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Garry Marr: Why it Could be the Right Time to Walk Away From Your Real Estate

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A Remax advertisement in front of condos in Toronto at Spadina Avenue and Front Street in Toronto on December 2, 2025. Photo by Peter J Thompson/National Post

There is a time to throw in the towel on any investment and that moment may be coming for some homeowners and condo investors.

Bankruptcy is still an ugly word in our society, and many will fight tooth and nail to avoid it, but it is becoming a viable financial option today if your real estate investments are underwater and you have no other assets.

Douglas Hoyes, licensed insolvency trustee and co-founder of Hoyes, Michalos & Associates Inc., said the technical answer for when to consider bankruptcy sometimes comes down to facing a reality that you are “balance-sheet” insolvent or just have more liabilities than assets.

“I have a house that I paid \$1 million for and it’s worth \$800,000. I hear this every day. It’s bad out there,” he said. “The question becomes, ‘Should I pull the trigger?’”

Hoyes starts by asking about your cash flow. If you just renewed your mortgage and can afford it, does it matter what your house is worth if you have no plans to sell it?

Of course, “afford” is a relative term. The monthly payments might make sense, but if they are based on a very long amortization, it may be time to ask, “What’s the point?” You also need to know that you will be able to afford the payments tomorrow if, say, you are in a variable product where rates can rise.

“It’s a bit like an eight-year car loan, where you ask, ‘What are you thinking?’” Hoyes said. “Hey, but I have had my car for 15 years because I’m a cheapo, so I get seven more years (after making the payments).”

Real estate is increasingly pushing Canadians over the edge. Hoyes did a study and found that homeowners accounted for eight per cent of all insolvencies in 2025, up from five per cent in 2024.

Paying down your mortgage and waiting for your \$800,000 home to reach \$1 million might not make much sense these days, especially once you factor in interest costs, but there are some important things to consider.

First of all, we don’t have “jingle mail” in most provinces, where you can just send the keys back to your lender because your mortgage is non-recourse. If you owe money on your home or a condo investment, your lenders will come after your other financial assets.

Bankruptcy also comes at a cost. You can keep your registered retirement savings plan holdings, but not any contributions made in the last year before filing. Your tax-free savings account? Gone. Most other accounts. Bye. You do keep your pension.

“The biggest thing most people lose in a bankruptcy is a portion of their income,” Hoyes said. “Every month you are bankrupt, you must report what

your income is and there is a government threshold, so if you are over the limit, you pay more. If you have a crappy job, bankruptcy is pretty cheap.”

If your income is low, the bankruptcy period is nine months – add 12 months for higher incomes – and the note about your filing stays on your credit report for six years after the bankruptcy ends.

A consumer proposal only stays on your record for three years after the debts are paid off, but your total debts, excluding the mortgage on your principal residence, must be \$250,000 or less.

“I’m talking to a lot of people who bought pre-construction condo units they paid \$1 million for, but it’s only worth \$700,000,” Hoyes said, pointing out the \$300,000 gap in that investment makes people not eligible for the shorter consumer proposal.

Ultimately, you still need a place to live, and he suggests finding a rental before any insolvency hits your credit report.

“This is still a very emotional decision because it’s your home,” he said, adding that some people have lives that include children going to school in the area, which makes them not want to leave.

But before you consider this strategy, let's not forget that developers and lenders have never been more motivated to make a deal that will keep you in your house or have you take possession of that condo you agreed to buy.

Greg Zayadi, president of Rennie & Associates Realty Ltd., said the first thing any consumer should consider is their contractual obligations, which differ by province.

The developer will ultimately have to prove they lost money to go after you. If you paid a \$100,000 deposit on a \$500,000 condo now worth \$400,000, it will be hard to go after you for damages.

“In a lot of cases, developers will do their best to work with the purchaser (rather than go after buyers) legally,” Zayadi said. “They will give more time, arrange financing and sometimes even agree to a vendor take-back mortgage.”

Some condo developers are now agreeing to let some consumers switch to a less expensive unit if they can't get financing. In some cases, those who bought a \$700,000 unit can arrange to switch to a \$500,000 unit, he said.

Obviously, losing \$200,000 is not ideal, but it is a way to avoid bankruptcy or a developer coming after your other assets.

“You made a commitment and you put down a deposit,” Zayadi said. “You have an obligation, but nobody wants to be the big bad developer. A lot depends on a developer’s exposure. If you sold 100 units and 50 want to default, then you will flex a little bit to make sure everybody starts to close.”

Toronto real estate lawyer Bob Aaron, who has decades of experience and still considers the Ontario real estate collapse of 1974 the worst time of his life, said he has advised several clients to file for bankruptcy.

“Sometimes we do go to the builder and say my client has no assets and you’re welcome to sue if you want, but they will go bankrupt, so how about a mutual release to keep the deposit, and that’s the end,” he said, adding that some developers will just say they already have the deposit and go after you anyway.

Back in the 1970s, Ontario introduced a 50 per cent tax on all real estate profits, which crashed the market almost overnight.

“A few months later, I said to my wife, ‘The market has absolutely crashed, and we should buy a house.’ We did and got a fabulous discount from what they were asking,” Aaron said. “The market goes up and down and those are the rules.”

The wreckage from that is what people have speculated wildly about. In some cases, they have no assets to compensate for the massive losses. Yet mortgage delinquencies are far less than one per cent in Canada, and part of that is because bankruptcy remains a dirty word.

“We are politely Canadian. We do not like to default,” Zayadi said. “Our banks are polite people. In the United States, it’s bankruptcy, let’s go.”

There is a certain truth to that. But at some point, even in Canadian real estate, there comes a time to surrender.

One more thing to consider: what if the market drops even more? That’s something a client once asked Ted Rechtshaffen, president of TriDelta Private Wealth.

“Then they’re in even worse shape,” he said. “It’s like being at the casino and being down. Do you want to bet more to win more to cover my losses or walk away?”

If you can walk away without paying the house back everything, that is pretty tempting and maybe the right financial decision. I’ll let others decide if it’s the right moral one.