Will they take my house if I file bankruptcy? (Part 1)

I'm current on my house mortgage payments but am way in debt for other things. If I file bankruptcy, will they take my house? As with many questions about bankruptcy, the direct answer is a strong "it depends".

Let's see what might happen in a Chapter 7 bankruptcy, the type of bankruptcy in which you get rid of your unsecured debts, those debts (like credit card debts) that are not secured by your property (like your car loan or home mortgage) quickly and completely. In a Chapter 7 bankruptcy, all of your assets, everything you own, can be taken by the bankruptcy trustee for the benefit of your creditors EXCEPT property that you "exempt" in your bankruptcy filing. Let's look at your house...

- **Do you owe as much or more on it than it's worth in today's market?** If the answer is "Yes", then the trustee wouldn't have anything left to pay to your creditors after the house is sold and the mortgages are paid. That means your house is safe in a Chapter 7 bankruptcy. Did you ever think you'd be glad that the value of your house dropped? You might be glad right now.

- **If you house is worth more than you owe on it** (after the cost of selling it), then that money (your "equity" in your house) would be left over after a sale and would be available to give to your creditors. In this case, the trustee would likely sell your house UNLESS you can EXEMPT that equity. As you can imagine, exemptions are a very important subject. So, can you exempt the equity in your house? In California, here's how you find out.

1. California has a "homestead" exemption (contained in the "704" set of exemptions) you can use to exempt your home. The amount of that exemption is based on your age and other factors.

$75,000	– Single person, age 64 or younger
$100,000	– Married person with the spouse living in the house, age 64 or younger
$175,000	– Debtor or spouse (living in the house) is one of the following: – 65 or older – Physically or mentally disabled so as to be unable to engage in substantial gainful employment – 55 years of age or older with a gross annual income of not more than $25,000 or, if the debtor is married, a gross annual income of both debtor and spouse of not more than $35,000 and the sale is an involuntary sale.

So, if your equity in your home is not more than the above exemption amount for your situation, you can keep your home. If your equity is more than that, you may not be able to keep it in a Chapter 7 bankruptcy. You'll need to consider a Chapter 13 bankruptcy which we'll discuss in the next article in this series.

Note also that if you use this homestead exemption, you won't get the benefit of the California "Wild Card" exemption (see the next paragraph). You'll need to discuss with your bankruptcy attorney what the lack of the Wild Card exemption means to you.

2. If you only have a small amount of equity in your home, for example $10,000, then you could choose to not use the large California homestead exemption and instead use the "Wild Card" (703) set of exemptions. In this set of exemptions, you get a $26,925 (as of 4/1/2013) to use for anything (as many items as you want) including the equity in your home. So you could use $10,000 of that exemption for your home, leaving $14,250 for exempting other things like your bank accounts, and protect your home from sale in your Chapter 7 bankruptcy case.

As mentioned above, the next article will cover using a Chapter 13 bankruptcy to protect your home if a Chapter 7 won't do it.

Will they take my house if I file bankruptcy? (Part 2)
Will they take my house if I file bankruptcy? (Part 3)

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