

**VOLUNTARY  
SURRENDER**

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## VOLUNTARY SURRENDER

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### Voluntary Surrender

When borrowers experience difficulty in paying their mortgages, and they cannot see any realistic likelihood of being able to pay as required by the mortgage in the future, they may consider voluntarily surrendering the property to the bank or other lender. However, they should be cautioned that this may not lead to a good outcome for them.

### Risks of Voluntary Surrender

There are two risks that may arise from voluntary surrender. Both relate to loss of control

#### Physical Loss of Control of Property

When owners of property leave the property without any written agreement in place, it may well be vacant for some time. This leaves it vulnerable to vandals and thieves, and it may deteriorate. A garden may return to sand if left unattended, and any property may be occupied by squatters.

#### Legal Loss of Control

If borrowers hand the keys back to the lender without any written agreement in place, they have very little effective control of what the lender does with the property. If the lender sits on the property without taking any effective action to look after it, or to sell it, the potential loss for the borrower will increase. A mortgage usually provides that interest continues to accrue until the principal is fully paid. Accordingly, the debt will increase, and the property may fall in value due to neglect. The property may be sold belatedly for a low figure.

### Paying Rates and Water Rates

Owners of property sometimes assume that if they hand possession of property to a lender, their responsibility for the property ceases. This is not so. The Local Government Act 1995 (WA) provides that the owner for the time being of land upon which a rate or service charge has been imposed is liable to pay the rate (s. 6.4). There is a similar provision in section 126 of the Water Services Act 2012. This is something a person needs to take into their calculations if they are considering handing property back to a lender.

### Written Agreement Vital

If borrowers wish to leave a mortgaged property and hand possession to the lender, this should be done only after consideration of the alternatives, and by written agreement with the lender. The borrower can request that the lender agrees to take proper care of the property, and sell it as soon as practicable for the best price reasonably obtainable. If the lender refuses to put this in writing, then I suggest the borrower stays on in the property until compelled to leave.

### Staying On

There are benefits, in many cases, for borrowers to stay on in the mortgaged property. If the property is the borrower's home, the borrower can use the property as free rent: staying on without paying the mortgage in order to accumulate enough money to move gracefully into a rental home. If the property is a business, staying on will enable the borrower to continue to operate it, and draw profit.

### Renting Property and Bankruptcy

If a person is considering leaving a property they own, moving into a rental property, and then becoming bankrupt, they should do this in that order. A person who is bankrupt may find it more difficult to rent a property than a person with a better financial history.

### Paid Manager

Any agreement with the lender should be in writing, to avoid any misunderstanding. The borrower should put forward the most advantageous proposal. An example is if the land is a farm, or used for a business, the borrower can suggest staying on as a manager, paid by the lender. If the land is a farm, this may be desirable from the lender's point of view, to care for stock or a crop. If the property has a business, its continuation may give the lender something better to sell than a vacant property. The borrower should ask for a proper market rate of payment, with normal employment conditions, such as superannuation, and workers compensation.

### Leave If Legally Obligated To Go

Exploring the advantages of staying on should not be misinterpreted as advocacy for resisting legal compulsion to leave. The best strategy is to continue correspondence with the lender to extract the best deal from the lender which the situation allows. It is most undesirable for borrowers to stay on until they are physically removed by the sheriff. A dignified departure with a good home to go to should be the longer term aim.

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