

## Buy a Beach House for Shelter

### When Going Bankrupt: Ann

#### Woolner

Commentary by Ann Woolner, Bloomberg

Oct. 17 (Bloomberg) -- Say an absentee landlord owns the house next to yours. Neither of you keep up your [mortgage](#) payments.

If you both declare bankruptcy, chances are better that he would keep his place than you yours. However beloved your home or settled your family is in the neighborhood, you can't force your mortgage holder to change its terms to escape foreclosure.

The landlord can.

Bankruptcy law favors the landlord over the homeowner when it comes to modifying mortgages. It's easier to hold onto a second home at the beach -- and a boat to go with it -- than your home sweet home.

Backward? Absolutely.

A speculator with slum properties all over the city, who owns a place in Manhattan and a house at the Hamptons, gets better treatment under bankruptcy law than a salaried worker's family with only one, modest bungalow.

``Current law permits modification of any type of debt in bankruptcy except for a single-family principal residence," says Adam Levitin, who teaches law at Georgetown University.

``You can modify credit-card debt. You can modify student loans. You can modify debt on a yacht," points out Levitin.

The one item that bankruptcy can't force a creditor to alter is the loan on the roof over your head. And yet, that's the debt most deserving of modification to help the economy recover and to offer some sense of stability to the debtor.

Vacant Houses

As [vacant houses](#) scar neighborhoods and each day brings 10,000 new foreclosure filings, the surplus of empty abodes drags down an economy made sick by reckless lending.

The housing bubble's burst deflated home values below what some folks owe on them. But they still owe it, unless the lender agrees to alter the mortgage.

Otherwise, even in bankruptcy, homeowners still must meet those monthly payments

toward the full principal and interest or find themselves out of their home and into somebody else's rental property, if they can afford the rent.

As foreclosures [soar](#), so do bankruptcy filings -- almost 29 percent more in September than the year before, according to the [American Bankruptcy Institute](#).

``We expect 1.1 million new cases by year end," the institute's executive director, [Samuel Gerdano](#), said in a statement earlier this month.

Same Treatment

Why not give the primary home mortgage the same treatment in bankruptcy that goes to the second home and to every other debt obligation?

Presented with the chance to do that in April, the U.S. Senate [rejected](#) it 58-26, refusing to make it part of the housing bill. The yeas were all cast by Democrats; most of the nays came from Republicans. (Neither of the senators running for president cast votes, although [Barack Obama](#) co-sponsored it and has a similar proposal as part of his economic revival plan.)

``If the federal government is going to ride to the rescue of investment banks on Wall Street, it should also provide some relief to those who are about to lose their homes on Main Street," said the bill's sponsor, Democrat [Richard Durbin](#), Illinois's other senator.

Way back then, the only rescue the government rode in for was that of Bear Stearns Cos., which was sold in March to JPMorgan Chase & Co. with help from the Federal Reserve.

Unimaginable in April were all the subsequent bailouts. But bankrupt homeowners are still waiting for help.

When Congress was voting on the super-duper, \$700 billion bailout plan early this month, Democrats tacked the Durbin amendment onto it, where it stayed for days until it finally was sacrificed to woo Republican votes in the House.

Industry Opposition

The opposition stems from the mortgage industry, which says if lenders never know whether the original terms of the loan could be changed by a bankruptcy judge, interest rates on primary homes would soar by 1.5 percentage points.

``That's just laughable on its face," Levitin says. He says interest rates on loans for

investment property tend to be only 0.38 percentage points higher than for primary homes mainly because of the extra risk that the borrower won't repay.

It will take a law to undo the restrictions imposed on home mortgages by the 1978 bankruptcy code.

``The sad thing is we've been pushing for this for about a year and a half, two years," says [Henry Sommer](#), president of the National Association of Consumer Bankruptcy Attorneys.

``It probably could have somewhat ameliorated the crisis we are facing now," says Sommer, who practices in Philadelphia.

Maybe next year.

In the meantime, if you find yourself in bankruptcy and have two homes, don't expect your lender to cut you a deal on the one where you live.

But you just might be able to get a break on the beach house. And wouldn't that be more pleasant than that rental property next door?

([Ann Woolner](#) is a Bloomberg news columnist. The opinions expressed are her own.)

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