

Can Bankruptcy Save My Home?

Bankruptcy doesn't automatically mean you get to save your home.

It is a balance between what you owe, what you have, and what you can afford to pay. The good news is that bankruptcy can protect your home and hold off foreclosure.

Chapter 13 bankruptcy is designed to allow you to keep your home, even if you are behind on payments. If you keep your house after filing for Chapter 7, the fact that other debts are discharged should make it easier to pay your mortgage.

On the other hand, there's no "free house" option. No bankruptcy action forgives a primary mortgage. The mortgage stays secured by the home and you will need to continue paying the mortgage to save your home.

Different Ways to File for Bankruptcy

- Chapter 7 discharges your debts after selling your non-exempt assets to repay creditors.
- Chapter 13 bankruptcy allows you to keep your assets if you are able to maintain a payment plan determined by your income and expenses and stay current on your secured debts.

No matter which type you file for, the court puts an "automatic stay" on any foreclosure action. This means that if your house was being foreclosed on, that procedure will stop as the court sorts out your ability to pay. It does NOT mean you automatically keep your house.

In both types of bankruptcy, there is a homestead exemption: a way to protect some of the equity you have built. In Illinois, the homestead exemption is \$50,000 per individual and \$100,000 for a married couple.



Can Bankruptcy Save My Home?

How Your Equity Affects You in Bankruptcy

- The market value of your house, minus what you owe on it, is home equity. If the market value of your home is \$200,000 and you owe \$100,000 on the mortgage, then you have \$100,000 in equity. In other words, if you sold your house tomorrow, after you paid what you owe, you would be left with \$100,000 minus any costs of sale. The debt on your house not only includes the mortgage, but any home equity loans or lines of credit you may have, as well as liens.
- The Illinois homestead exemption helps you by protecting \$50,000 of your equity. When you file bankruptcy, your equity is considered available to distribute to your unsecured creditors. The bankruptcy trustee will only consider the equity after the exemption is subtracted. So, if you have \$100,000 in equity, after the exemption, you will have only \$50,000 in equity.

Keeping Your Home in Chapter 7 Bankruptcy

- In a Chapter 7 bankruptcy, the court will calculate what you have in equity, after the exemption, to pay off your debts. If your equity after the exemption is little or nothing, you will likely be allowed to keep your house, because selling it would not generate enough money to pay any unsecured creditors. On the other hand, if you have a lot of equity, the bankruptcy court may determine you have to sell your home to pay off creditors.
- If the court determines there is sufficient equity, the trustee will sell your home to pay off your creditors. Any debts secured by the property will be paid first including costs of sale and trustee fees and then the remainder will be paid to unsecured creditors.
- Here are some of the things that make it more likely your house will be protected if you file for Chapter 7 bankruptcy:
 - You are up to date on mortgage payments.
 - All, or most, of your equity is protected with an exemption or secured by a mortgage.
 - You owe more on the house than it's worth.

Can Bankruptcy Save My Home?

Keeping Your Home in Chapter 13 Bankruptcy

- In a Chapter 13, you, the bank and your creditors all decide on a repayment plan that takes three to five years. Your assets are not sold off. Once the plan is completed, your unsecured debt is discharged.
- In a Chapter 13 bankruptcy, the equity in your home is also a factor. It determines the amount you have available to pay your unsecured creditors.
- The plan that is worked out with the court and your creditors will include a way to catch up on and pay your mortgage – if you can afford it. You will need sufficient income to make the ongoing mortgage payments and a bankruptcy payment.
- If you are behind on your mortgage the plan will work out how you pay the past due payments over the course of the plan through the bankruptcy payment.

