

Chapter 7 Bankruptcy

By Paula Ferreira Montoya, Attorney At Law

Your employer downsizes, and your job is gone. Your health deteriorates, and you run up huge medical bills. Your breadwinner spouse dies or divorces you. Your retirement nest egg disappears when the stock market drops, and you hold a mortgage on a home or multiple properties. For some people, these kinds of events can lead to financial disaster and, in the worst cases, bankruptcy.

Should you be given a fresh start? Everyone deserves a second chance. Fortunately, the laws of the United States give people the opportunity to start over by wiping away certain debts if they can qualify to file for bankruptcy. Chapter 7 bankruptcy enables you to completely discharge debt because you cannot afford to repay it.

As the economy continues to slump and more and more people are unable to pay their mortgage or other debts, bankruptcy and foreclosure have become household words, and the questions of emotion and worry are pouring into the offices of attorneys to discuss what to do. The following is a sampling of questions being received by bankruptcy attorneys from persons considering bankruptcy, facing foreclosure or both.

Q: Recently, I received a notice from a collection agency that read, “If you don’t start making payments on this debt, we will take you to court and ask the court to impose the maximum sentence against you.” Can I be imprisoned for simply not paying my bills, such as a mortgage or credit card debt?

A: No, you are not going to be imprisoned for not paying your mort-

gage or credit card bills. Debtors’ prisons in the U.S. were abolished in the 1850s. Failing to make payments on debt is not considered a crime in the U.S. Collection agencies use almost any means necessary to collect debts through embarrassment, intimidation, threat or otherwise.



Q: I have been unable to pay my mortgage for two months as I need the money to pay for food, my car and other bare essentials necessary to maintain the livelihood of my family. Should I expect collectors to show up on my doorstep to remove me and my family from my home and take my car and other personal assets for which I have already paid or continue to pay?

A: If you have only missed a payment or two on your mortgage, you most likely have time to pursue financial alternatives. Without court approval, no one can require you to immediately move out of your home regardless of your inability to pay your mortgage, nor does a lender have any access to any of your other assets. To remove you from your home, a lender must obtain a foreclosure judgment issued by a court followed by an eviction notice to leave. In recent cases, this process has taken six months to a year or more, and all the while no mortgage

payments were being made by the homeowner. Furthermore, simply because a lender asks the court for a foreclosure judgment to take back a property, with the right defense, a homeowner may be able to further delay the entry of the judgment if the lender cannot produce appropriate evidence of its right to foreclose.

If you are considering bankruptcy because you are unable to pay your mortgage or other debts, you need to know your legal options. In order to cut down on the number of bankruptcy filings and to reduce the potential for fraud in the bankruptcy system, in 2005 Congress

changed the bankruptcy laws requiring all debtors to attend a credit counseling session before they file bankruptcy. It also eliminated the ability to file a Chapter 7 without first evaluating or measuring your debts and income, known as a means test. This test is to measure whether you truly need to be relieved of your debts and are not just abusing the system. Don’t be intimidated by the sound of that—it’s a straightforward test, and most debtors qualify for Chapter 7.

Filing Chapter 7 bankruptcy sometimes leads debtors to experience emotions of guilt, low self-esteem and even shame. Remember, there is no shame in having to protect the interests of your family’s financial well-being. If you find yourself in a financial drain and threatened by collectors or lenders because you are unable to pay your mortgage or other bills, consult with an attorney to discuss your financial and legal options. **L**



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