

## **So I'm filing bankruptcy – should I tell my attorney about the house?**

Over the years I've seen a lot of people who did not tell their attorney everything. Maybe not a surprise to those of you reading, but it still gets to me. What were they thinking?

Okay, don't answer that. Maybe they weren't thinking.

I think a large percentage of people who decide to file bankruptcy only tell their attorney what they think their attorney needs to know. Either that, or a large percentage of bankruptcy attorneys don't do their homework. Right now I'm leaning toward the filers not being forthcoming.

I don't know how many times I've seen a Chapter 7 Statement of Intention that says Reaffirm or Retain and Pay (an option that is supposed to be gone since the 2005 code changes – maybe it's the attorney....hmmm) when the homeowner is months behind in their payments. The mortgage company is not going to reaffirm unless your debt is current. And they certainly won't let you stay in the home if you aren't paying. In fact, they will want to get the house out of bankruptcy if the homeowner doesn't have a legitimate plan to get current.

I also don't know how many times I've seen people file bankruptcy and then stop paying their mortgage on the home they want to keep. Lots of them think their repayment plan is covering the home when it doesn't. Some believe that filing makes the debt go away, so they can just keep the home. Here is a place the attorneys are not forceful enough. People going bankrupt don't seem to hear the first time you tell them something. Or the second. As their bankruptcy attorney, you will need to tell them over and over, and probably should put it in writing to them. Pay your mortgage if you want to keep the house.

Another thing I've seen over and over is where people want to keep their home, so they don't tell their bankruptcy attorney about it at all. I suppose the attorney should double-check when they disclose they aren't paying rent, and then insist on the info on where they live. In any event, your mortgage company knows you owe them money, and if they find out about the bankruptcy later, it may cost the homeowner more than it would have if they had revealed the home upfront. After all, if the bankruptcy needs to be reopened for your home to be administered, there will be additional costs associated with the reopening.

And how many times have I seen people actually weep over a house they can not afford but insist on keeping? I know you want to own a home, and I understand you get attached to your home, but seriously, it is just a house. There are others....lots of them.

So if you are filing a bankruptcy, tell your attorney about your home. Tell him how many months you are behind if you are behind on your payments. Tell him what you paid, how much equity there is....and discuss whether you should be keeping the home, or surrendering it.

And of course before you go through the bankruptcy, call your mortgage company and ask for their loss mitigation department. There are a lot of programs available to homeowners to help get their mortgage on track.

Maybe this is a blog about honesty and full disclosure. You can't fix a problem until you are honest about it. Your attorney can't help you to fix a problem unless you are honest with your attorney, and completely disclose your situation.

Michael W. McCoy