current times, there is no Arizona homeowner that will ever believe their home's value will depreciate 40% each year.

Residential homes are neither stocks, nor bonds. If the value of your home depreciates by 200% from the date you purchased it, your home will not be delisted by the New York Stock Exchange. When you can sell your home and break-even or turn a profit, then sell the home. When you can sell your home and take a loss, then keep the home.

3) If you leave your current home, where will you go?

Do you remember how much it costs to move your furniture, pay a security deposit on an apartment and pay deposits to activate utilities? The total is probably more than three times your current mortgage payment. Perhaps there is value in seeking a HAMP loan modification, if for any other reason, you buy yourself invaluable time to save money for your next living experience. A lender cannot foreclose on your home, if you have formally requested a HAMP loan modification, unless the lender has first reviewed your application and denied you in writing. The lender must state the specific reasons for denial, and there is even an appeals process. People applying for HAMP loan modifications can delay foreclosures for almost one year. And yes, that is a year without paying the mortgage.

4) What kind of loans and how many loans do you have on your home?

In Arizona, we are pretty lucky. In most cases, the Anti-Deficiency Statutes (A.R.S. §§33-729 & 33-814) prevent a lender from suing you for a money judgment when your foreclosed/short sale home sells for less than the amount you owe on your mortgage, so long as:

- a) the mortgage was used to purchase the property.
- b) the property was your primary residence (look at what address you included on your 1040 tax forms for the previous two years to determine the answer).

So those of you that took out one mortgage and used the mortgage to purchase the home where you currently live, yes you can probably “walk away”!!! I also think that those individuals that took out 80/20 loans to purchase their home also can probably “walk away” too.

But what if you have a first or second mortgage on your home that was not used to purchase your home? Examples would include: refinancing your mortgage and taking that money out to start a business, pay bills, take a vacation and maybe even make improvements to your home. How many people took out a home equity loan/line of credit? You cannot “walk away.” Why?

Because the Arizona Anti-Deficiency Statutes will not protect you. The day that your home goes to foreclosure or you sign those short sale papers, the "due-on-sale" clause triggers in your loan documents (promissory note and deed of trust). As a result, your lender will sue you for the entire amount owed on those loans. Without an attorney, you will probably lose the case. (Editor's Note: See if that realtor who earned 3% on your short sale returns your calls now.)

You now have nowhere to live, and your lender is garnishing your bank accounts and wages. And why? Because some "up & coming" associate law school professor told the coloring book that you should "walk away." Newspaper subscriptions canceling everywhere in Arizona!!!

- 5) **If you "walk away" from your home, will you ever receive another 30-year fixed mortgage at a 5% interest rate? Never!!!**

If you "walk away" from your home, you lose two assets: the home and the low-interest mortgage.

The incentive to try and receive a HAMP loan modification is not necessarily to save your home from foreclosure. The primary benefit is to receive a 30-year fixed mortgage at 5.0%. But even if you do not receive a HAMP loan modification, holding that 30-year fixed mortgage at 8.0% might be the most important financial decision you make. Why?

Do you remember the late 1970's and early 1980's? Great roller-skating rinks, malls were closed on Sundays, inflation for everyone and credit cards for almost no one!!! Mortgages for people that put 20% down and had great credit meant 30-year mortgages at 18.0%. That is where things are headed in the real estate and mortgage industry. Five years after your home is short sold or foreclosed, you will buy another home, and you even will qualify for a loan. But your loan will be at least three times what you are paying now, presumably for the same type of house. You will gladly sign the loan papers, because you will be sick of renting!!!

You still want to "walk away?" You still care that you are "upside down" on your home?

- 6) **When will Mr. Obama save your home? He will have to, or he will not be re-elected. So you hang in there.**

Each month the HAMP loan modification program gets a little better. By better, I mean, Mr. Obama and his Treasury Department both put more teeth into HAMP's enforceability, and soften the requirements to qualify. Do you

realize that if everyone who lost their home during Mr. Obama's first term voted against him in 2010, he would lose by a greater margin than Mondale lost to Reagan in 1984?

Miraculously in 2012, Mr. Obama will take swift action against these banks that will have not helped you thus far. Every first term president wants one thing: a second term. There is one issue that unites people of all political ideologies: the ability to save their homes.

As for local politics, any man or woman that wants to be Arizona's next governor or serve in the state legislature, should simply campaign on a guarantee that they will pass a state law, requiring all loans for primary residences to be modified under the HAMP program. All the other campaigning is a waste of time and money. I guarantee that anyone making these promises will be elected to office.

- 7) **Pay your mortgage, do not pay your mortgage, modify your loan, short sale, deed-in-lieu, or foreclose – WHATEVER YOU DECIDE TO DO, YOU MUST NOT ALLOW GUILT TO PLAY A ROLE IN YOUR DECISION!!!**

I am not a theologian, but I cannot think of a single religion warning that you will suffer a negative afterlife, if you cannot pay your mortgage (if you know differently, feel free to correct me). If you cannot afford to pay it, then you cannot afford to pay it. It is not your fault. The lenders have been lobbying and planning for your doom and downfall over the last fifteen years. As stated above, there are some very concrete, economic, logical and legal factors that must aid you in your decisions. But emotion and feeling guilty cannot be factors in the choice you make.

Remember, no one gets dumped between Halloween and Valentine's Day. But the holiday season is over. And your lender is pining for someone else, a more attractive partner. If you plan to be the "dumper" and not the "dumpee"; break-up with your lender; and "walk away" from your mortgage, then first consult with your attorney. You must confirm if your newly-dumped, broken-hearted lender will keep calling you all hours of the day; drive by your house with new investors; or worse – sue you for breaking-up with them.