

“The American Dream”

--Options for a Muslim to buy a home in the USA.

Research project for Advanced Islamic studies course

Worcester Islamic Center



Submitted by:

Br. Nawal Ahmed

Sr. Absatou Amadou

Hafiz Haseeb Rahman

Hafiz Shahbaz Raja

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Abstract:

"That we are humble students and we conducted this research by using contemporary fatawa from scholars and submitted this to Dr. Asif Hirani for our fall 2019 semester of Advanced Islamic Studies at Worcester Islamic Center."

The American dream manifests itself in the ownership of a home. The home is an abode to live in, to decorate, to host parties, to look back upon and to prove one's accomplishment in the land of opportunity. The struggles of fleeing from injustice, oppression and poverty are proven to be over for the U.S. immigrant of almost every country in the world over decades and decades. It is this realization that the immigrant looks back upon and says " I made it". The journey to this end goal, however, brings about the story of the trials and tribulations most face in this country.

For many it is the humble beginnings as perhaps a dishwasher in a restaurant or a cashier in a convenience store while pursuing an education or a business aspiration. Whatever the story in the beginning, that fragile and uncertain beginning, if nurtured with persistence and hard work has, for most yielded in the stage of becoming a home owner the minute the struggle is over. Home ownership is considered the first firm step in the ladder of a stable life that leads to the establishment of a family life. It is a firm platform upon which the humble worker or student is able to feel they have become part of the fibre in the cloth of

American life. With roots established as such one can now write home and say “ I bought a house”.

However, for most, the achievement of this dream cannot be realized without taking a loan from a bank. Typically, a homeowner would have to borrow around 80%- 95% of the value of their home to make this dream a reality. As long as someone has a decent job, no criminal record, and the ability to pay 5% - 20% of the home’s value, any bank is willing to lend the remaining 80%-95% to them. Mortgage loans are the largest industry in the USA. Banks lend freely to most, despite the existence of discrimination towards certain ethnic groups. This type of lending is the single most interest based business in America. While borrowing to buy a house is customary for most, for the practicing Muslim it poses a great problem since mortgages from banks are offered with interest. The prohibition of interest based activities as stressed in the Holy Quran (1) goes directly against the customs of mortgage based home ownership that is prevalent in America. Thus, for the Muslim, the achievement of the American dream becomes quite a different task than that for a non-practicing Muslim or a non-Muslim. In this brief, we will attempt to identify this issue and examine what options are available to the practicing Muslim in America and how he or she can achieve the American dream of Home Ownership without compromising on the principles of Islam.

2. Approach: What does Shariah say?

In our pursuit of finding a solution to this issue, we will formulate a systematic approach that incorporates shariah law (2) and the principles of Islamic Jurisprudence. (3) We will examine this issue from a classical and also from a contemporary point of view.

Shariah is the divine set of rules set by Almighty Allah that map the way a Muslim should lead his or her life. It encompasses direction in rules for the individual, to state and societal affairs. Its instructions are embedded in the direct revelations as found in the quran and authentic Sunnah practices as evidenced in the life of the Last Messenger of Allah, the holy prophet Muhammad (peace be upon him).

The Principles of Islamic Jurisprudence are a set of methodical rules developed by scholars used to apply shariah laws in the absence of direct evidence from the Quran and Sunnah.

3. “Interest vs “Riba” are they the same?

Upon having reviewing the first source of guidance into the matter of obtaining a mortgage from a bank or a financial institution, we see that interest is directly involved and is one of the salient features of a mortgage. As such, there is direct evidence from the Quran in the prohibition of “ Riba” . (4). Further, there also direct hadith with direct reference to the prohibition of “Riba”.

However, the confusion and disagreement for many come into play in the understanding and definition of Riba. It is the same as interest? Some state it is the same, whereas others hold the position that it is not. This is where the matter becomes gray for many who are in pursuit of the American Dream of home ownership.

Riba: (5)

What do we really mean when we use the Arabic term *riba*? The literal translation of the word is “increase, addition or growth,” though it is often translated as “usury.” English speakers typically understand usury as the charging of an exploitative interest rate. But *riba* refers to any excess value in transactions that our Sacred Law has prohibited. The prohibition of those transactions is determined with the aid of

interpretation of the text of the Qur'an and Sunnah and through inferences and extension by qualified scholars of fiqh al-muamalat.

