I filed for bankruptcy. What happens to my home?
Updated October 14, 2021

This packet provides general legal information for those residing in Washington. It is not a substitute for individualized legal advice.

1. What are secured and unsecured debts?

Debts are either secured or unsecured. A **secured** debt is when you have taken out a loan to purchase a piece of property, like a house or a car, and are making payments on it until you own it outright. The secured property is known as **collateral** for the loan, and the lender has an ownership right in the property until you finish paying off the loan. If you miss payments on a secured debt, the creditor can repossess the collateral without taking you to court. For example, your car may be repossessed or your home could go into foreclosure. An **unsecured** debt is a debt that is not anchored to a particular piece of property, such as credit card or medical debt. If you default on unsecured debt, the creditor must obtain a judgment against you before they can take any of your property. If you have a mortgage, your home is an example of secured debt.

2. What happens to my house when I file for bankruptcy?

When you file for bankruptcy, you must tell the court what you want to do with your secured property, including your home if you have a mortgage. You have a few options:

- **Surrender.** If you choose to surrender the property, the creditor will repossess it. Your remaining liability will be discharged.

- **Retain and pay.** This option is available if you are current on your payments. In this case, you may keep the property as long as you continue to make on-time payments.

- **Cure default.** You might consider this option if you have already defaulted on your mortgage. If you have filed for bankruptcy under Chapter 13, you may pay your regular mortgage plus a percentage of the **arrearage** (the amount you have failed to pay in missed payments) in order to catch up. You are still responsible for paying off the entire debt during the repayment period.

If you filed for bankruptcy under Chapter 7, this is probably not a viable option for a defaulted mortgage. If you are already at risk of foreclosure, you can buy yourself some time by filing for Chapter 7 before the foreclosure occurs, but you run the risk that the trustee will liquidate the property to pay your creditors. If the property is not sold, it will still be foreclosed when the bankruptcy concludes.

- **Seek a loan modification.** While this is not guaranteed, you may be able to get the mortgage holder to agree to a modification that will allow you to become current on your payments and avoid liquidation or foreclosure.

- **Strip off unsecured junior mortgages.** If you have taken out additional mortgages on your house (known as junior mortgages), you may be able to discharge those in bankruptcy. If a home is foreclosed upon, the mortgage holders are paid in the order that the mortgages were taken out. If your original mortgage is more than the fair market value of your home, the junior mortgage holders would not receive any money in foreclosure, because any proceeds of the sale would go to the original mortgage holder. This means that the junior mortgages are essentially unsecured, and can be discharged in bankruptcy.

  As an example, suppose you own a house worth $300,000 with a $400,000 original mortgage (Mortgage A), and you subsequently take out an additional $100,000 mortgage against the same property (Mortgage B). You default on both mortgages and your home is foreclosed upon. Since Mortgage A is for more than the house is worth, the holder of Mortgage B wouldn't get anything from the sale of the home. Mortgage B is an unsecured junior mortgage and can be stripped off and discharged in bankruptcy.

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