

Bankruptcy and Your Home: What You Need to Know

Can you keep your home if you file for bankruptcy, and how does that depend on whether it's Chapter 7 or Chapter 13?

One of the most common concerns when filing for bankruptcy is whether you can keep your home. The answer depends on several factors, including whether you file for Chapter 7 or Chapter 13, the value of your home, and the laws in your state.

In Chapter 7 bankruptcy, a court-appointed trustee may sell non-exempt property to pay creditors. You may be able to keep your home, depending on its value and whether you meet the exemption limits in your state. Most states have exemptions that protect a certain amount of home equity, and if your home's equity is below that amount, you may be able to retain it. However, if your home's value exceeds the exemption limit, the trustee could sell it, though you would receive the exempted value.

Mortgage payments are also crucial. If you're current on your mortgage and continue making payments, you are generally allowed to keep your home. However, if you're behind on your mortgage, bankruptcy won't automatically discharge your mortgage debt, and foreclosure may still occur.

Chapter 13 bankruptcy, on the other hand, is a reorganization bankruptcy designed for individuals with regular income. It allows you to keep your home as long as you adhere to a repayment plan that lasts for three to five years. Even if you're behind on your mortgage, Chapter 13 offers the flexibility to catch up on missed payments, and as long as you stick to the plan, you can avoid foreclosure. In this chapter, your home is typically protected from being sold, as long as you continue making the necessary payments.

What factors will affect whether you can keep your home in bankruptcy?

Several factors play a role in determining whether you can keep your home during bankruptcy proceedings:

1. **Equity in your home:** If your home's equity exceeds the exemption limits, there's a higher chance the trustee in Chapter 7 could sell the home to pay creditors. In Chapter 13, your home is generally protected, but the equity must be factored into your repayment plan.
2. **Mortgage status:** Being current on your mortgage can help protect your home in both Chapter 7 and Chapter 13. However, if you're behind, Chapter 13 is the better option, as it allows you to catch up on missed payments.
3. **State exemption laws:** State laws regarding home exemptions play a crucial role in protecting your home. Some states have more generous exemptions, allowing you to

protect more of your home's value.

4. **Your ability to repay:** Chapter 13 requires you to prove you can afford the repayment plan, which includes your mortgage payments. If you fail to do so, you may lose your home, but Chapter 13 still gives you an opportunity to work with creditors.

How do homestead exemptions work and how can they help protect your home equity?

Homestead exemptions are legal provisions that allow homeowners to protect a portion of the equity in their primary residence from creditors. These exemptions vary by state and can be a significant tool for individuals facing bankruptcy or other financial distress.

In states with homestead exemptions, homeowners can protect a set amount of equity in their homes from liquidation in bankruptcy. For instance, if a state offers a \$100,000 homestead exemption and you have \$80,000 in equity, you can keep your home. However, if you have \$150,000 in equity, only the exempted portion is protected, and the remaining equity can be used to pay off creditors.

The specific exemption amount depends on your state's laws. Some states, like California, offer fixed dollar exemptions based on factors like marital status or age. Texas, for example, offers a homestead exemption with no upper limit on home value, as long as the property is under a specified size. Florida offers a full homestead exemption with no dollar limit on the value of the home, though there are conditions regarding property size.

Homestead exemptions are powerful tools for homeowners trying to keep their property during bankruptcy. It's essential to understand how your state's exemption laws apply to your situation before filing for bankruptcy.

Can you walk away from your home in bankruptcy?

If you're overwhelmed by mortgage payments or facing foreclosure, walking away from your home may seem like a viable option. Bankruptcy can offer a structured way to walk away without the harsh consequences outside of bankruptcy. Surrendering your home means voluntarily giving up ownership, which is an option in both Chapter 7 and Chapter 13 bankruptcy.

In Chapter 7 bankruptcy, when you surrender your home, you avoid having to continue making mortgage payments. The home will likely be sold to pay off the mortgage lender, but any deficiency balance (the amount owed after the sale) may not be discharged unless it qualifies under certain conditions. While surrendering the home will typically lead to foreclosure, it may allow you to start rebuilding your credit sooner since you are no longer tied to the mortgage.

In Chapter 13, surrendering your home is also an option, especially if keeping it is no longer financially feasible. The process is similar to Chapter 7 in that you voluntarily give up the property, and the lender can proceed with foreclosure. However, any deficiency balance after the sale is more likely to be discharged in Chapter 13 than in Chapter 7. This is one of the key advantages of Chapter 13. Additionally, if you are behind on mortgage payments, surrendering the home can reduce the total debt obligations in your repayment plan.

Regardless of whether you choose Chapter 7 or Chapter 13, walking away from your home will have a negative impact on your credit score. It will likely result in a foreclosure being reported on your credit report for up to seven years, which can significantly lower your credit score.

Before making this decision, it's important to carefully consider the emotional and financial implications of walking away from your home and consult with a bankruptcy attorney to understand your options.