



# Contemporary Issues Related To Buying Real Estate (3)

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# Tenth

## **Buying Houses via Paying off the Remaining Mortgage Payments, Commonly Known as Non-Performing Loan (NPL)**

- NPL is a loan that is in default or close to being in default.
- These types of loans become mostly none performing, once 90 days have passed without payments made by the borrower to the lender, according to the lending agreement.





- Banks are required to classify NPLs as substandard category, doubtful to collect category
- Fannie Mae intend to reduce the number of such loans on their balance sheet by selling such loans to 3rd party buyers to meet their reduction targets to meet specific requirements.





- This transaction is not permissible
- It is buying loans.
- The Fiqh Council stated in this regard "Selling undue debts to a party other than the debtor is not permissible,
- whether paying upfront with the same currency or a different one, as this leads to Riba.



- Delaying the payment or part of it is not permissible as well, whether using the same or different currency.
- This is the prohibited credit-for-credit, sale where there is no submission of any of the traded items.
- No difference acknowledged whether the debt is a result of a loan or credit sale.

## **Eleventh**

### **Buying Houses via Paying off the Outstanding Property Tax, Commonly Known as Real Estate Tax Sale (RETS)-Comments**

- Two concerns:
- Unjust transaction. Although this is true, but the new buyer is not responsible for the wrongdoing of the county.
- Suspended and not an immediate sale. Some scholars have allowed it such as Imam Ahmad and Ibn Taymeyah.







# Twelfth

## Buying Houses via Short Sale

- Any sale of real estate that generates proceeds that are less than the amount owed on the property.
- It occurs when a lender and borrower decide that selling a piece of property, thereby absorbing a moderate loss, is preferable to having the borrower default on the loan



- It is therefore an alternative to foreclosure
- For the buyer:
- Outright purchase, then clearly there is no issue.
- But, if he applies for a loan from the same financial institution that loaned the original client, i.e. the current owner, then this transaction is forbidden
- It's an interest- bearing loan
- The bank is the lienholder on the house, not the owner.
- This is a clear distinction between short sales and buying foreclosures.



- If the buyer secretly agrees with the current owner to short sell the property without notifying the bank.
- This short sale would not really be for the buyer to assume ownership but would rather be in the interest of the current owner.



- It is allowed for both parties in a transaction to willingly change the clauses in an agreement or sale if there are special circumstances arose, especially when the special circumstances are beyond the control of the buyer and seller and heavily impact the interests of either party. In Islamic finance law, this is referred to as "Special Circumstance Theory", and in the US commercial law, it is called "Force Majeure"

- The US courts do not currently recognize this legal theory. In the US, the homeowner does not have the right to initiate a short sale for himself. The mortgage issuing bank has the exclusive legal right to initiate a short sale at its discretion.





- Another issue that needs to be addressed is if the buyer secretly agrees with the current owner to short sell the property without notifying the bank. This short sale would not really be for the buyer to assume ownership but would rather be in the interest of the current owner.
- Muslims are expected to comply with the laws of the land and therefore shouldn't secretly arrange with others to short sell their property for themselves.



## **Thirteenth Buying Houses Directly from the Banks, Commonly Known as Buying Foreclosed Houses-Comments**

- The foreclosing bank is the owner, thus, he sells on behalf of himself.
- The loan involved is nominal
- Dr. Husain Hamed Hassan approved my Fatwa regarding the permissibility of buying foreclosed homes from the owning banks directly.



## Fourteenth Repenting from Purchasing a House via Interest



- Foreclosing and loosing equity is not a requirement for the sincere repentance.
- Guarding investment is a necessity.
- Necessities allow one to do that which is forbidden, among which is to pay interest.





- Remedies to rectify the situation:
- First : Refinancing with a Sharia compliant mortgage company.
- Second: Selling the property and paying off the loan in full is the solution.
- Third: keeping the ownership of the house and paying monthly as much as he can is the solution

- A prepayment penalty is a clause in a mortgage contract stating that a penalty will be assessed if the mortgage is prepaid within a certain time period.
- Even though it is similar to interest - if it still exists -, but it is still allowed to be paid because it is the only way to get out of the interest-bearing loan with least harm befalling the homeowner.
- Choosing the lesser of two evils is a well-known concept in Islamic law.

