

Bankruptcy Basics

Using Chapter 13 To Stop Foreclosure

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We're in the beginning of year 3 of Covid-19, and many of the luxuries we once enjoyed are still out of reach. But there's one reminder of the past that has come back strong: home foreclosures.

Mortgage forbearance ended in December of 2021, so many of us are facing a huge mortgage bill, and no way to pay it. We're going to talk about your options in a minute, but first a warning: if it has come down to the wire for you, pick up your phone and call a qualified bankruptcy attorney.

Filing bankruptcy in Georgia results in an "automatic stay" – a legal action which prevents your mortgage holder from pursuing foreclosure.

We're hoping that you are able to keep your home, but before we talk about your options to avoid foreclosure, let's remember how the country got into this foreclosure mess.

The Pandemic, Job Loss, and Forbearance

When the Atlanta area went into quarantine in March 2020 no one was certain how long the lockdown would last and how our local economy would fare. For many people, quarantine meant working from home with their kids out of school.

But for others quarantine meant jobs were lost, hours were reduced, and uncertainty abounded. Businesses had new expenses, and struggled to deal with restrictions. Many pivoted, but some were dead in the water.

Regardless of the cause, in 2022 many of us are in over our heads financially.

Maybe the pandemic was just another in a long line of unfortunate circumstances, adding to your debt. Maybe the government checks were welcome, but not enough to keep your credit card debt from growing, and your minimum payments from getting out of reach.

For those who received forbearance from their mortgage servicers, the option came as a huge sigh of relief. Rather than having to focus on moving in the middle of a pandemic, they were allowed to put off their mortgage payments. But forbearance is not forgiveness, and they were left to wonder what the future looked like.

In December 2021 forbearance came to an end and "Payment Due" notifications started dropping on a population that was just starting to see the impacts of the new Omicron variant.

Your Options to Avoid Home Foreclosure

Fortunately, as long as you have permanent employment, your mortgage company probably has options for you to make up missed payments.

Unfortunately, approval is completely at their discretion, and you might find that while waiting for a rejection your situation only worsens.

Most of us who are behind on our mortgages have also racked up more personal debt than we can afford, so even if we were approved, we'd still find ourselves going in the hole each month.

That's why we've listed bankruptcy as your first option. It will immediately halt foreclosure, and give you the best chance of emerging in a stable financial position.

Chapter 13 Bankruptcy >

If you have at least \$5,000 in credit card debt that is preventing you from making your mortgage payment

Lump Sum Payment >

If you have recently won the lottery

Repayment Plan >

If you can afford your monthly payment, plus some extra

Payment Deferral >

If you're able to pick up payments, but not make up payments

Loan Modification >

If you can't afford the current payment, but do at least have permanent employment

Partial Lien >

If you can't afford the current payment, have permanent employment, and are an FHA insured borrower

While bankruptcy may be your best chance of stopping a foreclosure, it's good to understand options your mortgage company may offer (at their discretion).

Using Chapter 13 Bankruptcy to Stop Foreclosure

As we mentioned, when you file bankruptcy an automatic stay is triggered. That means that many debt collection activities have to cease immediately. **So as long as you file bankruptcy before the foreclosure sale date, the process will stop cold.**

You can use the provisions of Chapter 13 to keep your home as long as you resume making payments.

In Chapter 13, debt is reorganized into a single, lower monthly payment you can afford. You'll still have to make your mortgage payments, but Chapter 13 reduces other debt to a level that allows you to do so.

Can Anyone Catch Up Their Mortgage with a Lump Sum Payment?

Pay months of back payments in a lump sum? Unless you found fortune in manufacturing face masks and you're reading this article for a friend, this option probably isn't an option.

Fortunately, have more flexible options available than paying the mortgage arrears all at once.

If you are for some reason able to pay your missed payments, know that you might have other options.

A Repayment Plan to Avoid Foreclosure

If you can afford your current monthly payment, plus some extra, a repayment plan may be a good option for you. Typically in a repayment plan the amount of your unpaid payments is split up and added to a certain number of payments.

For example, if your mortgage payment was \$2,000 and you had missed 3 payments you would own an extra \$6,000. If that amount were split up over 12 months you would end up paying \$2,500 per month for the next year, rather than \$2,000.

In Chapter 13, some of your debt is wiped out completely and other debt is reorganized into a single, lower monthly payment you can afford. You'll still have to make your mortgage payments, but Chapter 13 reduces other debt to a level that allows you to do so.

