

Can I Stop Foreclosures & Garnishments ?:

You can stop a foreclosure or garnishment with the filing for Bankruptcy Protection. Once the bankruptcy is filed an Automatic Stay goes into place. This is a Court Ordered Automatic Stay. If the creditor continues to contact you or attempts to proceed with a foreclosure or garnishment of your wages; they would be in “contempt” of the Court Ordered Automatic Stay. This would result in sanctions (money damages) being levied against the creditor. Once your bankruptcy is filed the creditor cannot contact you by phone, mail or any other means. He/she would be required to speak only to our office.

The filing of the bankruptcy precludes the creditors from taking any affirmative action against you. However, if the creditor has already commenced a non-judicial foreclosure (filed a Notice of Default with the County Recorder’s office) then the time period (the running of the 90 day period of redemption) would continue to run. At the end of the period of redemption the creditor would not be able to record a Notice of Sale or continue with the foreclosure, but the period of redemption would expire. As a practical matter this means, simply, that if you believe the bank is contemplating the commencement of a Foreclosure of your home, you should then seek legal advice from our firm and file your bankruptcy petition before the foreclosure is commenced.

If after, a Notice of Default is recorded you should immediately seek legal counsel and be prepared to file your petition for Bankruptcy before the end of the Notice of Default period. This will provide you the most time to remain in your home and may allow you to continue to negotiate with the Lender.

Never allow the property to be sold at “auction” or a foreclosure sale. Once this happens, a filing of bankruptcy protection will provide you with little help. It may delay your eviction but it will not reverse the foreclosure sale.

Be aware of the “modification” and foreclosure Trap: Many have experienced a situation where the lender places you into a modification program and simultaneously files a Notice of Default against you. When the client contacts the lender they tell them “not to worry, we will not complete the foreclosure if you qualify for the modification”. You believe that you have nothing to worry about and that the foreclosure has been stayed. This is not true. The foreclosure continues. After 90 days the borrower has not been approved for a modification and the bank files a Notice of Sale. When the borrower contacts the bank they are told that they do not qualify for the modification and that their home will be sold in 20 days. If you are doing a modification and the lender simultaneously commences a Foreclosure; contact our office or other bankruptcy counsel. **DO NOT** rely upon the verbal promises of the Bank. You want to be prepared to file for bankruptcy if the lender proceeds with the Notice of Sale. If you do nothing, the home will be lost in foreclosure.

I want the calls to stop:

When you come into our office you can pay a portion of our retainer (minimum is \$300.00) You are given a “bankruptcy package” and have signed a written retainer agreement. When your creditors call you simply advise them that you have been forced to file for bankruptcy protection and you provide them with my name and phone number. Once the creditor confirms that you have contacted **and** retained legal counsel for Bankruptcy; the creditor normally stops all contact. The reason for this is simple: they know that the debt will be eliminated in the bankruptcy and that their claim will disappear. Instead of wasting time calling and harassing you they simply move on to the next individual on their list. They will continue to

call our office until you file and we provide them with a bankruptcy filing number. If you do not follow through with the filing of a bankruptcy, the collector will eventually get tired of waiting and will file litigation to collect their debt. Normally, depending upon the amount of the debt owed, this will take six months or longer. The calls will stop.

Can I discharge IRS Taxes in a Bankruptcy?:

The simple answer is: yes. But the discharge of IRS Taxes in a Chapter 7 bankruptcy is based upon several factors. The critical component is the timing of the filing of the bankruptcy. The basic rule is that the taxes must be at least three years old. The bankruptcy must be filed three years after the return was due to be filed *and* two years after the return was actually filed. You must add an additional 240 days if you have been subject to a tax audit. If you owe taxes from an IRS audit then you must file the bankruptcy more than 240 days after the audit is final on the IRS books.

We have tax specialists who will review your tax situation and obtain your official IRS Transcript. From this information they will be able to determine whether or not your taxes will be eliminated with the filing of the bankruptcy or that you should wait before filing. Sometimes the difference of a few days or weeks will determine if the IRS claim will be discharged or not in the bankruptcy. If you file too soon; the lien and IRS claim will not be discharged. You would then have to wait an additional 8 years to refile.

Free Initial Consultation:

If you have questions concerning whether or not you need to file for Bankruptcy Protection please call our office and schedule an appointment. The initial Consultation for a potential bankruptcy is free. Bring in your most recently filed tax return and a list of your current debt. I will review your situation and we can determine if bankruptcy is a rational solution for you. Call my Palm Desert office at 760 320-8345 or 760 776-1150 and speak with Cheryl.