

## **Can I Keep a Rental Property if I File for Bankruptcy?**

The answer to this question depends on whether you are filing Chapter 7 or Chapter 13 bankruptcy. In Chapter 7 bankruptcy, if the rental property has equity, meaning that the value of the property exceeds what is owed on the property, the trustee would almost definitely seize property and sell it to satisfy some or all of your unsecured debts. The Arizona homestead exemption only applies to your primary residence so any equity in the rental property is non-exempt. If the rental property has no equity or negative equity, that is you owe more money than it is worth, the trustee will generally not seize the property as it will not yield any proceeds for your unsecured creditors. The trustee's job is to determine whether or not there is money for your creditors, not to take property that belongs to you.

However, the Chapter 7 bankruptcy trustee in your case may take the rental income you receive during the life of your bankruptcy, usually around 6-7 months. Therefore, you may be left in the very difficult position of having to pay the mortgage on the rental property without receiving rental income from your tenants. Clients who are faced with this situation are often forced to surrender their rental property in Chapter 7 bankruptcy.

If your rental property has equity, Chapter 13 bankruptcy allows you the option of the keeping it as long as you pay to your unsecured creditors the value of the equity in the property over the life the plan. For example, if your rental property has \$15,000 equity, the plan has to propose to pay \$15,000 to your unsecured creditors over the life of the plan. Furthermore, you may be eligible for a cramdown under Chapter 13. A cramdown means that if you owe more money on the property than it is worth, the bankruptcy court can reduce the amount you owe on the mortgage to the fair market value of the property. The cramdown will in turn lower your monthly mortgage payment and the total principal on the loan. The Chapter 13 cramdown is allowed on secured debts other than your primary residence.

There is one caveat to keeping your rental property in Chapter 13 bankruptcy. In some instances keeping the rental property can cost you money. If the rental property has a negative cash flow, that is the costs outweigh the income brought in, the trustee may object to your plan on the basis that the money you're spending on the property should be distributed to your unsecured creditors. You may be resolve this objection by paying the amount you are losing on the property to your unsecured creditors in your plan, but most of the time it makes more sense to just surrender it.

If you have a rental property and would like to keep it, you should consult with an experienced Tucson bankruptcy lawyer in determining whether Chapter 7 or Chapter 13 bankruptcy is your best option. The affordable Tucson bankruptcy lawyers of Ariano & Reppucci are available around the clock to answer any questions you may regarding keeping your rental property in bankruptcy.