

# Bankruptcy's Impact on Loss Mitigation Applications

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**BARBARUOLO LAW FIRM, P.C.**  
**ATTORNEYS AT LAW**

# Introduction to Consumer Bankruptcies

## Chapter 7

- Liquidation (3-4 months)
- Debtor does not pay creditors
- Secured debts should be current or “surrendered.”
- Must financially qualify via “Means Test”

## Chapter 13 (Reorganization)

- Reorganization (3-5 years)
- Creditors paid in order of priority
- Allows opportunity to cure default on secured debts.
- Generally, if you can afford it, you can keep it.

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# Introduction to Consumer Bankruptcies

## 11 U.S.C. § 362 – the “Automatic Stay”

- Protects against commencement, continuation, enforcement, creation, perfection, and any act against property of the estate by creditors.
- Foreclosures, repossessions, garnishments, and sales must all cease upon filing of a petition.
- Stay is in place until end of case or until creditor receives Order for Relief from Stay.
- Subject to many exceptions (evictions, DV, child support issues, etc.)
- No Stay - “commencement” of a foreclosure by HUD 11 U.S.C. 362(b)(8)

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# When your client has previously filed a bankruptcy...

- What Chapter did he or she file?
- What debt still exists?
- Disposition of case?
- Are borrowers eligible for bankruptcy again?
- Chapter 7 – Reaffirmation Agreement(s)
- Chapter 13 - Plan of Reorganization / Orders modifying Plan

Pacer website: <https://ecf.nynb.uscourts.gov/>

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# PACER - Chapter 7

A typical PACER Chapter 7 case heading.

**U.S. Bankruptcy Court  
Northern District of New York (Albany)  
Bankruptcy Petition #: 15-11251-1-rel**

*Assigned to:* Robert E. Littlefield Jr.  
Chapter 7  
Voluntary  
No asset

*Date filed:* 06/12/2015  
*Date terminated:* 10/08/2015  
*Debtor discharged:* 09/22/2015  
*341 meeting:* 07/21/2015  
*Deadline for objecting to discharge:* 09/21/2015  
*Deadline for financial mgmt. course:* 09/21/2015

*Debtor disposition:* Standard Discharge

**Debtor**  
[REDACTED]  
Schenectady, NY 12306  
SCHENECTADY-NY  
SSN / ITIN: xxx-xx-2055

represented by **Justin D Myers**  
Barbaruolo Law Firm, PC  
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**Trustee**  
**Gregory G. Harris-Trustee**  
Harris, Conway & Donovan PLLC  
The Patroon Building  
5 Clinton Square  
Albany, NY 12207  
(518)436-1661

**U.S. Trustee**  
**U.S. Trustee**  
Office of the U.S. Trustee  
74 Chapel Street, Suite 200  
Albany, NY 12207

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# PACER - Chapter 7

A typical entries for “No Asset Report”, Reaffirmation Agreement, Motion for Relief from Stay, and Order of Discharge.

Chapter 7 Trustee's Report of No Distribution: I, Gregory G. Harris-Trustee, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. 341(a) Meeting of Creditors Closed. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 1 months. Assets Abandoned(without deducting any secured claims): \$ 238475.00, Assets Exempt: \$ 110369.00, Claims Scheduled: \$ 278582.00, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment(without deducting the value of collateral or debts excepted from discharge): \$ 278582.00. Filed by Gregory G. Harris-Trustee. (Harris-Trustee, Gregory) (Entered: 07/21/2015)

Reaffirmation Agreement Between Debtor and Cap Com FCU With Attorney Approval Filed by Cap Com FCU. (Rosenberg, Dana) (Entered: 07/27/2015)

Default Motion for Relief from Stay *regarding 604 Bluebird Lane, Schenectady*. Fee Amount \$176 Filed by Trustco Realty Corporation. (Attachments: # [1](#) Exhibit Mortgages and Assignment # [2](#) Exhibit Bond # [3](#) Exhibit Certification of Payment History) (Tobrocke, Melissa) (Entered: 07/30/2015)

Receipt of Motion for Relief From Stay(15-11251-1-rel) [motion,mrlfsty] ( 176.00) filing fee. Receipt number 8432524, amount \$ 176.00. (Re:Doc# [10](#)) (U.S. Treasury) (Entered: 07/30/2015)

Notice of Hearing on Default Motion. Hearing Scheduled for 8/26/2015 at 9:15 A.M. in Albany Filed by Trustco Realty Corporation (related document(s)[10](#)). (Attachments: # [1](#) Affidavit of Service) (Tobrocke, Melissa) (Entered: 07/30/2015)

Order Granting Motion For Relief From Stay RE: 604 Bluebird Lane, Schenectady, NY (Related Doc # [10](#)) (McDonald, Dina) (Entered: 09/02/2015)

Order Discharging Debtor (Admin.) (Entered: 09/22/2015)

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# When your client has filed bankruptcy (and didn't tell you)...

- Chapter 7 – are they “surrendering” the home, or other property?
- Chapter 13 – how does the Plan propose to pay the mortgage?
- Automatic Stay should not affect pending Loss Mitigation review.

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# PACER – Chapter 13

The Petition and the Plan.

ECF				
Query		Reports	Utilities	Logout
Filing Date	#	Docket Text		
04/26/2013	<a href="#">1</a> (58 pgs)	Chapter 13 Voluntary Petition, Schedule A-J & Statement of Financial Affairs. Fee Due \$281 Filed by Paula M. Barbaruolo of Barbaruolo Law Firm, PC on behalf of [REDACTED] Government Proof of Claim due by 10/23/2013. Chapter 13 Plan due by 5/10/2013. Automatic Dismissal Deadline per RA 316 due 06/10/2013. (Barbaruolo, Paula) (Entered: 04/26/2013)		
04/26/2013		Receipt of Voluntary Petition (Chapter 13) Case Upload(13-11081-1) [caseupld,1305u] ( 281.00) filing fee. Receipt number 7169371, amount \$ 281.00. (Re:Doc# <a href="#">1</a> ) (U.S. Treasury) (Entered: 04/26/2013)		
04/26/2013	<a href="#">2</a> (8 pgs)	Chapter 13 Plan Filed by [REDACTED] (Barbaruolo, Paula) (Entered: 04/26/2013)		

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# Signs your client should consult a bankruptcy attorney...

- Settlement Conference closed /Foreclosure sale imminent
- Multiple mortgages, without equity
- Wage garnishments
- Judgment liens / Consumer credit lawsuits pending
- Unsecured debt greater than \$10,000
- Credit card payments is being prioritized over housing costs

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# Bankruptcy Loss Mitigation Programs

## Northern District of New York

- Designed to be a 90-day process
- Available in Chapter 7 or Chapter 13
- Strict scheduling Order and continuous judicial supervision
- Frequent status hearings for application updates

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# Bankruptcy Loss Mitigation Programs

Eastern & Southern Districts of New York

- Stays of MFR during pendency of process
- Confirmation is adjourned until Loss Mit concluded
- Less frequent calendar calls
- Creditors file status reports

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# How can Housing Counselors be involved in BK Loss Mit?

A time for discussion and brainstorming.

Northern District Bankruptcy calendar:

<http://www.nynb.uscourts.gov/?q=calendar>

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