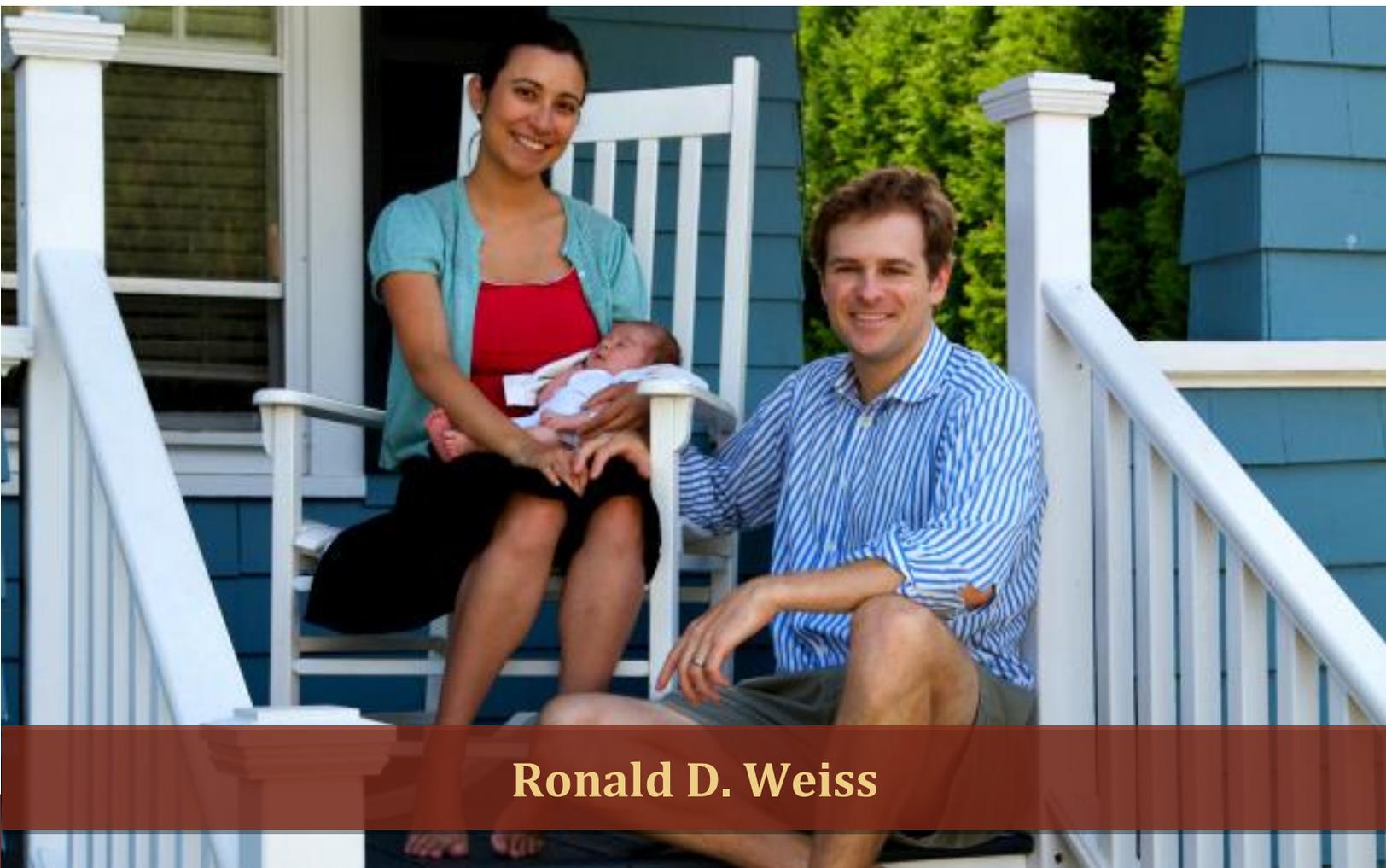


ELIMINATE YOUR SECOND MORTGAGE WITH CHAPTER 13

Despite A Bankruptcy Filing, a Debtor Could Lose His Home to Foreclosure; However, There Certain Circumstances Wherein It Is Possible for a Debtor to Eliminate His or Her Second Mortgage through a Chapter 13



Ronald D. Weiss

Mortgage debt is secured, with the home acting as collateral on the loan. This is true both of primary mortgages and second or subsequent mortgages. When a home has multiple loans that use the house as collateral, the first mortgage holder has the primary claim to funds generated if the home is sold in foreclosure. Any subsequent lenders have secondary claims.



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Because mortgage debts are guaranteed by the home, a bankruptcy is not generally going to be able to absolve a debtor of his obligation to repay the mortgage loan. A debtor who files for bankruptcy typically must reaffirm his mortgage loan under chapter 7 and/or must include full repayment of mortgage debts in his chapter 13-repayment plan. The debtor must also become current on outstanding balances of home loans. A debtor who fails to reaffirm the loan, catch up on

back payments and continue to pay as promised could lose the home to foreclosure despite a bankruptcy filing.

