

IT MAY BE POSSIBLE TO STRIP A JUNIOR MORTGAGE IN CHAPTER 13

You may have heard that Bankruptcy may make it possible to keep your home (or rental property) and get rid of any 2nd Mortgages or Junior Mortgages. A Junior Mortgage is any mortgage that secures your residence (homestead) that came after the initial or 1st Mortgage.

While this may be possible in some cases, there are a number of important limitations:

1. **CHAPTER 13 ONLY!** A junior mortgage can only be removed (strip) in a Chapter 13 case where you continue to pay in full the 1st Mortgage. You CANNOT strip a junior mortgage in a Chapter 7 case.
2. The junior mortgage can **ONLY** be removed (stripped) **IF** your home is worth less than the amount that remains owed on your 1st Mortgage. In other words, if the first mortgage foreclosed on the home and sold the home and paid themselves off, there would not be any remaining money from the sale to be paid to the junior mortgage. The junior mortgage would get nothing.

EXAMPLE 1: If your home is worth \$90,000 and you owe \$100,000 on your 1st Mortgage, there is no left over equity that could be used to pay the junior mortgage and that junior mortgage could be removed.

EXAMPLE 2: If your home is worth \$90,000 and you owe \$89,999 on your 1st Mortgage, there would be \$1 in equity that could be used to pay the junior mortgage. In this case, the junior mortgage CANNOT be removed (any of it).

3. A separate motion has to be filed with the Court (normally entitled a Motion to Determine Secured Status Pursuant to §11 U.S.C. §506) and the junior mortgage has the right to contest the motion by showing that there really is some equity in the home. Therefore, it is important to obtain a qualified and professional Comparative Market Analysis (CMA) done on the property and later (if an objection is filed) a professional Appraisal to show the true value of the property. See our Residence Valuation Worksheet for information on getting a CMA completed.
4. The Order that declares that the junior mortgage is removed (stripped) is contingent upon **COMPLETING IN FULL** your Chapter 13 Payment Plan. The mortgage is not officially removed until you receive your Discharge at the end after making **ALL** Chapter 13 payments. Until you have completed the plan, the junior mortgage is still there and the house cannot be sold or refinanced without paying that junior mortgage in full until the mortgage is officially removed.
5. If you fail to complete your Chapter 13 Plan payments, the junior mortgage will still remain and the Motion will have done no good. However, typically if you fail to complete your plan it is often because of financial hardship and often the house will need to be surrendered (or may have already been foreclosed due to failure to also make the regular payments to the 1st Mortgage). In these case, you really won't care if there is still a junior mortgage on the property or not!