Your Home and Bankruptcy

Myths and misunderstandings: understanding the basics

Will I lose my home if I file bankruptcy?

Immediately upon the filing of a **bankruptcy** under **chapter 7*** or **chapter 13*** of title 11 of the United States Code (Bankruptcy Code), the **automatic stay** goes in effect (see 11 U.S. Code § 362). The "stay" in bankruptcy is an order of the bankruptcy court that can be very effective in protecting persons in financial distress. The stay prohibits collectors from continuing collection activities unless and until the Court gives them permission to continue. In general, the Stay means Stop! If your home is in foreclosure, the foreclosure must stop; many people file bankruptcy to stop a home foreclosure.

Under chapter 7, The Court may lift the stay and allow the creditor to continue collecting if you are not current on your mortgage payments. To avoid losing the home, the chapter 7 homeowner may be permitted to sign a voluntary agreement to reaffirm* the otherwise dischargeable debt owed to their lender and continue the monthly payments during and after the bankruptcy according to the original terms, but there are exceptions.

Under chapter 13, the person filing bankruptcy makes regular payments according to a plan that addresses the treatment of all their debts, often including the debt owed on their home. Chapter 13 may allow a person to cure (catch up) their mortgage arrears (the amount they are behind) over a period of time and in an amount that they could not otherwise afford if they had not filed bankruptcy. Due to the complexity of the bankruptcy process, you are encouraged to seek the advice of a competent attorney before attempting to use it as a tool to save your home.

Consumer Tip:

Communication is important. If you fall behind on your house payments, contact your lender as soon as possible. If your house payment was due on the 1st, it is delinquent on the 2nd. The sooner you ask for help, the more options are available to you.

* See "Important Terms" on next page

What if I need to modify my mortgage? Do I lose all of my options when I file bankruptcy?

No. When a person files bankruptcy, that person becomes a debtor, and a bankruptcy estate is created. The bankruptcy estate contains **all** of the debtor's personal **and** real property. The debtor must abide by the bankruptcy rules and laws, but there are options to keep your property and in some cases even qualify for home modification programs.

One reason to file under chapter 13 is to allow more options to save a home. If there is more than one mortgage and the home 's value is less than what is owed on the first mortgage, the Debtor may be able to discharge their liability to pay the second mortgage. Another option may be to modify their mortgage under such programs as the Making Home Affordable Program, or as previously discussed, cure the arrearage in a plan. It is important for any homeowner considering bankruptcy to discuss all of their options with a competent attorney.

If the debtor is current on their mortgage, the debtor has the opportunity to reaffirm a mortgage debt under chapter 7 or continue making payments under a chapter 13 plan. A reaffirmed debt will report to credit and, assuming good payment history, have a positive impact. The advantages and disadvantages to reaffirming a debt should be carefully considered.

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Important Terms*

Arrearage - The part of the debt that is past due after missing a payment or payments.

Automatic Stay - The automatic stay goes into effect immediately upon the filing of a bankruptcy case. It prohibits collectors from continuing collection activities unless and until the court gives them permission to continue.

Bankruptcy– Seeking the formal protection of the bankruptcy court when not having the money to pay your debts.

Chapter 7 - A formal proceeding under chapter 7 of the bankruptcy code is considered a "liquidation" bankruptcy. In a chapter 7, the "liquidation" would be the sale of all the debtor's non-exempt property with a distribution of the proceeds to the creditors

Chapter 13 - A formal proceeding under chapter 13 of the bankruptcy code. The chapter 13 debtor files and pays into a plan that addresses the treatment of the debts. A chapter 13 trustee then distributes the payments according to a plan that typically runs from 3 to 5 years.

Exempt Property - The debtor is entitled by State or Federal law to exempt certain property from their bankruptcy estate. Exempt property may be kept by the debtor.

Loan Modification - A permanent change in one or more of the terms of a Borrower's loan.

Mortgage - A mortgage is a written agreement where the homeowner is pledging her home as collateral for the promise to repay the loan.

Petition - A petition is a formal request to the court or judge for relief from or remedy to a problem.

Personal Property - Tangible property like automobiles, clothing and furniture, as well as intangible property like stocks, bonds, life insurance and bank accounts.

Reaffirmation Agreement - A voluntary agreement by a chapter 7 debtor to continue paying a dischargeable debt usually in order to keep the collateral pledged on behalf of the debt (i.e. a car).

Real Property - Land and things attached to it such as buildings.

* The authors have relied in part on the following sources for definitions of terms: United States Courts (n.d.a.) *Glossary*. Retrieved on January 5, 2015 at www.uscourts.gov/common/Glossary.aspx

U. S. Department of Housing and Urban Development (n.d.a.) *Loan Modification Frequently Asked Questions.* Retrieved on January 5, 2015 from portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/faqlm

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Free financial education is available to assist consumers in understanding the process of building and maintaining their credit.

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