There are, however, certain circumstances wherein it is possible for a debtor to eliminate his or her second mortgage through a Chapter 13 bankruptcy filing. The ability to get rid of mortgage debt by filing bankruptcy is restricted to a limited number of individuals whose mortgages meet specific criteria. An

experienced bankruptcy attorney should be consulted by individuals considering bankruptcy who are experiencing problems with their mortgage debts because an attorney can explain whether it will be possible to eliminate your second mortgage during a Chapter 13.

When mortgage elimination is possible, you will need to take additional steps beyond simply filing your petition for Chapter 13 bankruptcy. Your attorney will guide you through the process to ensure that you have the best chance of being able to keep your home while being relieved of the burden to pay the full balance due on your second mortgage.

Eliminating Second Mortgage Debt with a Chapter 13 Filing



The process of eliminating second mortgage debt as part of a Chapter 13 bankruptcy is referred to as lien stripping. The name comes from the fact that the second mortgage holder has a lien or claim on the home.

If you do not pay your second mortgage, the terms of your mortgage loan will allow your second mortgage lender to foreclose on the home. As part of the foreclosure process, the bank will seize and sell the home and the balance

collected from the proceeds will be used to repay outstanding mortgage debt as well as costs and fees.

Unfortunately, in many cases, individuals are underwater on their homes and the proceeds from a sale are not going to be sufficient to cover the mortgages in full. If this is the case, the primary mortgage lender will have the first claim on the proceeds generated from the sale of the home and the second mortgage lender will receive the balance collected after the first mortgage is paid in full.

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If there is no balance available when the first mortgage is paid off, the second mortgage holder will receive nothing. For example, if a home was worth \$100,000 and the first mortgage was for \$110,000, the entire \$100,000 profit from the sale of the home would need to be paid to the first mortgage holder. The second mortgage holder would receive no money from the sale of the home even if the lender forced the home to be foreclosed on.

When there are insufficient funds to pay off the first mortgage and have money left over to cover any portion of the second mortgage, the loan is not really a secured loan no matter what the loan documents say. There is no real collateral; there is only collateral on paper.

It is under these circumstances that lien stripping is possible. When the value of the home is equal to or less than the cost of repaying the first mortgage, the second mortgage debt can be reclassified as the unsecured debt that it actually is. The result of this is that the second mortgage may be included as unsecured debt in a chapter 13 repayment plan.



Debtors who file for Chapter 13 bankruptcy will enter into a three-to-five year repayment plan in which a portion of the outstanding debts are paid. The monthly payments that the debtor makes to service all of the debt included in the payment plan are based on the income that is available to the debtor. At the end of the term of repayment, any outstanding or remaining balances on the loan(s) included in the payment plan are forgiven.

Since the second mortgage is included in the repayment plan when it is reclassified as unsecured debt, it is possible to pay less than the total balance due. The mortgage holder will not be able to take action to collect, or to foreclose on the home, once the mortgage debt has been reclassified and then discharged in a bankruptcy proceeding.

The second mortgage debt is, therefore, eliminated through the Chapter 13 process while the debtor remains in the home.

These types of cases have become more common as more homeowners are underwater, but they remain among the more complex bankruptcy cases. Individuals seeking to eliminate a second mortgage as part of a Chapter 13 bankruptcy filing should ensure they are represented by an experienced legal professional with extensive familiarity with the lien stripping process.

About the Author

Ronald D. Weiss, Esq.



Ronald D. Weiss, Esq., is an attorney who since 1987 has specialized in bankruptcy solutions, foreclosure solutions, and modification and negotiation solutions for individuals and businesses in the greater Long Island and New York areas undergoing financial hardship.

Mr. Weiss is a member of the American Bankruptcy Institute, the National Association of Consumer Bankruptcy Attorneys, the Suffolk County Bar Association and the Nassau County Bar Association, and is admitted to practice in the State of New York, the State of Connecticut, and the federal courts for the Eastern and Southern Districts of New York. Mr. Weiss is a 1988 graduate of New York University School of Law where he was a recipient of the Galgay Fellowship in Bankruptcy and Reorganization Law and has published several law journal articles. Mr. Weiss' past experience includes having been a law clerk to the Honorable Prudence B. Abram, a United States Bankruptcy Judge in the Southern District of New York, and having practiced corporate bankruptcy law at several large Manhattan law firms, including Moses & Singer, LLP, and Walter, Conston, Alexander & Green, P.C. Mr. Weiss later worked for Fischhoff, Gelberg & Director in Garden City, NY where he had practiced consumer and business bankruptcy before starting the Law Office of Ronald D. Weiss, P.C.

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Please call us at (631) 479-2455, or e-mail us at weiss@ny-bankruptcy.com for a free consultation to discuss your legal options in greater detail.

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