

## Bankruptcy Outline

### **I. Bankruptcy Case Overview-See Attached Exhibit A**

- A. Petition filed and bankruptcy estate created
- B. Automatic Stay becomes effective
- C. Assets of Estate Collected and Distributed
  - 1. Abandonment
  - 2. Exemption
  - 3. Sale
  - 4. Confirmation of Plan (Chapter 11 or 13)
- D. Discharge
- E. Another way to look at bankruptcy

### **II. Property of the Estate Considerations -See Attached Exhibit B**

- A. Concept of estate property is very broad under 11 USC 541
- B. Estate property includes property at the time of filing and some after-acquired property under 11 USC 541(a)(5)
- C. Title Underwriting Implications of bankruptcy estate
  - 1. New Entity automatically created which is equivalent to an involuntary automatic transfer of property without the parties in interest necessarily having actual or constructive notice
  - 2. Real property records may not reveal the estate creation and the title transfer
  - 3. Trustee must execute deed until property reverts in debtor
- D. Additional matters of concern relating to underwriting bankruptcy estate issues
  - 1. Only estate property can be sold free and clear
  - 2. Unscheduled and unadministered property of the estate REMAINS property of the estate upon case closure
- E. Hypothetical

### **III. Abandonment-See Attached Exhibit C**

- A. Abandonment is one of the mechanisms through which property is removed from the estate, as part of the administration of the bankruptcy proceeding
- B. Abandonment occurs by either: 1) motion; or 2) operation of law

### **IV. Automatic Stay-See Attached Exhibit D**

- A. Broad effect of Automatic Stay
- B. Primary Impact of the Automatic Stay Upon Title Insurance Underwriting
  - 1. Actions Violating the Stay are Void
- C. Automatic Stay issues arise often in title insurance underwriting
- D. Duration of Stay
- E. Effect of Automatic Stay under 11 USC 362
  - 1. New rules for multiple filings: 11 USC 362(c)(3) and (c)(4) (beware if co-debtor)
- G. Underwriting Tips

## **V. Discharge, Lien Survival and 522(f) Lien Avoidance-See Attached Exhibit E**

- A. Discharge and Lien Survival
  - 1. In Personam liability discharged
  - 2. In Rem lien remains
- B. Liens ride through bankruptcy
- C. Lien avoidance under 11 USC 522(f)
  - 1. Lien must be judicial lien, Property must be subject to exemption claim, and lien must impair the exemption
    - i. In Alabama, only homestead real property may be exempted
    - ii. Exemption is \$5,000 per spouse
- D. Formula under 522(f): to what extent is the lien avoided?
  - 1. Lien is avoided to the extent it impairs an exemption
  - 2. Lien impairs an exemption to the extent the sum of the judgment lien at issue, plus other non-avoided liens, plus the debtor's exemption IS GREATER THAN the value of the debtor's interest in the property in the absence of any liens
  - 3. Example
  - 4. Underwriting Challenges to Judicial Lien Avoidance
    - 1. Underwriting No, No
    - 2. Example of Problematic Judicial Lien Avoidance Order

## **VI. Sales of Property of the Estate: Not in the ordinary course-See attached Exhibit F**

- A. Quick Refresher
- B. Concept of after notice and hearing
- C. Necessary to occur pre-confirmation
- D. Title procedures for sale other than in the ordinary course
  - 1. Review petition and schedules-make sure all creditors on commitment appear in schedules
  - 2. Review copy of motion to sell along with proof of service on all creditors
  - 3. Review final non-appealable order of sale
- E. Order authorizing sale is automatically stayed 14 days, unless the court orders otherwise
- F. Notice of sale must be given 21 days prior to proposed sale date; Creditors have 7 days prior to proposed sale date to object

## **VII. Sales in the ordinary course of debtor's business - See attached Exhibit G**

- A. If sale turns out not to be in the ordinary course, then sale is void in violation of the automatic stay
- B. Same title procedures as in the sale not in the ordinary course should be followed

## **VIII. Sales Free and Clear of Liens under 11 USC 363(f) - See attached Exhibit H**

- A. Elements for 11 USC 363 (f) Sales
- B. Disjunctive Wording under 11 USC 363(f)(1)-(5) and effect of same
- C. Same title procedures as in the sales in the ordinary course and not in the ordinary course should be followed
- D. Adequate Protection Requirements
- E. Invalid Orders

- F. Fundamental underwriting inquiries for all bankruptcy sales – this includes 363(f) sales
- G. Checklist for 363(f) sales
- H. Usual Requirements for commitment regarding 363(f) sales