

## **BANKRUPTCY PROPERTY – SELLER IN BANKRUPTCY**



**1. INSURING A SALE** of property where the seller has filed bankruptcy, requires one of the following:

- The bankruptcy case is closed, or
- The bankruptcy case is dismissed (that's "dismissed", not "discharged"), or
- The court file shows the property is exempt (residence only). BEWARE: In a Chapter 13 case, the residence is usually included in the debtor's "Plan", even if it is exempt.
- The property is abandoned by the court or the trustee, or
- A court order authorizes the sale, and the 14-day appeal period has expired. (In a Chapter 11, an Order Confirming the Plan will re-vest title in the debtor.)

### **A DISCHARGE OF DEBTOR DOES NOT RELEASE THE PROPERTY FROM THE BANKRUPTCY.**

**A MOTION FOR RELIEF FROM THE AUTOMATIC STAY** only allows the foreclosing lender to proceed with foreclosure. It does not allow the bankrupt borrower to move forward with a sale of the property.

#### ***Documents needed to analyze bankruptcy questions:***

- Bankruptcy petition
- Schedules (usually attached to the petition)
- Docket (i.e. a list of all documents filed in the bankruptcy case)
- Plan (Chapter 11 and 13)

**2. ELIMINATING A JUDGMENT LIEN** against the seller is an entirely separate matter.

To eliminate a judgment lien, we need to:

- Record a certified copy of a court order avoiding the lien (usually under Bankruptcy Code Section 541(f)).

**3. ELIMINATING FEDERAL AND STATE TAX LIENS** is next to impossible.

Also, do not rely on a bankruptcy order purporting to set aside property taxes.