There are two common types of riba recognized by almost all Muslim scholars: riba al-fadl and riba al-nasee'ah.

The latter term, riba al-nasee'ah, is commonly referred to as compound interest. It is the most egregious type of riba in the marketplace. Riba al-fadl is called the riba of surplus. It refers to trading goods for one another in unequal amounts (e.g., gold, silver, wheat, barley, etc.).

Some have said that Prophet Jesus (peace be upon him) evicted the money changers from the Temple in Jerusalem for engaging in riba al-fadl. Jewish pilgrims arriving in Jerusalem were required to pay the Temple tax but preferred to use the half shekel since it was the only silver coin that did not feature the image of a pagan Roman emperor. The money changers of the Temple made a business of receiving silver coins of greater value and giving silver half shekels in return. The usurers took more silver from the pilgrims than they gave—the definition of riba al-fadl.

Knowing the rules of riba is an essential part of our faith. Just look at the example of our pious predecessors. Omar ibn al-Khattab (RA) prohibited buyers and sellers from even setting foot in the marketplace without first knowing the rules of riba. He did this out of a profound sense of responsibility toward those who were most vulnerable—

people who could be exploited without knowing it. And he also knew that avoiding riba was fundamental to the implementation of God's command to stand up for justice. Economic justice sometimes gets lost in the discussion about Islamic finance, but it shouldn't be.

And if you need more reason to watch out for riba, refer to what God says about it in the Qur'an. In it, He declares war on the one who takes riba:

O you who believe, give up what remains of your demand for riba if you are indeed believers. If you do it not, take notice of a war from God and his Messenger. (Qur'an 2:278 – 2:279)

Do the rules of riba even apply today? Absolutely. Not only did our classical jurists warn against doing business before learning what protects riba, but qualified, credentialed scholars like the members of the Accounting and Auditing Organization for Islamic Financial Institutions, or AAOIFI, say the same. Of course, even though the rules are timeless, there are certainly modern circumstances that we need to take into consideration as we apply to rules regarding riba to our daily transactions.

The conventional mortgage can be categorized as riba al-nasee'ah. As such it is strictly forbidden to engage in a regular mortgage loan.

The scholars are unanimously agreed that riba-based loans are haraam.

Ibn Qudaamah (may Allah have mercy on him) said: Any loan in which it is stipulated that more (than the original amount) be paid back is haraam, and there is no difference of scholarly opinion concerning that. Ibn al-Mundhir said: They are unanimously agreed that if the lender stipulates that the borrower must pay back more or give a gift, and he gives the loan on that basis, if he takes anything additional to that, it is riba. It was narrated from Ubayy ibn Ka'b, Ibn 'Abbaas and Ibn Mas'ood that they forbade loans that bring benefits. End quote from al-Mughni, 6/436 (see reference (6).)

Another view: There are others that have presented an alternate view of Riba and claim that modern day interest is not Riba, and thus not haram. While this opinion exists, it is known to be a minority opinion, it might be a from ijtihaad by a mujtahid, or purely someone who is trying to mislead people **“(He may be a mujtahid who will be rewarded for his ijtihaad, or he may be excused, or he may be an evildoer if by regarding this as permissible he is following his own whims and desires.” (7)**

Upon reviewing the majority and scholarly views on Riba and whether current day interest is Riba or not, from both a classical and contemporary standpoint, we can proceed to look at some practical situations with regard to the American Muslim and whether he can take a conventional mortgage to buy a home or not.

In order to structure a resolve to this question, we must follow the methods established by the shariah and by principles of jurisprudence .

The Shariah viewpoint adopted by majority scholars is established without a doubt as Haraam. As such, we need not go further as far as the application of Shariah goes to this problem. However, in reviewing the applications of the principles of jurisprudence, if one were to take the minority view of scholars who do not consider modern day interest to be Riba, then it would be permissible. Most people are not comfortable with the minority view. Thus the dilemma still remains of how the American Muslim can buy a house. In order to address this issue, commercial ventures have been adopted that are known to most as “Islamic Finance” or Islamic Banking.

4. Islamic Finance and Islamic Banking

This relatively new industry in modern times is the business proposition that addresses the problem of Muslims today living in a world where the interest based financial system is prevalent. Islamic finance has brought to the forefront of Muslim society, a set of transaction based contracts and agreements that comply with shariah. In essence, they avoid interest. (from hereon we will use interest instead of Riba since we adopt the majority scholars view that Riba and interest are the same and both are haraam)

The prime directive in Islamic banking is to replace interest with profit sharing. Scholars of fiqh have agreed upon a set of transactions that adopt this concept.

