



(253) 284-3838

### BANKRUPTCY'S IMPACT ON A SHORT SALE

Sellers of real estate in distress often look to bankruptcy as a solution to their overall financial problems. Bankruptcy is a constitutional right and may, in some instances, be an appropriate remedy. It is beyond the scope of this short article; however, to replace the quality consultation with a qualified bankruptcy attorney.

### BANKRUPTCIES AND SHORT SALES DON'T MIX

When one files for bankruptcy, strange things automatically happen by operation of federal law. You no longer own your home or any other asset not exempted by the Federal Bankruptcy Rules. Title to your home automatically transfers to the Bankruptcy Trustee who is administering your bankruptcy case.

This is called the "stay of bankruptcy." No one (even your lender) can continue to try to collect payments from you or even start or continue foreclosure proceedings unless approved by the Bankruptcy Court. Every collection effort stops upon the filing for bankruptcy protection.

### CHAPTER 7 AND CHAPTER 13 BANKRUPTCIES ARE MOST COMMON

A Chapter 7 bankruptcy is a liquidation and is utilized when a debtor is so insolvent (meaning that the debts owed are so much greater than what is owned) that the court oversees a liquidation and gives, in most cases, a discharge of most debts allowing a debtor a "fresh start."

A Chapter 13 bankruptcy is a personal financial reorganization with the court overseeing that overall "Plan" for as long as three to five years. Commonly referred to as a "Wage Earner Plan," it anticipates to a great degree repayment of some or all of the debts over time.

3906 South 74<sup>th</sup> Street, Tacoma, WA 98409

Telephone 253-284-3838

Toll Free 1-800-236-4948

[www.mbs-law.com](http://www.mbs-law.com)

[www.mbs-shortsales.com](http://www.mbs-shortsales.com)

[www.mbs-loanmods.com](http://www.mbs-loanmods.com)



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Most debtors presently in financial distress find that a Chapter 7 bankruptcy is most advantageous to them in our current recessionary marketplace.

#### NO ACTION FOR SHORT SALES WHILE BANKRUPTCY IS IN EFFECT

It is unlawful for any lender to do anything to foreclose or collect on a debt due them while you are under the Bankruptcy Court's protection. In fact, in most cases, your lender administers the case in a special "bankruptcy administration department" with their organizations.

No lender can legally negotiate a short sale during a bankruptcy without court approval. Most courts don't even entertain such proposals. Most lenders wait for the Bankruptcy Court to terminate or complete a bankruptcy before starting on resuming short sale negotiations or foreclosure for that matter.

#### WHEN TO DO A SHORT SALE?

If you are planning on bankruptcy, please consult a qualified bankruptcy attorney before you list or enter into a sale of your property. Planning is an important aspect of your decision making process as regards bankruptcy.

Your decision to do a short sale should be designed to complement the activities of your real estate professional and, if not done properly, can result in a lot of wasted effort of many real estate professionals involved.

#### LISTING YOUR PROPERTY BEFORE BANKRUPTCY

In our practice, we encounter on a continuing basis severe hardships, frustrations and loss of energy in transactions wherein a seller is either seeking to sell their property and then files for bankruptcy or is already in bankruptcy when they enter into a listing agreement to sell or an actual purchase and sale agreement.

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#### TIPS FOR BANKRUPTCY MATTERS

- Seek competent bankruptcy attorney help. You can meet with one of our attorneys or we are happy to recommend local competent bankruptcy attorneys who can assist you in your decision.
- If you are in bankruptcy, please advise your agent and our office immediately as special actions need to be taken as regards a short sale.
- Don't assume that bankruptcy is your only solution. Because Washington has many rules assisting borrowers in foreclosure, a successful short sale may be an alternative.
- Even though you may be discharged in bankruptcy, it can take as long as a month before such actions will "register" within the department that handles such matters at your loan servicing company. This can lengthen the time of negotiating your short sale.
- If in doubt, always call our office as we are happy to answer the questions you may have on bankruptcy matters and other matters regarding short sales.

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