

# Shunneson Law Offices

[www.thedrakilaw.com](http://www.thedrakilaw.com)

PROVIDING THE LEGAL SERVICES YOU DESERVE (847) 693-9120



## Can I Inherit Property While I'm in Bankruptcy or File Bankruptcy After I Inherit Property?



Earlier this week I met a man whose mother had, unfortunately, recently passed away. Part of the estate included the mother's home, which was worth \$100,000. The man also had credit card debt, medical debt, and business debt of over \$60,000. This man had two very good questions. First, whether he could file bankruptcy without telling the bankruptcy court before, or after, he accepted the inherited property. Second, whether he could keep the home if he did report it to the bankruptcy court.

As will be discussed more below, the answer to both of these questions was, surprisingly, yes.

With regard to the first question, it is understandable why clients feel that the inheritance should not be included in the pile of money that goes to creditors (called the bankruptcy estate). Inheritances generally consists of property their loved ones gave them in the hopes that it would help them through their tough times. In most cases, the inheritance is something people don't even anticipate. Zero percent of people want to give everything they own to their sons or daughters creditors after they die. Many clients agree and feel as though the property passed on between generations for the purpose of making their life better shouldn't be scooped up by bankruptcy trustees for the benefit of creditors that had no right to the property mere days before.

This view is supported by laws in many other areas. For example, inheritance property obtained by one spouse during the course of a marriage in Illinois is considered the non-marital property of that spouse and is not included in the marital estate. Unfortunately, the [bankruptcy laws](#) make inheritances an important part of the bankruptcy estate. In this regard, pursuant to [11 USC 541\(a\)\(5\)](#), any property a debtor becomes "entitled to acquire within 180 days...by inheritance" is part of the bankruptcy estate. As such, if you are "entitled" to acquire property, whatever that property is, within 180 days of the date your petition is filed, then that inherited property is technically property of your bankruptcy estate. The word "entitled" was purposely used to communicate that the date the inheritance becomes part of the bankruptcy estate is the date the deceased passed away and not the date it is actually acquired. Accordingly, the inherited property is part of the bankruptcy estate even if your loved one dies after the petition is filed, and even if it takes years to actually acquire it.

As an aside, other provisions of the bankruptcy code also put duties on those that inherit property to let the court know of this fact. As such, many provisions of the law require that a debtor that has filed a petition prior to the entitlement date amend the bankruptcy paperwork to disclose the inheritance. This is an obviously necessary part of the law to make sure any property acquired by inheritance after the bankruptcy is filed is part of the estate. This means you can't file a bankruptcy before you obtain any inheritances and avoid making it part of the bankruptcy estate.

With regards to the second question, the bankruptcy code actually will allow you to keep the home in certain situations. This very pro-creditor law that gives your creditors property from your loved ones after they pass away six months after your bankruptcy is filed is tempered by other provisions of the bankruptcy law. The bankruptcy code allows for debtors to use certain "exemptions" to keep property. Initially, all clients are well-advised that they are

allowed to [discharge mortgage loans in Chapter 7 bankruptcy](#). However, most people with questions about an inherited second home want to know if they can keep both their own home and the second home. In order to do that, you will need to do two things (at least in a Chapter 7 case).

First, you will need to “reaffirm” with the bank. This consists of signing a new contract with the banks stating you will continue to pay your mortgage. In most cases, this is a fairly simple process if you can show ability to pay for the mortgage.

Second, you must be sure that the available “equity” (value of the home above the mortgage) in your home does not exceed the available exemptions. For your residence, this requires a review of the various [homestead exemptions](#). This exemption is not available for your second home. Instead, you will need to utilize one of the other available exemptions. Most often, this will be the [wild card](#) exemption.

For example, in the situation with the man whose mother had recently passed away, we had to inform the man that his second home would probably be part of the bankruptcy estate under the bankruptcy law. However, it turned out that this second home had a mortgage of \$94,000 and an estimated value of approximately \$96,000 – \$100,000. Of course, bankruptcy laws require that you provide proof of the value of a home. An appraisal would be necessary to determine whether the bankruptcy code could actually allow the man to file bankruptcy, reaffirm his mortgages, and keep both homes. For the sake of argument, however, let’s assume the appraisal comes back in the man’s favor for \$94,000. This would allow for the man to keep both homes under current bankruptcy law. Given the market for homes right now, it is very likely the appraisal will come back in his favor.

At [Shunneson Law Office](#), I am devoted to giving you a fresh start, while protecting important property in the face of overwhelming debt. [Contact us](#) for a consultation or for a **FREE INFORMATION PACKAGE** to better inform you prior to talking to an attorney, or anyone else making promises about your financial future. Located in Lake County, Illinois, with meeting locations throughout Chicago, we have the ability to meet with you at any convenient Chicagoland location from 9:00 a.m. to 5:00 p.m., Monday-Friday. However, evening and weekend appointments are available upon request by calling 847.693.9120.  
-Drake Shunneson (copyright 2012)

**NOTICE: The materials provided are for informational purposes only and should not be viewed as legal advice. The materials also mainly concern Chapter 7 bankruptcies. It may also be viewed as advertising material. You should contact us directly, or your attorney, to obtain advice to any issue or problems. This article, by itself, does not create an attorney-client relationship and the opinions are those of the individual**

author and do not reflect the opinions of the Law Office or any other individual, attorney, entity or individual. [Photos courtesy of FreeDigitalPhotos.net.](#)