

have enough income to make your regular mortgage payment plus an extra payment to the bankruptcy trustee every month. The court will dismiss your chapter 13 case if you cannot show that you have the ability to make both payments going forward (or if you start to make the payments but later fall behind).

What else should I know about filing bankruptcy?

Filing a chapter 13 bankruptcy case on your own, without a lawyer representing you, is very difficult. Most cases filed without a lawyer end up being dismissed. You will have a much better chance of saving your home if you retain a lawyer to represent you in a chapter 13 case. You may be able to qualify for free legal assistance by contacting some of the offices listed on the back of this brochure. Also, if you hire a private lawyer to handle your chapter 13 case, usually their fees are paid through the bankruptcy payment plan, meaning that you have to pay only a very small amount up front (sometimes as low as \$300).

Within 180 days before filing a bankruptcy, you must participate in pre-bankruptcy credit counseling provided by an approved group. There is a fee for the credit counseling, but this fee may be waived if you are very low income or being represented by a legal services office with income eligibility rules. A list of approved credit counseling agencies is available here: http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm. You will also be required to take a financial management course after your case is filed in order to receive a discharge of your debts.

What other options might help save my home?

It may be possible for you to qualify for a loan modification to bring the loan current and reduce your monthly payment to an affordable level. It is a good idea to get help with your application for free from a HUD-certified housing counselor.

Never pay someone for help with a loan modification. Good help is available for free from a housing counselor, and often the people who charge money are scammers.

If you are unemployed, had your work hours reduced, or experienced a financial hardship from a medical condition, the death of a spouse, or military deployment, you might qualify for help from HomeSafe Georgia. HomeSafe Georgia may be able to make your mortgage payment for up to 24 months while you are looking for full-time work, or to help bring your loan current or reduce your principal balance. Get more information and apply online at www.homesafegeorgia.com.

Need Help?

If you live in Fulton, DeKalb, Gwinnett, Clayton, or Cobb County, facing the risk of foreclosure, and want advice about loan modification, HomeSafe Georgia, or bankruptcy options, call Atlanta Legal Aid's Home Defense Program at (770)817-7520.

Other resources:

Georgia Legal Services Program
People outside metro Atlanta * (404)206-5175

Atlanta Volunteer Lawyers Foundation
Pro bono chapter 7 cases * (404)521-0790

Georgia Senior Legal Hotline
Advice for seniors in Georgia * (404)657-9915

Find a HUD-certified Housing Counselor here:
<http://www.consumerfinance.gov/mortgagehelp/>

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Can Bankruptcy Help Me Save My House?



Information for Georgia homeowners about the automatic stay, the difference between chapter 7 and chapter 13, and other options you might have to save your home.

**Atlanta Legal Aid Society
Home Defense Program**

www.atlantalegalaid.org

Bankruptcy and Your Home

For people who are struggling with a mortgage payment they can't afford or facing the risk of foreclosure, it may seem like every option turns into a dead end. Maybe you have been trying to get a loan modification and the bank keeps asking you to fax paperwork over and over again. Maybe you are trying to get information about how to catch up the missed payments, and you end up getting a notice of foreclosure sale.

In Georgia, the foreclosure process moves very quickly and homeowners do not have many options to stop the sale and figure out a way to save their home. Foreclosures are nonjudicial here, meaning no lawsuit or court order is required. The bank only has to send you a letter by certified mail at least 30 days before the foreclosure sale.

Because of this fast-paced process in Georgia, even if you are trying to get a loan modification and your lender may be reviewing your application, it is important to get legal advice and have a backup option once a foreclosure sale has been scheduled. Filing for bankruptcy could be that backup option.

The Automatic Stay

One of the most important protections a person gets from filing bankruptcy is something called the automatic stay. The stay is like a protective shield that goes up around the debtor at the moment the bankruptcy case is filed. While the stay is in place, creditors are not allowed to attempt to collect against the debtor or take the debtor's property unless they first get permission from the bankruptcy court. This

means that if someone files bankruptcy before a foreclosure sale date, the bank will not be allowed to go forward with the sale until getting permission from the bankruptcy court (by filing what is called a "motion for relief from the stay").

It is important to know that there are some limits on the automatic stay. For people who have had one prior bankruptcy case dismissed within the past year, the automatic stay will only remain in place for 30 days, unless the court extends it. For anyone who has had two or more prior bankruptcy cases dismissed within the past year, the automatic stay does **not take effect** at all when a third case is filed. Also, some people who dismiss a bankruptcy case after a creditor files a "motion for relief from the stay" might not be allowed to file another bankruptcy for six months.

So long as this is your first bankruptcy filing (or the only case in the past year), filing a bankruptcy case before the foreclosure sale date should allow you to stop the foreclosure and figure out whether you can protect your home in bankruptcy.

Should I file Chapter 7 or Chapter 13?

There are two main kinds of bankruptcy cases that people dealing with debt usually consider. They may file a chapter 7 case, to wipe out debts quickly, or a chapter 13 case, which involves setting up a payment plan where you pay some of your debt off over 3 to 5 years and the rest is discharged.

People who are trying to save a home from foreclosure usually think about filing a chapter 13 case. The reason they do is that a chapter 7 case will only stop the foreclosure sale temporarily. After a few months, if you are behind on your mortgage, the bank will get permission to foreclose (or wait for your case to end, and then foreclose).

If you successfully complete a chapter 7 case, you will wipe out your personal liability on the mortgage – meaning that even if the foreclosure sale doesn't cover the full balance owed on the loan (leaving a "deficiency"), the creditor cannot try to collect any money from your bank account or your wages. However, the mortgage creditor will still have a lien on your house – an interest in your house that gives the bank the right to foreclose if you don't pay. That interest, or lien, stays in place during a chapter 7 case. Therefore, most people who file chapter 7 bankruptcy will not be able to save their home unless they are current on the mortgage or can get caught up quickly (perhaps through a loan modification, if you are approved for one).

In a chapter 13 bankruptcy, the debtor can use the 3 to 5 year payment plan to get caught up on the past-due mortgage payments. However, you have to be able to make your regular mortgage payment on time beginning the next month after you file bankruptcy.

For example, let's say you are 8 months behind on your mortgage and your mortgage is \$1,000 per month. You owe a total of \$8,000 to bring the loan current. If you filed a chapter 13 bankruptcy, then beginning the next month you would make your regular monthly payment of \$1,000 to the mortgage company. You would also send a separate check each month to the bankruptcy trustee. This monthly payment has to be enough to catch up the \$8,000 in back payments over the term of your bankruptcy payment plan (which will be at least 3 years and no more than 5 years long). So in order for a chapter 13 case to be successful, you have to