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Klein

The Problem: My son and daughter-in-law want to obtain a second mortgage to pay accumulated bills. I'd like to assist them with the loan, but fear I might lose out if they ever declare bankruptcy. Is there a way to protect my "investment" in their future?

The Expert: Robert L. Pryor, bankruptcy attorney, Pryor & Mandelup, L.L.P., Westbury.

The Strategy: The simplest way to accomplish your objective would be to grant a mortgage to your son and daughter-in-law.

The Rules: A mortgage is a security interest against real property. It serves as collateral security for an underlying loan. If the borrower defaults on the loan, the mortgage holder may foreclose against the mortgage and force the sale of the real property to satisfy its obligation. As a second mortgage holder, your rights would be subject to, and inferior to, the rights of the first mortgage holder.

How It Works: If you decide to grant this mortgage to your children, it will be critical that you observe all necessary legal formalities. That way, if your son and daughter-in-law are ever forced into bankruptcy, the mortgage would be protected from attack by creditors or by a trustee in bankruptcy.

To protect your rights, the mortgage should be recorded in a timely fashion in the real property records for the county in which the real property is located. Additionally, the terms of the mortgage and loan documentation should accurately reflect the transaction. The mortgage terms should be fashioned so that your son and daughter-in-law are able to stay current in making payments on the obligation. Mortgage obligations can be repaid on a monthly, quarterly or annual basis, or even through a balloon payment where the entire principal and interest becomes due after a certain term.

The Results: You can help out your family members without putting your own financial status at risk if both sides in the transaction follow the agreed-upon terms. Treating the mortgage as if it were an agreement between strangers is your best safeguard, particularly since creditors and/or bankruptcy trustees sometimes scrutinize transactions between family members if a bankruptcy occurs.

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The Problem: My son and daughter-in-law want to obtain a second mortgage to pay accumulated bills. I want to assist with the loan, but fear I might lose out if they need to declare bankruptcy. Is there a way to protect my "investment" in their future?

The Expert: Robert L. Pryor, bankruptcy attorney, Pryor & Mandelup, L.L.P. of Westbury and a member of the panel of Trustees for the United States Bankruptcy Court for the Eastern District of New York.

Short Answer: The simplest way to accomplish your objective would be to grant a mortgage to your son and daughter-in-law. It is critical to observe all of the legal formalities in creating this mortgage obligation so that if they were forced into a bankruptcy at some later date, the mortgage would be protected from attack by creditors or by a trustee in bankruptcy.

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The Result: Both sides must follow the agreed upon terms. Because creditors and/or trustees sometimes scrutinize transactions between family members in bankruptcy, to protect your investment it is important to treat the mortgage as if it were an agreement between strangers.