



What Happens to **Your Home** in a **Bankruptcy?**



Introduction

Owning a home is still considered by many to be the American Dream. People often save for years before being able to buy their home. It is your own little piece of the world. Understandably, many people are emotionally attached to their home and do not want to do anything that would put them at risk of losing it.

When I take a call from a potential new client, it is not uncommon for some of their first words to be, “I’m considering filing for bankruptcy, but I definitely don’t want to lose my house.” I worry that the fear of losing their home in bankruptcy often prevents people from even calling my office and getting the help they desperately need.

While owning a home can factor into the bankruptcy options that are available to you, we would never recommend that you file a bankruptcy that would cause you to lose your home. In fact, bankruptcy can even be used to help you keep your home if you have fallen behind on mortgage payments.

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Types of Bankruptcy

There are two main types of bankruptcy available to individuals.

The first is a Chapter 7, which is what most people think of when they think of bankruptcy. In a Chapter 7 bankruptcy, credit cards, medical bills, delinquent utility bills, personal loans, payday loans, and certain other debts are totally eliminated. The second type is a Chapter 13 bankruptcy, which is a reorganization of debt over a three to five year payment period.

In order to determine which type of bankruptcy is best for you, we look at your income, expenses, the amount and type of debt you have, and the property you own. The last part is where owning a home can factor into which bankruptcy is right for you.

The Bankruptcy Law allows you to protect a certain amount of property that you own. Under this protection, called an exemption, your property cannot be sold by the Court and cannot be factored in to how much you can afford to repay. Specifically when it comes to a house, there is an exemption for home equity. The amount of equity in your home is the difference between what your home is worth and what you owe on it.

In order to accurately determine how much equity you have in your home, we need to know how much your house is worth and how much you owe on it. How much you owe on your house is an easy question to answer as you can just refer to your most recent mortgage statement or a credit report. Determining how much your house is worth can sometimes be a harder question to answer.

If you've purchased your house in the past few years and have not done much work to it since, it is likely that your house is still worth what it was when you bought it. If you've lived in your house for a while and/or you have done significant work to improve the house, we'll need to find out what your house is worth based on similar homes that have sold or listed recently in your area. In order to do that, you can obtain a market analysis (an informal valuation) from a real estate agent or an appraisal (a formal valuation performed by someone licensed by the state to value real estate).



How to Protect Your House

Once we know how much equity you have in your home, we can determine if your equity is fully exempted, or protected, under the Bankruptcy Law. In most situations, you can exempt about \$23,000.00 in equity in your home.

This amount would be doubled if a couple owns their home jointly. Therefore, if Sally's house is worth \$100,000.00 and she owes \$90,000.00 on her mortgage, her home equity is fully exempted. This means that if Sally otherwise qualifies for a Chapter 7 bankruptcy, she can eliminate her eligible debt without losing her house.

Let's assume that Sally's house is worth \$150,000.00 and she owes \$90,000.00 on it. This means that she has \$60,000.00 in equity and that exceeds the amount she can exempt by \$37,000.00. Now what are Sally's options? A Chapter 7 bankruptcy would not be a good idea for Sally as her house could be sold by the Court and \$37,000.00 of the proceeds would be used to repay her creditors.

A Chapter 13 bankruptcy provides Sally the opportunity to keep her house even though she has more equity than what can be exempt. In Sally's situation, if she files a Chapter 13 bankruptcy and agrees to repay at least \$37,000.00 (the amount of equity in her house that she could not exempt) to her credit cards, medical bills, and personal loans over up to five years, she gets to keep her home. This allows Sally, and anyone else with a lot of equity in their home, the chance to keep their house, but still get their debts under control.

A Chapter 13 is also the type of bankruptcy that can help someone save their home if they have fallen behind in mortgage payments. There are two ways that a Chapter 13 bankruptcy can help someone save their home from foreclosure. The first option is to put you on a payment plan that would pay the normal monthly mortgage payment moving forward plus enough extra to get you caught up on the missed payments up to five years.



Loan Modification

Sometimes, the mortgage payments are so far behind that getting caught up over five years is not affordable. When we encounter a situation like this, we can try to help the client get a loan modification in their Chapter 13.

A loan modification is a voluntary change to the terms of a mortgage loan that the homeowner and the mortgage company agree to. A modification can change the amount owed, interest rate, monthly payment, or length of repayment.

Our goal when we attempt to get a client a modification is to reach an agreement that will bring them current on their mortgage loan. While we cannot guarantee that we will be able to get a client a modification, it at least gives our client a chance to keep their home when they might not have had any hope of being able to do so otherwise.

Filing a bankruptcy does not mean that you are going to lose your home, but if you're considering filing for bankruptcy and own your home, you definitely need to consult with an experienced attorney to make sure you file the right type of bankruptcy to protect your home.

At Steidl and Steinberg, we offer a free consultation where you will get to meet with one of our experienced attorneys and find out what your options are. Don't let fear of losing your home prevent you from considering bankruptcy as a way of getting your debt under control.

We have offices all across Western PA.

To schedule your free consultation call at **412-391-8000** or get in touch with us online [here](#).