

INSIGHTS + NEWS

David Mawhinney Quoted in Massachusetts Lawyers Weekly's "Bankruptcy Court rejects Chapter 13 'sale' plans"

MAY 4, 2022

A U.S. Bankruptcy Court judge has rejected a pair of Chapter 13 "sale" plans proposing to satisfy secured creditors' claims by selling the respective debtors' principal residences at some point during their plan periods. The first debtor asked to make monthly mortgage payments while curing prepetition arrears by selling his home some time before the conclusion of his plan's 60-month term. The second debtor's plan offered monthly payments that were less than his current monthly mortgage payments and proposed curing prepetition arrears by selling his home at an unspecified time during his plan's 36-month term.

David Mawhinney spoke with *Massachusetts Lawyers Weekly* about the case, noting that in cases like this, the homeowner and his counsel are hoping underwriters at the bank will agree to a consensual modification of their loan:

"If I owe \$150,000 in back payments and I can't pay that in the next couple of years, I want the bank to capitalize that, put it on my principal balance, and I want a reasonable mortgage payment. That's really the solution a lot of homeowners are looking for," he said. "The problem is that a bankruptcy court can't order that, so you have lawyers coming up with creative ways to try and treat these problems."

According to the article, the decision suggests that a debtor's plan should include a specific timeframe for the sale of their home.

As David noted: "You're basically saying, 'Hey, I'm going to continue to live in this house for the duration of my plan, which could be up to five years, and during that time I'll pay you "x" and you can't foreclose on me as long as I comply with the plan. And then I promise you before the five years is up, I'll sell this house for enough to pay you what you are owed.' Judge Panos said this isn't permissible because you're modifying their contractual rights. ... But I do read his opinion as leaving the door open to a plan with more concrete milestones."

Continue reading "[Bankruptcy Court rejects Chapter 13 'sale' plans](#)" on the *Massachusetts Lawyers Weekly* website (subscription required).