

Can I Short Sell My House While In Bankruptcy?

By John Skiba, Arizona Bankruptcy Attorney

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As I wrote in a recent article, more than 50% of homes in Arizona are worth less than what is owed on them. This is leading many people to try and short sale their home. However, because of other debt issues, many people also need to file bankruptcy. When all of these things come together often I have clients who are in bankruptcy and want to short sell their home. The questions are, (1) can you short sell your home in bankruptcy? (2) If so what is the process, and (3) is it a good idea to short sell your home rather than just surrendering it through the bankruptcy?

Can You Short Sell Your House While in Bankruptcy?

The answer is yes you can. No matter whether you are in a [Chapter 7 bankruptcy](#) or a [Chapter 13 bankruptcy](#) case, if you want to sell the home you will not encounter any resistance from the bankruptcy court. A home that must be short sold by definition does not have any equity to try and go after and thus is of no real value to your creditors or the bankruptcy estate (and in reality, not much value - other than sentimental value - to you either). Because the property has no equity, it is highly unlikely that the bankruptcy court, the [trustee](#), or any of your creditors will object to the property being sold.

How Do I Short Sell My House While in Bankruptcy?

Most of my clients that have sold their home during bankruptcy do so because they have been working with a real estate agent for some time prior to their bankruptcy filing. I leave getting an offer on the property and marketing the property up to you and your realtor. However, once you have an offer that has been accepted by your bank it is necessary to get approval of the bankruptcy court prior to the close of escrow on the home. I will often work directly with your real estate agent to get the information that I need to file a Motion to Approve Sale with the bankruptcy court.

Once this motion is filed with the bankruptcy court we must wait 14 days to see if there will be any objections. Typically there is no objections and after the expiration of the 14 days the bankruptcy judge will sign an order allowing the sale to go forward. The point of bringing up these deadlines is that I have had situations where I didn't even know that my clients were trying to sell the home or I did know and then had their real estate agent contact me two days before closing and want an order from the bankruptcy court permitting the sale to go forward. I don't need a lot of time, but it does take the court 2-3 three weeks to get the order allowing things to go forward. Communication between me, you, and your real estate agent is key to make this process go smooth.

Should I Short Sale My Home or Surrender it Through the Bankruptcy?

This is a hotly contested question amongst bankruptcy attorneys. Most bankruptcy lawyers will tell you that you are probably better off simply surrendering your home back to the bank during your bankruptcy case rather than doing a short sale. You will likely get a different opinion from your real estate agent. My opinion on this matter is that I recognize there are certain situations where it makes sense to short sell the property rather than let it go. However, there are benefits to surrendering your house through your bankruptcy case: (1) you will not owe anything after you surrender the home to the bank, and (2) you will have no risk of tax liability if you surrender the home through the bankruptcy.

In a short sale, especially if you have a second mortgage or home equity line of credit, the bank may want you to sign a promissory note agreeing to pay back the difference between what the home sold for and what you owed. If the bank agrees to waive the balance of what you owe, you run the risk of having that treated as income and having to pay taxes on it.

Again, I understand there are valid reasons to proceed with a short sale while in bankruptcy, but it is important to discuss this at length not only with your real estate agent and your bankruptcy attorney but your accountant as well.

If you need to file bankruptcy and would like to discuss the options there are with dealing with your house I would be happy to meet with you to discuss your specific situation. [My bankruptcy consultations](#) are always free. I can be contacted at (480) 420-4028 or via email at john@skibalaw.com.