

Facts about Discount Payoffs

Have you received an offer from your second mortgage holder for a “discount payoff”? A “Discount Payoff Agreement & Release of Claim” appears to be an offer allowing you to pay a small portion of the total remaining principal balance on your second mortgage in exchange for release of the mortgage. The Agreement also suggests that it will forgive the remaining debt owed on the second mortgage. This seems like a great opportunity, and mortgage holders will encourage you to sign the agreement and send in a check for the payoff amount. But is it too good to be true? Maybe. Before agreeing to a “discount payoff” agreement, consider the following:

1. The Debt May Not Be Forgiven

Look for language in the letter that might allow the mortgage holder (or someone else) to collect the debt in the future. The “discount payoff” may only promise a release of the mortgage, but not forgiveness of the debt. This leaves open the possibility that they will pursue you to pay the debt in the future. The creditor has six years from the date of the contract to file a lawsuit.¹

Look for terms such as “advise.” This term may mean that the mortgage holder (or law firm representing the mortgage holder) will “advise” that the debt be forgiven and “advise” that the mortgage be released. This means that nothing is certain, and the mortgage holder may or may not forgive the debt or release the mortgage.

Also look for language indicating that although the mortgage holder may not collect the remaining balance, they may retain the right to sell the debt to someone else, giving someone else the right to collect the remaining balance from you.

Debt Forgiveness

See our “Mortgage Debt Forgiveness” fact sheet for information about possible tax implications

2. Release of Claims

A “discount payoff” may include a Release of Claims provision. This provision may explain that in return for the offer to pay a fee to release the mortgage, you will not sue the lender. However, it may also state that even though you promise not sue the mortgage holder, they can still sue you. This could mean the mortgage holder is still able to sue you for the remaining balance (or other legal claim), but you cannot sue the mortgage holder for their wrongdoings.

3. Definition of “Discount Payoff”

“Discount payoff” seems to mean that if you pay what the mortgage holder is asking (the discounted remaining balance), you will have satisfied the loan (payoff). Typically, mortgage holders do not define the term, leaving open the possibility that the mortgage holder could later state it defines the term “discount payoff” differently.

4. Seek Advice

If you receive a “discount payoff” offer, consult with a housing counselor or attorney who is familiar with discount payoffs.

Ask Your Attorney:

- Does the release of the mortgage also mean forgiving the debt?
- What is meant by a “discount payoff”?
- Will the mortgage holder be able to collect the remaining balance at a later time?
- Will I be able to sue the mortgage holder if it fails to comply with the agreement?
- Can I add provisions ensuring the mortgage holder will not be able to collect the debt at a later time?

Be sure to keep a copy of the signed discount payoff letter and any proof of correspondence between you and the mortgage holder.

*This document represents general information that will vary by lender and is not legal advice.
Consult a competent legal professional for advice specific to your situation.*

For additional information on foreclosure or to locate a housing counselor in your area, contact the Minnesota Home Ownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org

¹ Minn. Stat. § 541.05 (2009).