

FAQS FOR HOMEOWNERS AND HOUSING COUNSELORS:

WHAT HAPPENS TO MY HOME MORTGAGE IF I FILE BANKRUPTCY?

My home is in foreclosure and I'd like to file bankruptcy to stop the foreclosure. Will bankruptcy help me?

There are two types of bankruptcies that individuals file, Chapter 7 or Chapter 13. If you file a bankruptcy *prior* to the Sheriff's Sale (foreclosure sale), it will stop the foreclosure sale until the bankruptcy case closes or the mortgage company receives permission from the court to proceed with the sale. If you file after the Sheriff's Sale, the bankruptcy court can not set aside the sale.

In a Chapter 7 bankruptcy, if you meet the eligibility requirements, you may be able to discharge many of your debts such as credit cards and medical bills. If you want to keep your house you must continue to make your mortgage payments. A Chapter 7 is most helpful if you have other debts or garnishments that, if eliminated, would free up your income so you can make your mortgage payments.

In a Chapter 13 bankruptcy you would set up a payment plan that would allow you to pay your mortgage (your regular monthly payment plus a portion of any past due balance) as well as a percentage of your other debts. How much you have to pay depends on your income and assets. You have to have enough money to pay the payment plan so you must have current income that will be sufficient to make your payments. However, the bankruptcy court does not have the authority to modify your mortgage for your primary residence so if you need a loan modification to lower your mortgage payments a Chapter 13 may not be the best tool for your needs. However, the bankruptcy court may be able to modify a second mortgage or home equity line of credit.

If you are considering bankruptcy you should schedule a consultation with an experienced bankruptcy attorney. You can contact the National Association of Consumer Bankruptcy Attorneys to find an attorney in your area, <http://www.nacba.org/attorneyfinder/>.

I filed bankruptcy and I have received a Motion to Lift Stay from my mortgage company. What does this mean?

When you file bankruptcy your creditors may not usually proceed with collection activity such as a foreclosure until the bankruptcy case closes. If your mortgage company wants to proceed with foreclosure before then, your mortgage company must ask for permission from the bankruptcy judge to proceed with foreclosure.

If you get this motion you should discuss the matter with your bankruptcy attorney to determine how to respond.

I filed a Chapter 13 bankruptcy but then the case was dismissed before I finished my payment plan. What will happen now?

Because you did not finish your payment plan your loans and debts will be reinstated. If you were behind on your mortgage before your bankruptcy it is likely that the mortgage company will start trying to collect those past due payments and put your mortgage account into foreclosure status. You need to contact your mortgage company to make payment arrangements as soon as possible.

I filed a Chapter 7 bankruptcy and my debts were discharged. I said that I wanted to keep my house but no one ever gave me the paperwork to reaffirm my mortgage. Do I still have to make my mortgage payments?

Absent a reaffirmation agreement, the personal liability on your mortgage loan was discharged. This means that if your mortgage company forecloses on the house but does not receive enough money to pay off the mortgage, the mortgage company is not supposed to try to collect the difference, called the deficiency, from you. However, if you want to keep your house you must continue to make your mortgage payments.

Reaffirming a loan is a formal process that has to be approved by the court prior to the completion of your bankruptcy case. A mortgage loan can not be reaffirmed, and your personal liability reinstated, simply by continuing to make your mortgage payments or signing a loan modification or other repayment plan with your mortgage company.

Reaffirmation agreements are relatively rare now for mortgages. Mortgage loans usually “ride through” the bankruptcy, meaning that they are not formally reaffirmed but the mortgage company continues to accept payments and does not foreclose as long as you are making the payments. Some loan modification programs, such as the Home Affordable Modification Program, are set up to allow a loan modification after a mortgage loan is discharged but some mortgage companies or programs may not be able to offer a full range of options after a bankruptcy discharge.

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