MORTGAGE CORNER

Retiree may not qualify for lower interest rate on primary loan

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Q: I went through a divorce and then bankruptcy after things were settled. Every debt was included in the bankruptcy and no creditor contested or showed up at court. My bankruptcy was discharged in 2004. At the time of the bankruptcy, I had a second mortgage, and this second mortgage was included in the bankruptcy filing. However, shortly after my bankruptcy, the lender went out of business. Since then, I have tried to refinance my home due to the lower interest rates but I can't even get a lower interest rate with my first mortgage company because this second mortgage no longer exists. I have had no contact with anyone and I don't want to continue to have this problem. I have since retired and I am a senior who does not make the income I once made when I was employed. I have established a very good credit rating and want to see what I can do regarding this matter. This has been very upsetting to me. What can I do?

A: The first thing you should know is that loans don't usually die when lenders go out of business. When you say that the bank that had your second mortgage went out of business, the assets of that bank were most likely purchased by another bank. The second issue you need to know is that the discharge of a debt in bankruptcy does not terminate the lien the lender has on a piece of property. The bankruptcy court discharge is against you personally but usually doesn't affect the lien on your home. For example, if you have a first mortgage of $100,000 on your home and a $20,000 second mortgage, when you get those loans discharged in bankruptcy, those lenders can't come after you for payment on the loans. But the lenders can foreclose on the home, force the sale of the home and use the proceeds from the sale to satisfy whatever amount of the debts that can be paid off through that sale. If you went through bankruptcy, the only way the lien on the home could have been released would have been if the bankruptcy court had voided the lien on the home as well. But bankruptcy courts don't usually do that. Now, getting back to your situation, you need to be aware that you may not be able to refinance easily or even sell the home without dealing with the second lender. If you now have funds to pay off the second lender, you might be able to do that. You can do a little research on the Internet to find out what happened to that bank and who the successor bank might be. If you go to the FDIC website, you can search existing banks and also find banks that are no longer in business. (You can get to the search page faster by searching the term "FDIC BankFind.") You can type in the name of the institution and will see when the institution went out of business and the name of the institution that took them over. Once you have the new name of the new bank, you can call them up and get information on the loan and your property. Again, keep in mind that the loan still exists; it just can't be enforced against you personally. So depending on where things stand with you, you might still be unable to refinance if you don't have money to pay off the second lender. If the lender is willing to cut a deal with you to release the lien, you can try that. Once the lien of the second lender is released, you'll be free to refinance the loan, take out new loans and even sell the home without having to deal with the second lender. One cautionary note for you: If you contact the second lender, your obligation was discharged by the bankruptcy court and you are under no legal obligation to reinstate that loan obligation. Your new lender may offer to negotiate with you a settlement or work something out, but you need to make sure you read the documents carefully. If you don't want to reinstate the loan obligation, you don't have to and the lender shouldn't force you to either. Finally, even if it all works out the way you want it with the second lender -- or the new second lender -- now that you're retired, you may not qualify to lower the interest rate on your primary loan. Lenders will evaluate your ability to repay. And if the only income you have is from Social Security, it may not be enough to qualify for a loan. Good luck.