

FILING BANKRUPTCY—IS IT RIGHT FOR YOU?

Having recently received foreclosure notice from our lender and facing potential bankruptcy, my wife and I see the holiday season as an emotional, depressing and stressful time rather than one of joy. Is there a way to postpone the foreclosure by filing bankruptcy and possibly reorganizing our lives to keep our home?

If you find yourself in financial turmoil and possibly facing the lost of your home to foreclosure and unable to pay your other bills, you are not alone. You should not feel embarrassed. Most people who file bankruptcy are honest people who feel badly about not paying their debts and that bankruptcy is immoral or wrong.

The bankruptcy laws were passed to help you when your debts make it impossible to provide for your family. It allows you to reduce or eliminate debt to clean the slate and give you a fresh start in life. Due to the lingering effects of bankruptcy, you should use it as a last resort after first attempting to do everything possible to pay your bills.

Bankruptcy may make it possible for you to eliminate most or all of your debts. Filing bankruptcy will stop foreclosure on your home and allow you an opportunity to catch up on missed payments (but will not automatically eliminate mortgages and other liens on your property without payment). Filing bankruptcy can also prevent repossession of a car or other property. Wage garnishment, debt collection harassment, and similar creditor actions to collect a debt will also stop. Utility services cannot be terminated. You can challenge the claims of creditors who are trying to collect more than you owe.

The 2 main options available to most people are Chapter 7 and Chapter 13 bankruptcy. Under chapter 7, you ask the court to discharge your debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for your giving up

to wipe out (discharge) your debts in exchange for your giving up property, except for certain exempt property that the law lets you keep. The property which is not exempt is sold, and the money distributed to creditors. If you are behind on mortgage or car loan payments and want to keep your house or car, a chapter 7 case may not be the right choice since chapter 7 only eliminates unsecured debts.

Therefore, if you cannot afford to keep making payments, you will lose your house or car.

In a chapter 13 case, a plan is filed stating how you will pay off your past-due and current debts over 3 to 5 years. The benefit of chapter 13 is that it allows you to keep valuable property, most importantly your home and car, if you can make the required payments. You should consider filing a chapter 13 plan if you own your home and may lose it because of financial problems; you are behind on paying other debts, but can catch up if given some time; or, you have valuable property which is not exempt, but you can afford to pay creditors from your income over time. To file chapter 13 you must have enough income to pay for your necessities and to keep up with the required payments.

If you find yourself contemplating bankruptcy, make sure you do it correctly. Due a change in the law in 2005, the process is now complex. In order to file, you must go to counseling and meet the conditions of a means test that shows you qualify for a chapter 7 or 13 bankruptcy. While under the prior law many people filed bankruptcy without legal representation, today it is much more difficult without the help of an experienced bankruptcy attorney.

Don't become so emotionally distressed that you simply give up on your home because you have received a foreclosure notice. If you are currently unable to meet your monthly mortgage payment or have received a foreclosure notice, seek legal counseling immediately.

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