

## **Bankruptcy is Good (If You Can Afford It)**

**By Reuben Seguritan**

These days, it seems like more people are filing for bankruptcy. Except that some of them usually declare bankruptcy for reasons other than those any average income earner may have. And because of antiquated state laws, some get to keep more than they actually owe.

Take the case of a physician who filed for bankruptcy in order to escape from malpractice suits (including one filed by a patient who lost a leg) and managed to walk away with his \$500,000 home. Or the case of a bank executive who got to keep his mansion and the 30 acres on which it stood. Or the developer who owed \$60 million in debt and actually ended up paying only \$2 million. These were individuals who obviously could stand to sacrifice the assets that they lost in the process of filing for bankruptcy, and although it appears that they were able to wriggle out of financial obligations, the fact remains that they did not do anything illegal. But what about those who earn a modest income and have just enough to cover necessary expenses? What recourse do these people have? Although the bankruptcy law was written to give debtors a chance to redeem themselves and start afresh, it benefits mostly wealthy individuals who are able to keep luxury homes.

Filing for bankruptcy, under any chapter of the bankruptcy code immediately ceases ALL actions. Creditors are prohibited from obtaining court judgments, and even those obtained prior to filing are unenforceable. They are not allowed to garnish debtors' salaries, repossess their cars or foreclose on their real property. In certain cases, where creditors are represented by an attorney, they are not even allowed to contact debtors directly.

Generally, most debtors file for Chapter 13 bankruptcy relief to protect their homes or real property from foreclosure. This requires the debtor to resume regular mortgage payments within a three to five year period. After the five year period, a discharge may be obtained. If the debtor is unable to resume payments, the case may either be dismissed or converted to a Chapter 7. Dismissal of a Chapter 13 case does not bar the debtor from filing bankruptcy under another chapter of the code. Conversion to a Chapter 7 would allow debtors to discharge their debts and keep their exempt personal and real properties and start over, as it were.

Chapter 7 allows debtors to exempt their homes and some personal property, usually between \$2,000 and \$4,000 worth. Federal law provides for exemptions of \$15,000 in home equity. There are, however, 18 states that allow debtors a choice between Federal and state options, which is as high as \$200,000 in Minnesota and unlimited in Texas. This is the reason certain people are able to keep luxury homes in spite of the large amounts that they originally owed.