

Removing a Second Mortgage Through Bankruptcy

In recent weeks, I have observed attorneys offering bankruptcy services, loan modifications and debt management plans. It is often difficult to decide what is the best option, but not many attorneys are talking about a powerful tool to help debtors: the ability to use bankruptcy to remove a second mortgage.

Under a 1992 decision by the U.S. Supreme Court called *Dewsnup v. Timm*, lien stripping can only be accomplished in a Chapter 13 bankruptcy. Chapter 13 is designed for people with regular income to pay back a portion of their debts over time.

In the Southern District of California, which covers San Diego County and Imperial County, the process begins by filing a petition for Chapter 13 bankruptcy. The debtors or their attorney also file a plan with the court to repay creditors all or part of the money that is owed to them using future earnings. A repayment plan can be three years or five years, depending on factors such as your income and must be approved before the plan can take effect.

Prior to filing a Chapter 13, the debtors or their attorney should obtain a professional appraisal of their home. In order to remove an unsecured second mortgage, the fair market value of the home must be less than the balance owed on the first mortgage. After filing the Chapter 13 bankruptcy, the attorney will contact the court and obtain a hearing date to request an order removing the lien from the property.

If the court grants the motion, the court will issue an order directing the holder of the second deed of trust to take the necessary steps to remove the lien from the home. The type of loan does not matter. The bankruptcy court can order the removal of a HELOC, a purchase money loan or any other type of mortgage or other type of lien on the property if it is fully unsecured.

The lien strip only becomes effective once the debtors have completed the payments under their plan. In addition to the removal of the second mortgage, their debts are generally discharged except for domestic support obligations, most student loans, certain taxes, most criminal fines and restitution obligations, certain debts which are not properly listed in your bankruptcy papers, certain debts for acts that caused death or personal injury and certain long term secured obligations.

If you are in Southern California and would like to see if you qualify for Chapter 13 bankruptcy to remove an unsecured mortgage or other lien from your home, please [contact us](#) for a free consultation.

About the Author: [Carl H. Starrett II](#) has been a licensed attorney since 1993 and is a member in good standing with the California State Bar and the San Diego County Bar Association. Mr. Starrett practices in the areas of [bankruptcy](#), [business litigation](#), [construction](#), [corporate planning](#) and [debt collection](#).