

Divorce, Bankruptcy And Houses In New York  
Jay S. Fleischman, Esq.

I was sitting in front of a man who had gone through everything bad in his life, and all in a very short span of time.

First, he'd lost his job of 15 years. A mid-level New York executive in a field that favored the young, his prospects were bleak. But he kept plugging away, working towards a new career in an industry that would pay less but let him keep living in New York while giving him the stability he sought for himself and his family.

Then his wife announced that she was packing up and moving out. For good. The details aren't important, it's just enough to say that when a marriage is over not many positive thoughts spring to mind.

The kids had their share of issues surrounding the break-up, as did the man and his soon-to-be ex-wife. Where to live (New York is a big state), how to keep up with the monthly bills, and the like kept everyone awake on more than one occasion.

But eventually it was all over. He signed the house over to her, primarily so the children would have somewhere to live affordably in New York that was warm and familiar. Her income was enough to keep up with the mortgage payments, so it all worked out on that end.

His finances, however, were a shambles. Two years of divorce lawyer fees combined with a period of prolonged unemployment left my client feeling displaced and dazed.

And now here he was in my New York City office, looking to file for bankruptcy. Not because he wanted to, but because it was the only thing that made financial sense.

His first question was one I've heard countless times over the years.

**My ex-wife got the house as part of our divorce decree. If I file for bankruptcy in New York, will the property transfer be at risk? In other words, will she be forced to give up the house she got in the divorce if I file for bankruptcy?**

Bankruptcy trustees in New York, when faced with a divorce and houses, will usually look to the terms of the divorce decree. If the decree provides for the turnover of the house then they will typically not disturb it - provided, however, that there's nothing else going on that looks <ahem> fishy.

What do I mean? If you transferred the house to your ex in the divorce and still pay the mortgage (not as part of marital support) that could be considered odd without more facts. Or if you signed over the house and still live there.

But as a general rule, a binding state court divorce decree isn't going to get up-ended by a bankruptcy trustee in a New York case.

Jay S. Fleischman is a [New York bankruptcy attorney](#) and Managing Partner of Shaev & Fleischman, LLP. Jay is also the author of [The Consumer's Guide To Bankruptcy: The Truth About Ending Your Bill Problems And Getting Back The Good Credit You Deserve](#).

