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The prohibition against “clogging the equity of redemption” has been enforced by the courts for centuries. Yet the traditional justifications (invoking fairness or unfair bargaining power) offered for this central premise of mortgage law are rather unconvincing, particularly in the commercial context. After describing and critiquing the traditional view, this Article lays out an alternative justification for the equity of redemption, stressing the role of the law in fostering efficient renegotiation upon default. This view explains why the equity of redemption cannot be waived in the initial loan documents, and why it can be waived in subsequent workouts only if the court is convinced of the fairness of the waiver. Moreover, this Article demonstrates that, even if the equity of redemption is an efficient term in most mortgages, signalling concerns may prevent parties from including it in their contracts, thus justifying the judicial insistence that the equity of redemption be a mandatory, rather than a default, term.

