

Bankruptcy

Pre-Confirmation Sales Free and Clear of Liens

1. Review Commitment to determine Parties with liens on real property;
2. Review Bankruptcy Matrix to determine if all parties with liens on the real property have been Listed as a Creditor;
3. Determine if all lien holders were given Notice of Motion;
4. Does the Order for Sale specifically reference the 11 USC § 363(f) provision which allows the property to be sold free and clear of liens;
5. Does the Order for Sale reference a business purpose and/or necessity to sell the property prior to a Confirmed Plan;
6. Determine if the Order for Sale specifically identifies the property being sold;
7. Determine if the Order for Sale establishes a reserve for mechanic's liens (if needed);
8. Determine if the Sale Price is sufficient to fully compensate all secured creditors;
Note: If funds are insufficient, you may have a Sterns vs. Marshall issue and further inquiry will be needed
9. Determine if the 14 Day Appeal Period has run from the Date of the Order with no appeals having been filed;
10. If an Appeal has been filed, determine if a Stay of the Order Pending the Appeal has been entered;
Note: If Appeal has been filed but no Stay Pending Appeal – this creates a 9th Circuit Clear Channel issue and an appropriate exception must be taken.
11. Collect all necessary Transfer Taxes. Unless State law specifically authorizes otherwise, payment of transfer taxes is required in a Pre-Confirmation Sale. (See, Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc. 554 U.S. 33, 128 S.Ct. 2326); and
12. Obtain a Certified Copy of the Order for Sale and record it along with all other necessary Transactional Documents.