

Will I need to file bankruptcy after they foreclose on my home?

I'm not making enough money to afford my mortgage payments and my home will soon be sold in foreclosure. It's worth a lot less than I owe on it. Will I still owe mortgage-loan money after the foreclosure sale, which would mean that I'd probably need to file bankruptcy?

The quick answer is "maybe" but we'll need to look at the details of your situation to know. We'll assume that your home will sell for less than you owe on it; the amount that you owe less than the amount received from the sale is called the "deficiency". Here are some different situations and their probable results. Hang on for the ride.

1. **You have only one mortgage loan on your home and it's the original one you got to buy the home.** You won't owe anything after the foreclosure sale because of California's "anti-deficiency" law that says you don't owe that deficiency amount if the loan was taken for the purpose of buying the home for you to live in. This type of loan is called a "purchase-money" loan.
2. The same situation as in 1 above but **you refinanced that loan at a later time.** That's a new loan that wasn't used to purchase your home, and therefore doesn't give you the protection in 1 above. But you probably still won't owe any deficiency amount because of California's "one action" rule that says the lender can only bring one legal action in connection with the foreclosure. Almost all foreclosures in California are done by a "non-judicial" procedure that doesn't involve a court and is much faster and cheaper than a court procedure. That's the lender's "one action". If the lender uses this foreclosure procedure, they cannot bring a second action and sue you for the deficiency.
3. Same as 1 above but **you also took out a 2nd mortgage loan at the time of purchase to pay part of the purchase price.** You're protected for the same reason as in 1 above, because California's "anti-deficiency" law says you don't owe a deficiency amount on purchase-money loans. Of course if the holder of the 2nd mortgage loan is the one that did the foreclosure (non-judicial), then you're protected by the "one action" rule, but holders of the 2nd mortgage loans seldom do the foreclosing.
4. Same as 1 or 2 above but **you took out a 2nd mortgage loan (from another lender) after you purchased the property,** either a straight loan or a line of credit often referred to as a HELOC (home equity line of credit). This loan (1) is not a purchase-money loan and (2) the lender has not used up "one action" because that lender didn't foreclose on the property. So you would be liable for any deficiency remaining on that loan.
5. Same as 4 above but **the 2nd mortgage loan was taken from the same lender that issued the purchase-money loan.** This lender is subject to the "one action" rule and therefore you are protected. BUT if that 2nd mortgage loan has been sold to someone else, then this new holder of the note is not the one that did the foreclosure, the "one action" rule doesn't apply, and you would be liable for any deficiency remaining on that loan.

If you are liable for a deficiency remaining on a mortgage loan after foreclosure, that debt (and other debts) would be discharged (eliminated) by a bankruptcy. Whether that's desirable for you or not is a whole other question. Do yourself a favor and consult with a qualified bankruptcy attorney in your area to discuss that.

Malcolm Ruthven
Attorney at Law
San Francisco Bay Area
415.342.4666 Fax 415.869.6645
mruthven@mruthvenlaw.com
www.ca-bklaw



Click [bankruptcy](#) for more information from [Malcolm Ruthven](#)