

Arizona Bankruptcy Attorney: Dealing With Your Mortgage Through Bankruptcy

By Arizona Bankruptcy Attorney John Skiba

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In Arizona there are few people who aren't dealing with a home that is worth far less than what they owe on it. I regularly visit with people who owe 50% more than what the home is worth and often have second mortgages or home equity lines of credit (HELOC) of \$100,000 or \$200,000. Couple all this with adjustable interest rate loans and you can see why the economy, particularly in Arizona, is having such a difficult time recovering. In looking back it is amazing that more people didn't see this big down turn coming. I remember talking with friends about how quickly home prices were rising and our concern that a "starter" home was going to eventually be \$500,000! I think we all remember the long lines outside of new developments on Saturday mornings just hoping to win the lottery and be given the chance to put money down on a lot! How times have changed.

With the turn in the housing market, the question now is what can be done with these underwater homes? Whether you are trying to save your home from foreclosure, have it make financial sense to stay in your home, or simply surrender your home, bankruptcy has many tools that can help.

Saving Your Home From Foreclosure

Many have stopped making their house payments because they either can no longer afford it or they have stopped in hopes of getting a loan modification. The loan modification programs have been complete failures. Rarely do I see a client who has obtained a permanent modification that results in the payment being significantly lower (I have seen a few come back with HIGHER payments!). My current estimate is that of the hundreds of families I have helped over the last few years less than 10% have received a loan modification.

If you are behind on your house payments and want to stay in your house bankruptcy can help. Chapter 13 bankruptcy has tools that allow you to get caught up on missed payments and even remove second mortgages and HELOCs. In chapter 13 bankruptcy you will be required to propose a plan to the bankruptcy court and your creditors as to how you will get caught up on your house payments. You will have three to five years to get caught up on those payments. During this time the bankruptcy court will bar the bank from foreclosing on your home so long as you make the regular monthly mortgage payment as it comes due and make the payment to the court to get caught up on the missed house payments. For example, if you monthly house payment is \$1,500 and you are six months behind, the bankruptcy court would require that you begin making the

monthly payment of \$1,500 plus make a payment to the bankruptcy court of \$150 per month for 60 months to get caught up on the six months of missed payments.

Lien Stripping

If you have a second mortgage or HELOC of credit, it may be possible to remove it through a chapter 13 bankruptcy. The requirements are that the value of your home be less than what you owe on your first mortgage. If this is true, then we can “strip off” the lien held by the second mortgage or HELOC and discharge/eliminate it through the bankruptcy process. For example, if you have a home with a first mortgage of \$200,000 and a HELOC of \$100,000, and your home is valued at \$170,000, we would be able to eliminate the HELOC completely. Removing the second mortgage or HELOC will not only reduce what you are paying out each month but can make staying in a home more financially reasonable.

Surrendering Your Home Through Bankruptcy

Some are either so far behind on their house payments or have made the decision that it doesn't make financial sense to stay in a home any longer, and have decided to surrender their home back to the bank. Often this can be accomplished through the regular foreclosure process and there will be no future liability. However, those with second mortgages or HELOCs where the money obtained from those loans was used for something other than actually buying the home may be held responsible for any outstanding balance after the foreclosure sale. Further, there may be some tax liability if the homeowner chooses to short sell the property.

All of this can be eliminated by surrendering the home through a chapter 7 bankruptcy or a chapter 13 bankruptcy. You will have no liability on any outstanding balance and will have no tax liability by surrendering the home through the bankruptcy.

Arizona bankruptcy attorney John Skiba offers a free bankruptcy consultation to discuss your specific situation. He can be reached at (480) 464-1111.