Minnesota Homeownership Center

VOLUNTEER LAWYERS NETWORK

HPP
Housing Preservation Project
A Public Interest Law Firm

Homeownership Advisors Network

Bankruptcy and Foreclosure: Frequently Asked Questions

Q: ***What happens to my mortgages in bankruptcy?***

A: It depends on which type of bankruptcy you file.

In **Chapter 7** bankruptcy, most of your assets are liquidated and distributed to creditors, and then your remaining debts are discharged. This essentially means the creditor cannot pursue you for payment. If your home is included in the Ch. 7, delinquent amounts on the mortgages will still be owed to creditors. Furthermore, the lien (which gives the lender the right to take your property through foreclosure) still exists, so the lender may still proceed with foreclosure.

Under **Chapter 13** bankruptcy, your debt is reorganized into a repayment plan, which allows you to repay your debts in full. Repayment plans typically last 3 to 5 years. Ch. 13 bankruptcy allows you to keep assets such as your home.

In a Ch. 13 bankruptcy, only the delinquent mortgage debt is included in the repayment plan. Therefore, you will need to make your regular monthly payment on all mortgages AND a monthly payment to the bankruptcy trustee under the repayment plan. The bankruptcy does not affect the mortgage lien, so lenders retain their right to foreclose if you fail to make timely payments.

> **NOTE**
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> **This FAQ provides general information and is not meant to be legal advice. Consult a competent legal professional for advice specific to your situation.**

Q: ***What is an automatic stay?***

A: An automatic stay prevents further proceedings against you from anyone except the bankruptcy court. The stay goes into effect immediately when you file for bankruptcy.

In a **Chapter 7** filing, the automatic stay halts the sheriff's sale until after the bankruptcy case is closed. A Ch. 7 stay lasts until the case is dismissed or the discharge is granted, and the property is no longer in your bankruptcy estate. If the sheriff's sale has already occurred but you are still in your redemption period, you would be able to extend your redemption period for up to sixty days following the date of filing the bankruptcy petition.

In a **Chapter 13** filing, the automatic stay will generally prevent creditors from collecting on the mortgage until the court confirms the repayment plan. A Ch. 13 stay lasts until the repayment plan is confirmed or the case is closed or converted, which usually takes between 3 and 6 months. Talk with your bankruptcy attorney about when you need to begin making your regular mortgage payments, because remember that in a Ch. 13 you need to pay your regular monthly payment on all mortgages AND your monthly trustee payment under the repayment plan.

Q: *Can a lender avoid the automatic stay?*

A: Creditors may ask the court for relief from an automatic stay after thirty days. Courts are more likely to lift the automatic stay in Ch. 7 bankruptcies, since the purpose of Ch. 7 is not to save the debtor's assets.

Q: *What happens if, after filing for Chapter 13, I default on my regular mortgage payments?*

A: If you default during the automatic stay period, foreclosure is prohibited. In order to foreclose on your home, the lender will have to file a court motion for relief from the stay, as discussed above. Courts may be hesitant to grant the motion during the stay period, since the point of Ch. 13 is to help people keep their assets, but that is up to the court.

If you default on your regular mortgage payments after the automatic stay ends, the lender will have its normal right to foreclose on your home, pursuant to the lien.

Q: *What happens when I file for bankruptcy and don't include my mortgage?*

A: In a **Chapter 7** proceeding, some assets are exempt from inclusion in the bankruptcy estate that is liquidated. One such asset is equity in your home, up to a certain limit. If you own less equity in your home than the limit, your equity will not be liquidated and distributed to creditors. If you can stay current on your mortgage payments, you will probably be able to keep your home. You can try to negotiate a modification with your lender, but your lender is not obligated to offer you any modification.

As discussed above, in a **Chapter 13** bankruptcy you will need to keep making mortgage payments to keep your home. Delinquent debt on the mortgage will be included in your repayment plan.

Q: *Can I convert my Chapter 7 filing to a Chapter 13 filing, or vice versa?*

A: Ch. 13 filings may always be converted to Ch. 7 filings. Ch. 7 filings may be converted to Ch. 13 filings with court permission; however, most courts will not permit this conversion if the case had already been converted one or more times.

Q: *Who can I talk to about bankruptcy?*

A: Only an attorney can give you advice about whether to file bankruptcy. Attorneys charge varying fees for bankruptcy. Ask a lot of questions and get everything in writing to avoid problems later on.

Mortgage lenders may be hesitant to speak with you about the decision to file for bankruptcy, since that may cross the line into giving legal advice.

Housing counselors can give you general information about bankruptcy but cannot give you advice about whether bankruptcy is a good option for you. A housing counselor can help you develop a budget to assess whether a Ch. 13 repayment plan may be affordable.

For information on how to contact a nonprofit Housing Counselor, call the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or visit www.hocmn.org