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Editorial

## No Protection for Homeowners

Rising mortgage delinquencies are likely to be followed by rising consumer bankruptcies and, with them, the first big test of the federal bankruptcy reform law of 2005. Early indications are that low- to middle-income borrowers will be unduly punished.

The new law's expensive and cumbersome requirements have already discouraged some hard-pressed homeowners from seeking bankruptcy-court protection, even in the face of dire circumstances such as spiking monthly payments coupled with job loss or medical expenses. Of the debtors who do enter bankruptcy proceedings, many are required to restructure their debts — negotiating with lenders to lower loan balances and stretch out repayments — rather than being allowed to liquidate them.

But here's the trap: The restructuring process, known as Chapter 13, prohibits the bankruptcy court from modifying the repayment terms of most mortgages on a primary home. So even under a restructuring plan, bankrupt homeowners must still repay their mortgages in full or lose their homes.

That lender protection is a holdover from 30 years ago, when mortgage bankers required ample downpayments and most home loans had fixed interest rates. Because lenders were conservative and stuck to uncomplicated loans, they were shielded from having to take a hit when homeowners filed for bankruptcy.

But the modern-day mortgage market is neither conservative nor uncomplicated. Many of the mortgages issued during the housing boom required little or no downpayment. They also have adjustable rates primed to go up sharply and rely for their repayment on continued hefty increases in housing prices — which have not materialized — rather than on the borrowers' income.

The 2005 bankruptcy reform should have recognized the riskiness of today's mortgages by eliminating the outdated lender protection. But during the reform effort, fairness took a back seat to a baser aim — simply, to make it more difficult for consumers to gain a fresh start through bankruptcy. The result is that lenders who abandoned caution during the housing boom are protected while the law gives no aid to borrowers who were enticed, and at times deceived, into risky mortgages.

The law's perverse nature is even more evident if you read the fine print: The prohibition on modifying mortgage debt applies only to primary homes. Borrowers wealthy enough to own more than one home can restructure the debt on second or even third homes.

Before foreclosures climb any higher, Congress must reform the bankruptcy law. Legislators should reject the special protection for mortgage lenders by putting mortgages on the same footing as other secured debt. Doing so would help restore consumer bankruptcy to its purpose — to provide a safety net for borrowers who can't repay their debts for reasons beyond their control.