



## Can I Cram-Down a Mortgage in Chapter 13 Bankruptcy?

### **Question:**

Lien stripping only works on your primary residence and strips the 2nd mortgage lien only if the house is underwater on the first mortgage, right? What about a cram-down? Can you cram-down a mortgage on non-primary residences? If so, then the lien is crammed down to the present value of the property? So how long do you have to pay that off?

### **Answer:**

A chapter 13 bankruptcy does allow modification of a secured interest except on the debtor's primary residence. You are correct, you may strip the lien of a second mortgage (inferior mortgage) on a primary residence if the home's current market value is at or less than what is owed on the first (primary) mortgage.

A mortgage cram-down on real estate that is not your primary residence is legally possible, but practically very difficult to do. Bankruptcy Code section 1322(b)(2) allows a chapter 13 bankruptcy debtor to modify the rights of secured claimants; meaning, you can reduce the claim of the secured lender to the current market value of the real estate. However, section 1325(a)(5)(B)(ii) requires that the value of the secured portion of the crammed-down mortgage be paid within the plan. In effect, if you are going to cram-down a mortgage on non-primary residence real estate, you must pay the value within the 60 months of the chapter 13 plan. For example, if the real estate is worth \$100,000, but you owe \$150,000; the chapter 13 plan must pay the secured, crammed-down, creditor \$100,000 during the 60 month plan. So, that fact is hurdle number one; most chapter 13 debtors are not in a position to do so.

In general, the only practical way to pull that plan off is to have an external funding source. Reason being, the chapter 13 trustee is not going to allow you to fund payment to the crammed-down creditor with disposable income at the expense of your unsecured creditors. A typical chapter 13 bankruptcy is a payment plan to pay something



to your *unsecured* creditors. The trustee position is that your chapter 13 creditors should not be prejudiced so the debtor (you) can hold onto a non-essential piece of real estate, and the courts agree.

As a practical matter, the only way a cram-down is feasible is under the following conditions: (1) the debtor has access to an external funding source (loan, family member, friend, etc), (2) if the funding source is a loan requiring payments during the chapter 13 plan, the property must generate income such that it pays for itself.

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