

CAN BANKRUPTCY STOP FORECLOSURE?

Absolutely. In fact, stopping foreclosure to save a home is one of the primary reasons bankruptcies are filed.

When a consumer files any type of bankruptcy, Chapter 7, Chapter 13 or Chapter 11, the foreclosure is automatically stopped, or "stayed", until either the bankruptcy case is over, or the bank gets permission to foreclose from the Bankruptcy Court Judge.

Chapter 7

A Chapter 7 bankruptcy case is not the most effective way to save your home. Nevertheless, filing of a Chapter 7 will halt the foreclosure and provide you a period of time in which you can find the funds to catch up the mortgage. Your Chapter 7 case normally lasts between 90 and 120 days and once the case is over, if you are still in arrears, the bank can recommence foreclosure.

If you are current on your mortgage when you file a Chapter 7 case, you continue to make your regular mortgage payments. Assuming you do not have substantial **equity*** in your home, as is the case in 90% of filings today due to the collapse of the real estate market, the Bankruptcy Trustee will "abandon" your home and the home and your mortgages will be unaffected by the bankruptcy case. If you do have substantial equity in your home, it is possible that the Bankruptcy Trustee will attempt to sell the home in order to generate funds to pay the creditors. Your bankruptcy can tell you with high degree of certainty whether this is likely to happen before you file your Chapter 7 case.

***Equity** is the value of your home after all mortgages, real estate taxes and costs of sale are deducted.

Chapter 13

If you are in arrears on your mortgages when you file your Chapter 7 case, you must catch up before your case is over and the automatic "stay" ended, otherwise you will still be in default and the bank can foreclose. Often, homeowners choose to file a Chapter 13 case to have time to "catch up" their mortgage arrears. Under Chapter 13, you normally make your regular payment directly to the bank and "catch up" your mortgage arrears over a period of time. The "catch up" period must be "reasonable" but three (3) to five (5) years has been approved by the Court. The arrears that must catch up includes missed payments, foreclosure costs, and pre-petition late fees. Consequently, if your monthly mortgage payment is \$2500 per month

and you are four (4) payments behind ($4 \times \$2500 = \$10,000$), upon filing your Chapter 13 case you would immediately begin making the regular \$2500 per month payment, plus you would pay approximately \$208 per month "into the plan" to catch up that mortgage arrears over 48 months.

80/20 Mortgages

In addition to "catch up" payments, consumers can use the Chapter 13 process to strip down second and third mortgages on their homes.

During the run up in real estate prices, it was common for HELOC (Home Equity Line of Credit) loans, or other types of second mortgages to be secured by consumers' residences. Typically, banks granted an 80% LTV (80% of the value of the home when you got the loan) 1st mortgage loans at a low rate of interest, and a 20% LTV (20% of the value of the home when you got the loan – bringing the total to 100%) second mortgage at a much higher interest rate.

Due to the real estate collapse, those 20% second mortgages are now often time entirely "unsecured", meaning that if you sold your home at fair market value, the proceeds may pay off the first mortgage but there would be no money left for the second mortgage holder.

In this situation, if we can prove, usually through an appraisal, that the home value has dropped below the value of the first mortgage, we can "strip off" the second mortgage so that it is no longer a lien against the home and we would treat the second mortgage holder as a general unsecured creditor with no lien on any property.

Non-principal residences

The Bankruptcy Code was written with very powerful benefits to industries with strong lobbying presence in Washington, D.C. Consequently, a partially secured mortgage on a consumer's principal residence cannot be modified. Consequently, if for example you only have one mortgage on your house, but the home has depreciated to only 80% of that value, the Bankruptcy Code will NOT allow us to modify the single mortgage to the current value. This is different than the 80/20 example described above because in that case the second mortgage, i.e., the 20% mortgage, is entirely unsecured. In the partially secured scenario regarding your principal residence, consumers are forbidden from modifying that mortgage at all.

Nevertheless, a lien on virtually any other asset, other than a principal residence, can be modified to reflect the current value of that asset. Consequently, second homes, rental properties, boats, apartment buildings,

shopping centers, commercial buildings, etc. can be “stripped down” to the current value of the underlying asset. This most often arises in Chapter 13 cases with regard to vacation homes or rental property.

Your bankruptcy attorney will be better able to advise you as to what options are available to and which are in your best interest in light of your future plans and goals.