

Can I Keep My Home and File for Bankruptcy?

By Ralph A. Ferro, Jr.

A frequently asked question that I receive (from my NJ clients) is whether a client can keep their home if they are filing a Chapter 7 or Chapter 13 Bankruptcy. The answer is: It depends

Whether a debtor can retain his/her residence in a bankruptcy depends on several factors. The factors may include the approximate value of the house, net value of the house, mortgages on the house, whether the debtor can afford future payment of the house. The gross value of the house really does not affect the ability to retain the house. Let's go through some examples:

1. Debtor owns a house worth \$1 million:

It may appear that there would be no way a debtor can keep their house in bankruptcy. Suppose there is a mortgage balance of \$950,000; that was to be sold and all closing costs were to be paid, such as real estate commissions, filing fees, legal fees, etc., there most likely would be nothing left over. In effect, this house has no value to creditors or the estate. Under that scenario the debtor would keep his/her \$1 million provided he/she could maintain it.

Not everyone keeps their homes in bankruptcy. One must pay their mortgage payments to keep their house just as they would before they filed bankruptcy.

2. Debtor owns a house worth \$80,000

The debtor has no mortgages on the house, debtor would lose that house in bankruptcy. The house would be sold to pay creditors. Why? There is equity in the house and this asset has value.

It should be noted that the above two examples are assuming that the debtor filed Chapter 7 bankruptcy (liquidation) as opposed to Chapter 13 bankruptcy (reorganization). It is presumed that the federal bankruptcy exemptions are being utilized versus the state exemptions.

In Chapter 13 reorganization, as far as keeping your house, the general rule is this: If you can afford to keep your house, you may keep it. There are exceptions to this and always exceptions to the exceptions, but this is the general rule. Conceptually, if you can afford to pay for the equity of your home out of future income, you will be able to keep your home.

For example, it is determined that the debtors house has a net value after closing costs, etc., has a value of \$50,000. That is the amount that if the debtor's home was sold for this amount, the creditors would get approximately \$50,000. In Chapter 13 reorganization, the debtor is basically saying to the Court, Trustee and Creditors - If I sell my house you are only getting \$50,000 so I will pay you the \$50,000 with future income. A win-win for all. The creditors get the same amount they would get in a Chapter 7 liquidation and the debtor gets to keep their home.

The above examples are very general and are meant to explain concepts and analysis of what an attorney goes through with their clients to determine if it is feasible for a debtor to file bankruptcy and keep their home. There are many more variables and other factors that are equally important in this determination but I have limited the analysis to explain that it is possible to keep your home and file bankruptcy.

Bottom line is this: you do not want to make a determination yourself whether you can keep your home when filing for bankruptcy because frequently debtors will be incorrect in their assessment. You should always contact an attorney who specializes in bankruptcy who practices in your jurisdiction - the attorney is also best to advise you on whether you can keep your home in bankruptcy.

This analysis should only be used with the federal exemptions not the state exemptions - to determine which set of exemptions apply, you should contact an attorney who specializes in bankruptcy in your jurisdiction. ■