



Can I Still Strip 2nd Mortgage Lien When Converting From Chapter 13 to Chapter 7 Bankruptcy?

Question:

Can I convert a chapter 13 bankruptcy to a chapter 7 bankruptcy if I have a confirmed lien strip on the 2nd mortgage; or can the 2nd mortgage be reaffirmed? The condo is worth less than the 1st mortgage?

I am asking for a loan modification via HAMP and that has just been filed. I am late 7 months on the 1st mortgage.

Answer:

You may convert a chapter 13 bankruptcy to a chapter 7 bankruptcy at any time. The real question appears to be, what will happen at that point?

First, you will lose the second mortgage lien strip. If you convert to a chapter 7 bankruptcy, the 2nd mortgage comes back to life and you will be in default of the 2nd mortgage upon converting to chapter 7 bankruptcy. A chapter 13 bankruptcy second mortgage lien strip ONLY becomes effective upon the chapter 13 discharge.

My general fear with your situation is that you are only delaying the inevitable. If you MUST have a mortgage modification to keep your house; odds are you are going to lose your house. I assume you filed chapter 13 bankruptcy to stop a foreclosure but based on the fact that you are 7 months behind on the 1st mortgage and in a chapter 13, you choose not to cure the missed mortgage payments in your chapter 13. If the goal is to keep this upside down house, I don't see this ending well. I hope it works out, but of all the strategies available, you have chosen the one with the least chance of success.

However, having said that, if you end up getting a modification and converting to chapter 7 bankruptcy, you need to think twice about reaffirming the 2nd mortgage. Reaffirming a 2nd mortgage in chapter 7 bankruptcy when the house is significantly upside down in value is a



c-o-l-o-s-s-a-l mistake. Although you do risk having the 2nd mortgage foreclose, you will likely be able to settle with the 2nd mortgage lender for about 10% of the balance owed on the second mortgage.

In any event, you have a lot going on and should be in contact with your lawyer to help sort out the issues and challenges you are facing.

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