



# Claims Corner

## A FRESH START ON SALES OUT OF BANKRUPTCY

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As bankruptcy filings increase from their pandemic lows, many debtors may find themselves with significant equity in their homes that makes selling a viable option. Real estate practitioners thus may begin to encounter more closings involving property subject to bankruptcy jurisdiction, which can entail unique considerations. As a former debtor's attorney, I offer a few tips for navigating sales out of bankruptcy.

### Confirm Authority to Sell

Debtors who remain in possession of their assets, such as in a Chapter 13 consumer repayment plan or Chapter 11 business restructuring, will need to obtain bankruptcy court approval prior to any sale of real property owned by the debtor. Such approval may come from a confirmed plan or a separate order. The seller's bankruptcy attorney may request copies of the sales contract and a settlement statement to allow the court and creditors to review the sales price and anticipated net proceeds. Once this information is available, the closing timeline may need to factor in a notice period of at least 21 days before an order is entered.

In a Chapter 7 liquidation, the court-appointed trustee assumes control of the debtor's assets, including the power to sell. The trustee must also provide notice to creditors prior to sale, though procedures and documentation of authority to sell may differ by district. The trustee should be a main point of contact and a signatory to the deed.

In either case, a title commitment will generally require receipt of an order authorizing the sale. Investors Title attorneys are always available to review any documentation that may be out of the ordinary.

### Confirm Liens Are Addressed

Note that while bankruptcy procedures endeavor to identify and give notice to all affected creditors, you should conduct an independent title search and verify that all outstanding liens are addressed as part of closing. Motions and orders from the bankruptcy court may provide for a sale free and clear of liens but are only effective to the extent that a creditor received proper notice. If your title search identifies a lien against the property that will not be paid directly out of closing, additional scrutiny to confirm the creditor received proper notice of the proposed



sale and the lien is addressed by any resulting order may be warranted.

### Pay Close Attention to Disbursement Instructions

Bankruptcy orders authorizing a sale of real property may contain specific instructions for disbursement of sales proceeds. In addition to disbursements to satisfy liens, these can include disbursements due to the seller to account for property exemptions and disbursements to a trustee for further distribution to unsecured creditors. The bankruptcy court may look to the settlement agent in the event that proceeds are not disbursed accordingly, so careful review and confirmation of compliance is wise.

Although bankruptcy can present a few traps for the unwary, the ultimate goal of a sale out of bankruptcy is to pass clear title to the buyer while confirming that any net proceeds are appropriately distributed among the debtor and unsecured creditors. Consultation with both the seller's bankruptcy professionals and Investors Title attorneys can ensure a successful transaction that meets everyone's goals.