The concept of Financing itself exists due to some having excess capital to invest while others need capital to invest. Traditional Islamic transactions have been conducted during the times of our holy prophet Muhammad (peace be upon him) whereby parties with excess capital have partnered with parties needing capital in order to invest in a project or a venture. The gains and losses of such partnerships are divided between these parties based on an agreed upon formula. Thus creating an environment of financing without interest. Contemporary

Scholars have adopted similar models either in direct form, or in hybrid forms to allow commercial entities to offer “riba free’ financing for personal home loans and for commercial transactions. The most common are types of transactions are:

Murabaha, commodity based transactions used for short term investing and financing. This type of financing is akin to money market transactions in conventional banking.

Mudharaba: a partnership between parties that have capital and those that have management expertise. This transaction type allows for those without capital, but skills to access capital. And it allows capital owners access to people with skills. No interest is involved. The profits or losses are shared between the parties using an agreed upon formula. Such a transaction can replace an interest bearing business loan from a conventional bank.

Ijara: A leasing transaction where the owner of capital acquires land, commodities or equipment and rents it to a private or commercial entity for a fixed lease payment for a fixed period of time. Again, there is no interest involved.

Musharaka: A partnership between a capital owner and a party that needs capital. The owner of capital acquires an asset and sells it to the other party via an installment program over time. The owner of capital sells the asset with a cost plus profit markup to the buyer.

Diminishing Musharaka: A partnership between the owner of capital and someone who wants to buy an asset but does not have capital. The partner with capital purchases the asset and sells it back over time to the party that wishes to own it. A leasing transaction also occurs that allows for the party to use or rent the asset from the party with capital. Over time the asset is acquired and the party with capital realizes a profit via the rental agreement. This is the most common Islamic Finance instrument used for home ownership. There is no interest involved and it's conventional counterpart is the traditional mortgage. There are many more Islamic Finance transactions that are used in Islamic banking. However, they are not relevant to our discussion. The transactions used are all approved by contemporary scholars and transactions in the billions of dollars have been taking place every year and that number keeps growing as the Muslim populations worldwide seek out ways to satisfy their financial needs.

5. Islamic Finance in the USA

There are Islamic financial institutions in the USA that provide Islamic home financing based on the diminishing Musharaka model. They are: UIF, Guidance Financial and Lariba.

Over the years they have disbursed billions to home buyers. And have helped them achieve the American dream.

Their transactions are approved by well renowned contemporary scholars such as Taqi Usmani, Imran Usmani, Daud Bakr, Nizam Yacouby, Yusuf Talal De Lorenzo. Mohammad Elgari, Abdul Sattar Abu Guddah and others.

Additionally, the US based group of shariah scholars called Assembly of Muslim Jurists of America (AMJA) also has been a valuable contemporary source for the American Muslim.

AAOFI is a Bahrain based organization that has developed a set of standards and accounting practices for Islamic banks and Islamic financial institutions. US based Islamic Finance institutions use the guidance of AAOFI to adopt best practices in Islamic Finance for themselves.

6. Differences between Islamic Finance based home mortgages and

Conventional Mortgage companies:

The difference between a conventional mortgage and a mortgage offered by the “Islamic Finance” companies such as Guidance Financial, etc can be highlighted by the text from Guidance Financial’s website: (8)

“According to Islamic legal jurisprudence, lending money to profit from any commercial or investment activity including the financing of real estate is not an acceptable method of commerce. The home financing program that Guidance Residential created is based on an Islamic financial concept known as “Musharakah Mutanaqisa” or “Diminishing Partnership.” In this method, the relationship between Guidance Residential and the home owner *is that of a partnership* rather than a *borrower-lender*. Conventional home loan providers do not share the risk of natural disasters, eminent domain or foreclosure. Through this type of financing, the home buyer bears the brunt if any of these misfortunes occur.”

The high lighted words can be focused on to get the essence of key difference between conventional and Islamic mortgages:

First, The contract executed for the Islamic mortgage refers to a **“partnership”**. Whereas, the contract executed for a conventional mortgage refers to a **“borrower lender”** agreement.