Payment Deferral to Stop Foreclosure

If you're able to pick up making your monthly payments but you can't afford to pay more than that per month, a payment deferral might be a good option.

A payment deferral adds your missed payments to the end of your mortgage payment plan. At that time you might have to pay the additional amount all at once or refinance the loan.

If you sell the house before it's paid off you will owe the entire amount due – including the missed payments.

In any case, this option lets you stay in the home without increasing your monthly outlay.

How much equity is too much equity?

Did that miraculous increase in your Zestimate® limit your options?

Loan Modification to Avoid Foreclosure

Maybe you can no longer afford to make your monthly payments. Say you're back in the workforce after a long absence but you're not making as much as you used to. You might consider a loan modification.

A loan modification changes the terms of your loan to offer you a more affordable payment. If you've missed payments, that amount is added to the total balance, and the amount you owe is spread out over a longer period to reduce the amount of your payment.

In this case you will likely have to pay additional interest. You also might want to keep in mind that loan modifications usually require permanent employment. So if you are currently depending upon a job that is generally considered temporary or seasonal – DoorDash or Uber – a loan mod might not be for you.

If your debt goes beyond your mortgage, you should probably consider Chapter 13, which may include modifications for other loans in addition to your mortgage.

Why is everyone pushing loan modifications?

Some are just out to make a buck from your crisis.

Partial Subordinate Liens to Stop Foreclosure

If your home loan is backed by the FHA, you might have an option that's even more affordable.

The FHA Home Affordable Modification Program provides an interest-free loan to those who meet HAMP eligibility criteria. This loan can be used to pay off part of the first mortgage – up to 30% – reducing the monthly payment.

Since, the second mortgage payments don't come due until the first mortgage is paid, homeowners get the benefit of a loan modification without additional interest. In fact, since you can move up to 30% of the unpaid principal balance to an interest-free loan, you may end up paying less than the original loan amount.

Partial subordinate lien amounts to someone else loaning you the money to afford your home while allowing your primary mortgage holder to get first dibs.

Why the Housing Value Boom May Make Chapter 7 a Non Option

With fewer people in the workforce we've grown accustomed to empty grocery store shelves and long lines for drive-thrus. One unexpected boon for those of us looking to sell our homes has been the sharp rise in home values.

But if you're looking for [Chapter 7 bankruptcy](#) to help you stay in your home, that's not such good news. You see, your increased home value means you have more equity. Your trustee will most likely be forced to sell the home in order to pay off your debt.

In previous years many homeowners found that their equity was small enough to be covered by the \$21,500 federal homestead exemption (\$43,000 for couples both filing bankruptcy). But by fall of 2021, the average home price in the 11 counties of Metro Atlanta had increased 19.1%.

So if in 2020 you had \$20,000 equity in a Marietta home worth \$300,000, by November of 2021 that same house would be worth \$357,300, and you would have \$77,300 in equity – well above the homestead exemption. Put simply, if you had filed Chapter 7 in 2020 you would have been able to keep your home, but today it's less likely.

Chapter 7 might not be an option for you in today's housing book, but a Chapter 13 bankruptcy still might be your best bet for keeping your home out of foreclosure.

Beware of Loan Modification Scams

We've mentioned that in some cases a loan modification may help you avoid foreclosure on your home. But beware! There have been a rash of loan modification scams that have been defrauding unsuspecting homeowners.

Beware of anyone offering to:

- Take your money while falsely promising to save your home from foreclosure
- Ask you to pay fees upfront to receive services
- Promise to get you a loan modification
- Ask you to sign over the title to your property
- Ask you to sign papers that you do not understand
- Say you should start making payments to someone other than your servicer or lender
- Tell you to stop making mortgage loan payments altogether

Leave the Pandemic Behind and Get Back In Control

We're a long way from recovering from the effects of the pandemic on our economy, but that doesn't mean you can't start making steps now that will lead you to a more solid financial future.

If you've found yourself falling behind on mortgage payments and possibly facing foreclosure, we hope the information we've provided will save you from the loss of your home or at least additional expense.

And if bankruptcy is the best option for you, remember that these options are provided by your government to get you back on your feet. That's in everyone's best interest!

Contact Our Firm

Name *

Phone *

Email *


Message *

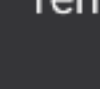
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