

Can I Get Rid Of My Mortgage And Keep My House? Can I Keep My Car And Get Rid Of My Car Loans?

I have noticed there is a good amount of confusion when it comes to secured debts. It is understandable, really. Every time you enter into a financial agreement – buying a home, securing a car loan, applying for credit cards – there are pages and pages of information spelling out the terms of the agreement. Unfortunately, they are usually written in size 2 font and contractual language. My eyes hurt just thinking about it.

I think it is near impossible for clients to understand what is going to happen with their loan in bankruptcy, if they do not understand the original terms of their contract. It is no wonder I have clients that come to me wanting to erase a debt in bankruptcy (say a mortgage or car loan) without having to turn over the property securing it. Shame on you, loan companies, for not including client education as part of your loan terms.

Before we get too deep into this conversation, let me first give a brief introduction to secured debts. A secured debt is one in which the creditor has rights in the security (think collateral property – something that the creditor can take in the event of default) and against the debtor in the form of personal liability (think lawsuit – the creditor can file suit against a individual that defaults on a loan).

Let's consider a standard car loan. These are secured loans which means that, if you read above, you know that there are two ways the creditor is protected. One way is by your personal liability towards the loan. If the car is taken by aliens – and your insurance won't cover it – you are still liable for the debt. The second protection is via the car itself. In this scenario, the security or the collateral is the automobile and thus the creditor can repossess the car when the loan is defaulted on.

What constitutes secured debt? Well, again it comes down to that fine print. Generally, any vehicles loans or property mortgages you hold are secured by the associated collateral. However, this may not be true for personal loans that you just happened to use to purchase your home or car. Get where I am going with this? In addition, most credit card debt is unsecured. However, even this is not black and white – a certain big box electronics store is especially good at claiming debt accrued on store credit cards is secured by the property purchased.

How are these secured loans handled in bankruptcy? Generally, when you file chapter 7 bankruptcy you are removing the personal liability associated with your debts. This is why creditors will no longer pursue payment from you – you are off the hook, so to speak. However, liens against the collateral property pass through bankruptcy unaffected (barring circumstances allowing lien avoidance or stripping).

What does this mean? The secured creditor can no longer come after you – but they can and will come after the property. What options do you have? According to the bankruptcy code, there are three options for handling secured debt in bankruptcy:

1. **Redemption:** this means that you pay the secured creditor the present value of the collateral asset in a single cash payment. Once paid, that asset is yours – free and clear. The balance of the debt is then considered unsecured, and discharged with your other debts.
2. **Reaffirmation:** this is an agreement to waive the discharge as to the reaffirmed debt and to pay the debt according to the original contract. This means that your personal liability towards that debt will remain after bankruptcy, which can be devastating if you default on the item in the future.
3. **Surrendering:** the collateral renders the debt an unsecured debt in bankruptcy. Your personal liability is discharged in bankruptcy. If you surrender the collateral property, there is no other avenue for the creditor to pursue, even if the value of the collateral is less than what was owed.

Please note that the above explanation is the Cliff's Notes version. No, scratch that. It is the 3x5 flashcard version. I wanted to give you all an understanding of secured debt, so that when you talk to an attorney you may have a better understanding of your bankruptcy case. There are numerous complexities that I didn't address today.

For example, in some cases liens can be avoided or stripped. Under these specific scenarios, the security is stripped and the debt is classified as unsecured. Two common examples include second mortgages that are wholly unsecured by equity in the home and car loans that exceed the fair market value of the vehicle.

Want another example? Sometimes people will choose against the above three options on a secured debt, and instead chose to do nothing. This allows personal liability to be discharged in bankruptcy. However, even if you remain current on the loan, the creditor still may take the property under the stance that filing bankruptcy alone is contractual default.

As you can see, it is complicated. I recommend you contact an experienced bankruptcy lawyer for a consultation prior to making any decisions about your case. Talk about coincidence, I am an experienced bankruptcy lawyer and I do offer free consultations regarding your bankruptcy case. So, if you have questions regarding your secured debt, get into my office today.