

Chapter 13, Foreclosure and Lien Stripping.

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Foreclosure. Chapter 13 allows you to save your house from foreclosure. Under your proposed payment plan, you will have to start making current house payments directly to the creditor, as they become due. Your first Chapter 13 plan payment will be made to the Chapter 13 Trustee, and is due thirty days after you file for Bankruptcy. These 36-60 month payment plans allow you to catch up missed payments (mortgage arrear), over the life of the plan, while you start making current house payments. If you make all post-filing mortgage payments, and are able to pay all of your Chapter 13 plan payments, you should be current on all of your house payments by the end of the plan.

Uphill Struggle. This is an uphill battle. It requires you to make current mortgage payments, and you have to catch up on the arrear, including late fees, interest, collection costs and attorney fees, during the term of your plan. In general, around half of all Chapter 13 plans get dismissed due to nonpayment. If you are thinking about filing a Chapter 13 Bankruptcy and catching up on missed mortgage payments, act quickly, before late fees, compound interest, collection costs and/or a foreclosing attorney whose fees may run from \$5,000-\$10,000, get added on. In my experience, debtors who are one to three months behind, often cure their arrear. Debtors, who are four to six payments behind, sometimes cure their arrear. And Debtors who are seven months to a year behind seldom bring their loans current, absent a substantial change in circumstance or a one-time calamity that caused them to get behind.

Plan Modification. One option is to modify your plan, letting secured collateral, such as a house or car, go. In this manner, you can propose an ambitious plan to cure mortgage arrear, and make your best efforts to save your house. If you find out that this is not affordable over the long run, you can modify your plan, and let the house go. You can still live in your house basically rent-free, during the foreclosure period.

Accounting Problem. There is an accounting problem, which has yet to be answered or solved by bankruptcy courts. Most mortgage software applies payments to the first missed payment. While the Bankruptcy Code allows you to catch-up pre-petition arrear inside the plan, and make post-petition payments outside the plan. The problem is that before the end of your plan, the creditor seeks to add late fees, interest, collection costs and/or attorneys fees because you have arguably been three months behind for the past 36 months. You think that you are current, while the mortgage company thinks that you are chronically three months late on each payment.

Unsecured Debts. Chapter 13 plan payments are supposed to be based upon your ability to pay, yet you are also required to pay all of your “projected disposable monthly income” into the plan for the benefit of unsecured creditors. If your income is above Colorado’s median, then your

plan might have to pay more to unsecured creditors and confirmation may be more difficult. Depending on your monthly income minus reasonable and necessary expenses, you might be allowed to pay back unsecured creditors pennies on their dollars, provided that is all you can afford.

Confirmation Hearings. Creditors have the right to object based on the amount of mortgage arrears, valuation of their collateral, interest rate, and your ability to pay, etc. The Chapter 13 Trustee also files many routine objections. It is up to the Judge whether or not to confirm your plan over their objections, and you have the right to propose amended or modified plans thereafter. The purpose of the Bankruptcy Code is to allow you to make a fresh start, unhampered by burdensome debt, and to allow you to stop foreclosure and catch-up on missed payments. Although some Judges believe that their role is to balance the interests of debtors and creditors, most understand that the remedial purposes of the Bankruptcy Code is to help debtors out of financial hardships. Most plans eventually get confirmed, it is mainly a question of paying all of your surplus monthly income for the benefit of unsecured creditors. In any case, debtors must walk a fine line by arguing both that the plan is affordable, yet they are unable to pay even one dollar more.

Guidance. I am an Attorney with fifteen years of Colorado bankruptcy experience, and I have filed hundreds of Chapter 13 bankruptcy petitions. I will use my knowledge and experience to lead you through these complex legal areas of the law such as Chapter 13 plans, lien stripping, and foreclosure.

Strip Off Second and Third Mortgages. Homeowner has a first and second mortgage on a primary residence (Home). If the value of your house has fallen below the value of your first mortgage, and your second and third mortgages are “wholly unsecured,” then you may be able to strip off these mortgages from your house. This requires that a special motion be filed with the Bankruptcy Court and “not a drop of (home) equity” exists to secure these additional encumbrances.

Although this gray area of the law exists between the ambiguity left by two Supreme Court decisions, the majority and trend rule allows debtors to strip off, but not strip down, second mortgages.

There is a risk that if your certified market analysis or appraisal comes in low, and theirs shows equity, the Court will split the difference concerning the value of your house. There is a risk that the Court will decide to follow the minority rule. If the Court allows you to strip off these additional mortgages, saving your house might be much more affordable, by eliminating these second mortgage payments.