Second, the “Partnership” referred to, in the Islamic mortgage takes place when the buyer and the Islamic finance corporation both together purchase the home. The funds from the buyer is the down payment and the funds from the Islamic finance corporation is the balance remaining in order to purchase the home.

Initially, the proportionate ownership in the home purchased by the two partners represents the amount of money each partner contributed. Once the property is purchased, the buyer rents the property from the partnership. And the rent is received by the partnership is shared pro rata between the two partners. Since the goal of the buyer is to ultimately “own the home”, the share of the rent that would belong to him is used to purchase the home from the other partner, which is the Islamic finance corporation, over an agreed upon term. Which typically could be anywhere from 15, 20 or thirty years. The buyer has a right to make any pre-payments at any time. In this fashion, the buyer ultimately owns the home and the Islamic finance corporation benefits from the “rent” it collected over the term of the partnership. Both parties are owners of the property until the home is fully purchased by the buyer from the Islamic Finance corporation.

Third, the conventional “borrower – lender” agreement operates on purely an interest and principal repayment basis. Where by the buyer makes a down payment and the conventional mortgage company lends the remaining amount needed to buy the home to the buyer. This lending is done on the basis of compound interest at an agreed upon rate. Every month the buyer is to make payments to the conventional mortgage company which partially represents principal repayment and interest payments. These payments are made until the loan is paid off fully by the buyer to the Conventional mortgage company. The term of these loans typically range from 15, 20 or thirty years. Usually, The buyer can pay off the loan at any time without any penalties. The Conventional Mortgage Company hold the title of the property until the loan is paid off.

Conclusion: It is clear that there are significant differences in the approaches towards buying a home using an Islamic Finance corporation versus a conventional mortgage corporation.

7. Case study:

Let us look into a situation where a Muslim will be faced with whether to buy a home with conventional finance or Islamic finance.

Case : Mr Haroon Al Rashid (HAR) of Worcester , MA wishes to purchase a home. He currently rents a three bedroom apartment and his rent is \$1500 per month. HAR has always avoided interest in his life since he feels riba is the same as interest and so does not want to take a bank loan. Recently, an Islamic Finance Corporation called UIF gave a presentation at the Worcester Islamic Center (WIC) and HAR learned from here that there are options for him to purchase a home using UIF's Islamic home purchasing program. UIF requires only 3% down payment. HAR is considering a \$ 200,000 home and has \$10,000 saved to put towards a down payment.

However, HAR is still a little doubtful. He knows WIC's dynamic and handsome Imam has been conducting Advanced Islamic Studies classes and this topic has been discussed as part of the curriculum. So HAR approached the Islamic Finance team of the class to get clarification on the following:

- 1) He has heard that some scholars say that Riba in the Quran is not necessarily Interest that is charged by conventional banks today.
- 2) whether the model offered by UIF is Halal or not.

3) What should HAR do from a) an Islamic sense; b) an economic and financial sense.

Analysis:

Answer 1)

The majority view from both, traditional and contemporary scholars is that Riba and current day interest are one and the same. (see discussion earlier in the paper “Riba vs Interest” are they the same).

However, there is a minority view of scholars that say modern day interest is not the Riba as described in the Quran. (9). Our recommendation would be to side with the majority and suggest that Riba and modern day interest are one and the same.

Answer 2) UIF uses a partnership model called “Diminishing Musharaka” (10) This model has been approved by eminent contemporary scholars and UIF has obtained a certificate of approval of their business operations and home financing transactions from the team of scholars.(11)

On this basis we can recommend HAR to obtain a home financing Islamic mortgage from UIF and it would be considered halal according to the contemporary scholars.

Answer 3)

a) According to the rules of Islamic jurisprudence, in order to determine if something is disallowed we need to refer to the Quran and authentic Sunnah.

If no direct agreed upon evidence can be found from the Quran and sunnah, then we would refer to the scholarly approaches of “ijtihad” based on: consensus (ijma), Qiyas (analogy) Interest/Utility (Maslaha), preference (Istihsan), blocking the means ((sad al Dhara’i), Previous Jurisprudence (Shar’ man Qabalana), a Companions opinion (Sahaba fatawa), Tradition of Madinah (Amal Ahl Al Madinah), Tradition/custom (Al Urf), Presumption of continuity (al Istishab) .

In this case, the classical and contemporary scholars all agree that there is enough evidence from the Quran and Sunnah that Riba is haram. Further, as we have elaborated earlier that modern day interest is the same as Riba as mentioned in the Quran.

