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# ***Foreclosure on property after bankruptcy?***

By [Justin Harelik](#) • Bankrate.com



Dear Bankruptcy Adviser,

I filed Chapter 7 bankruptcy, and all debts listed were discharged in 2008. The bank has just notified me of plans to foreclose on a home that was discharged. They plan to put it up for auction in September. Can they do that?

Can they sell the house when they haven't officially taken it over? And will that show as a new public record on my credit report versus the 2008 discharge date? Also, I applied for a mortgage -- but because this house is still in my name, I was told after the bank foreclosed I would have to wait up to three years before I can get a mortgage. So I'll have to wait seven years total because the bank waited four years to foreclose.

-- Jeff

Dear Jeff,

This is a reasonable question, but my answer will just provide more bad news. Most people don't understand the foreclosure process and what the bank must do in order to take back ownership of the property. The bank can take back your property in two ways.

**Deed in lieu of foreclosure:** You sign over all interest in the property to the lender. This avoids the foreclosure process and is slightly better for your credit than a foreclosure.

**Foreclosure:** There are two common types of foreclosure in the United States -- judicial and nonjudicial. Judicial foreclosure, as the word implies, requires the lender to go through the court system to take back ownership of the property. Nonjudicial foreclosure allows the lender to sell the property at a foreclosure auction, without court approval, after following a state-specific foreclosure process.

The bankruptcy filing does not provide the lender a way to recover the property. It must still proceed with one of the two above methods. In some cases, the lender will wait until your bankruptcy case is closed to start or continue the foreclosure process. In other cases, the lender will not wait that long and will file the appropriate paperwork with the bankruptcy court to allow it to take the property out of bankruptcy protection and continue with the sale.

Either way, until the property is back in the possession of the bank, you are still the legal owner of the property.

As for the lender reporting the foreclosure, unfortunately, it will be on your credit report even though the balance was discharged in bankruptcy. And while I don't have personal experience working with people trying to buy a home after bankruptcy or foreclosure, I have been told by mortgage brokers that lending institutions will sometimes wait two to three years from the date of the bankruptcy discharge or foreclosure sale, whichever is later, before approving a home loan application.

To add that last grain of salt to your wound, you're accurate in the waiting time for you and many others. Banks can take many years to foreclose -- in many cases, up to four years and beyond. It is hoped you've been able to save some of the money you haven't been paying on the mortgage. With that money, you'll be better positioned to make the requisite down payment on your future home.

You will have to patiently wait for the process to conclude. At that point, you can start planning for your next home.