

Do I have to make all my post-petition mortgage payments to my bank during a chapter 13 case to receive my discharge?

1 October 2016

Answer: When you are curing an arrearage on your mortgage through your chapter 13 plan, probably.

Initially, one needs to understand the basics. Many people file a chapter 13 plan to “cure” an arrearage (the amount a homeowner is behind) on their mortgage and save their home. A debtor in a chapter 13 presents a plan to be confirmed and if the debtor seeks to save their home, the plan must provide for payment (or satisfaction) of the arrearage over time. A chapter 13 plan will have an amount that the debtor will pay to the chapter 13 trustee, which will include an amount the trustee will pay to the bank to cure the arrearage. The plan will also inevitably include a term that the debtor will pay the on-going and usual monthly mortgage payments while they also pay the plan amount. (So the bank will be getting funds in two ways, one from the trustee to cure the arrearage, and second, directly from the debtor for the on-going mortgage payments.) The question is, when the plan comes to the end and the debtor has made all their plan payments but not their on-going mortgage payments, does the debtor get a discharge?

It appears there is not binding case law in Massachusetts, but there is some case law from other areas. For example, in *In re Heinzle*, a Texas bankruptcy court posed the question as to whether direct payments to a mortgagee are “under the plan” pursuant to section 1322(b)(5) like the payments to the trustee to cure the arrearage are. *In re Heinzle*, 511 B.R. 69, 75 (W.D. Texas 2004). The court concluded direct mortgage payments are considered “under the plan” and ruled that the debtor that did not pay his bank the on-going regular monthly mortgage payments was not entitled to a discharge. *Id.* at 78.

In another case, *In re Kessler*, the Court of Appeals for the Fifth Circuit concluded that direct mortgage payments are payments under the plan when the plan proposes to cure an arrearage. *Kessler v. Wilson (In re Kessler)*, Case No. 15-11252 (5th Cir., decided July 8, 2016). Thus they must be paid in order to obtain a discharge pursuant to section 1328(a). *Id.*

However, anecdotal evidence suggests that not all courts agree as some debtors in the same scenario have obtained a discharge. In these cases the author knows of, the banks have failed to object to the debtor’s final motion for a discharge. The take away is that you should make your direct, on-going mortgage payments to the bank during your chapter 13 plan or there is a risk, but not a certainty, that you will not obtain your discharge at the end of the plan.

In the event you are facing possible foreclosure think chapter 13 may be a good way to save your home, feel free to give this office a call.

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