Thus HAR should not take a traditional or conventional mortgage since it involves Riba (interest). However, HAR may purchase his home via any instrument from UIF or other institution offering the most common

and acceptable “diminishing Musharaka” contract as it is contractually a “partnership” and not interest.

b) While it is Islamically permissible to purchase a home via “diminishing musharaka” contracts, HAR needs to look into his own financial condition and his goals.

HAR should purchase a home at the right price, within his means, and, in a location where the property prices are expected to increase in the future. The whole reason being to protect his wealth, which is also an encouragement from the shariah. Without considering the “economic and financial “ aspect of the transaction it would be foolish to buy a home even if it is purchased Islamically.

For example, HAR is currently paying \$ 1,500 per month on rent. Thus we can infer that HAR can afford a monthly payment of the same amount. If he were to make such a payment to purchase a home over the usual thirty year period, then he would be paying $\$(1500 \times 12 \times 30) = \$ 540,000$. This would assume a purchase of a home of around \$200,000. Suppose home prices appreciate by 5% on average every year, then this home over 30 year would be worth $\$ 200,000 * (1.05)^{30} = \$ 832,000$. Clearly HAR would benefit $\$(832,000 - 540,000) = \$ 292,000$. (we have

rounded numbers for simplicity. Ignored property taxes and home maintenance costs for simplicity)

If HAR continued to rent, he would not have the benefit of preserving his capital, nor the profit on the assumed 5% annual increase in home values.

Thus it makes economic and financial sense for HAR to purchase a home using the “diminishing Musharaka” contract from any Islamic Mortgage company such as UIF, Guidance, American Finance House (LaRiba), given, he does so to be able to afford the payments and he purchases the home where he can enjoy a property value appreciation over time.

8. Conclusion:

We end our paper on the issue of Home ownership issues face by the American Muslim, by stating that it is clear by consensus among the majority of contemporary scholars that the American Muslim should NOT engage in buying a home from a conventional mortgage company. Rather, there are Islamic financing corporations in America that offer hala home buying solutions such as UIF, Guidance, American Finance House (Lariba) via the “diminishing Musharaka” contract. Contemporary scholars have approved these contracts and thus the American Muslim can achieve the “American Dream” of home ownership as long as they can afford the payments.

We are thankful to Almighty Allah in allowing us to investigate this matter and we send our peace and blessings upon the holy prophet Muhammad (peace be upon him), his wives, his companions and his followers. We remain indebted to the scholars both, classical and contemporary in the ijtiḥad on this issue. And Allah Knows Best.

9. References and citations:

(1) *O you who believe, give up what remains of your demand for riba if you are indeed believers. If you do it not, take notice of a war from God and his Messenger. (Qur'an 2:278 – 2:279)*

(2) Shariah Law: “Shariah is based on wisdom and achieving people’s welfare in this life and the afterlife. Shariah is all about justice, mercy, wisdom, an good. Thus, any ruling that replaces justice with injustice, mercy with it’s opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shariah, even if it is claimed to be according to some interpretation. “ – Ibn Qayyim, I’lam al Muwaqqi.

More generally speaking, Shariah is the revelation received by Prophet Muhammad (peace be upon him) had received and made practicing it the message and mission of his life., i.e., the Quran and the Prophetic tradition (Sunnah). – Maqasid Al Shirah Jasser Auda.

(3) The principles of Islamic Jurisprudence: “Usul Al Fiqh is concerned with the sources of Islamic law, their order of priority, and the methods by which legal rules may be deduced from the source materials of Shariah. It is also concerned with regulating the exercise of Ijtihad” – Hashim Kamali –“ Prinicples of Islamic Juriprudence. “

(4) *(Qur'an 2:278 – 2:279).*

- (5) excerpt from article <https://www.azzadfund.com/riba-explained-understanding-interest-in-islamic-finance/>)
- (6) <https://islamqa.info/en/answers/116968/the-difference-between-muraabahah-and-riba-based-loans>
- (7) <https://islamqa.info/en/answers/22339/regarding-riba-as-permissible> .
- (8)<https://www.guidanceresidential.com/resources/the-difference-between-conventional-mortgage-and-islamic-mortgage/>
- (9) <https://islamqa.info/en/answers/22339/regarding-riba-as-permissible>
10. see details in section 5. of this paper “Islamic Finance in America” .
11. <https://www.myuif.com/fatawa/>