



How Bankruptcy Protects You From Your Lender During Foreclosure

by
Richard Fonfrias, J.D.
Chicago's Financial Rescue & Bankruptcy Lawyer
Fonfrias Law Group, LLC

Homeowners are quickly discovering the importance of hiring an experienced bankruptcy lawyer to defend them against mortgage foreclosures by lenders.

And if you are facing foreclosure - or if your lender has already filed a foreclosure lawsuit against you - you should find a skilled bankruptcy lawyer right away!

Here's why:

By foreclosing against you, the lender wants to take possession of your home. Also, if the lender can't sell the home for enough money to cover the remaining balance on your mortgage, the lender wants to get a deficiency judgment against you. In this case, you would still owe the lender the balance of your mortgage even though you cannot live in the home.

The home foreclosure process goes through phases, including:

Documentation: After you're sued for foreclosure and after you hire a lawyer, the first thing you do is take copies of the lawsuit and related documents to your lawyer's office. If possible, take your mortgage paperwork with you so your lawyer can review it.

Your lawyer will write and file with the court an "answer" to the foreclosure lawsuit against the lender. In addition, he will include any affirmative defenses. These are defenses that do not deny the allegations against you, but give a reason why you cannot be held liable. Also, your lawyer will include any counterclaims, which are your legal claims against the mortgage lender.

Discovery: This is the longest part of your lawsuit. At this stage, your lawyer (1) asks the lender written questions, called interrogatories, (2) takes depositions, which are questions your lawyer asks the lender in person and under oath; (3) requests documents from the lender, and (4) requests admissions, which are written responses admitting or denying claims against the lender.

These two phases - documentation and discovery - can take a great deal of time. Often, this allows families to remain in their home for a year and sometimes longer.

During these phases, your lawyer should contact the lender's attorney to see if you and the lender can reach some sort of compromise, such as a loan modification. Loan modifications include forbearance, deed in lieu of foreclosure, short sale, reduction in principle, reduction in interest and refinancing.

If you and the lender cannot reach a suitable compromise, then you should consider filing either a chapter 7 (liquidation) or chapter 13 (reorganization) bankruptcy. Your bankruptcy lawyer can educate you about these chapters and which is more appropriate for you in your situation. **The Good News**

Bankruptcy is federal law. As a result, the foreclosure lawsuit that the lender filed against you is superceded by bankruptcy law. When your lawyer files your bankruptcy papers in federal court, the bankruptcy court judge issues an automatic stay. This is a court order that immediately stops all collection efforts against you, including the foreclosure.

This court order stops the foreclosure lawsuit - stops the lender from seizing your home - stops the lender from selling your home - stops the lender from evicting you from your home. In addition, the court order stops every one of your creditors from trying to collect money from you, including all state court lawsuits by creditors.

Bottom Line: Bankruptcy Is A Powerful Tool

Bankruptcy helps you in three important ways:

1. Bankruptcy gives you a lot of time, often many months ... sometimes even a few years ... to look for other options, such as a loan modification or another compromise with the lender.
2. Bankruptcy allows you to remain in your home in a Chapter 13 bankruptcy as long as the court ordered stay remains in effect.
3. During the bankruptcy process, no creditor can collect money from a deficiency judgment against you.

Don't Make This Costly Mistake You may believe - as many homeowners do - that you can simply walk away from your home, allow the lender to foreclose on the property, and your problems are over.

Not true!

If you simply walk away from your home, the law allows the lender to sue you for the amount due on your mortgage and to get a judgment against you. What's more, you could wind up owing the lender several hundred thousand dollars, as well as years of accrued interest. Plus, the foreclosure would destroy your credit.

The consequences of having unpaid debts, including unpaid mortgages, can be severe. This is why it's critical that you speak with a qualified, experienced bankruptcy lawyer who can help steer you through the process of negotiating with creditors and filing bankruptcy, if this becomes necessary.

You're Invited to Call or E-mail.

"If you have questions about bankruptcy, foreclosure, credit card debt, loan modifications,
tax liens or other financial problems, please send your e-mail today to

rich@chicagomoneylawyer.com

RICHARD FONFRIAS, J.D.

Chicago's Financial Rescue & Bankruptcy Lawyer

Money problems solved. Peace of mind protected.

Founder & Managing Partner

FONFRIAS LAW GROUP, LLC

First National Plaza ❖ 70 West Madison Street, Suite 1400 ❖ Chicago, Illinois 60602
Telephone 312-969-0730 ❖ Facsimile 312-624-7954 ❖ www.chicagomoneylawyer.com

