

**HOT** TOPICS  
**IN BANKRUPTCY**  
**UNDERWRITING**

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**HOT TOPICS IN  
BANKRUPTCY  
UNDERWRITING:**

**BANKRUPTCY OVERVIEW**

# **BANKRUPTCY OVERVIEW**

- The filing of a petition commences a bankruptcy case.
- Once a bankruptcy petition is filed, a bankruptcy estate is created, and an automatic stay becomes effective; we will talk more about the automatic stay soon.
- Throughout a bankruptcy, the assets of the estate will be collected and may be supplemented through the trustee's avoiding powers.
- Once the assets of the estate are collected, they may be distributed out through abandonment; exemption; sale or confirmation of the plan.
- Finally, if a debtor completes bankruptcy, they will obtain a discharge.

# **ANOTHER WAY TO LOOK AT BANKRUPTCY ADMINISTRATION**

- Alpha and Omega of the Estate
- The Estate is created (ALPHA) and contains all of the debtor's pre-petition interest in property (plus a few post-petition property rights).
- Bankruptcy administration is merely various voluntarily or involuntarily acts whereby those property interests are disposed of and no longer constitute property of the estate (OMEGA); e.g.:
  1. Sale
  2. Abandonment (by court order or operation of law)
  3. Revesting in debtor through the exercise of exemption rights or confirmation of plan
  4. Creditor exercise of state law remedies after lifting the stay (e.g. foreclosure)

# QUICK RECAP

If a debtor completes bankruptcy, they will obtain which of the following:

- a) A trophy for being a good debtor in bankruptcy
- b) A discharge
- c) A dismissal
- d) A letter from their attorney saying that if they have to file again to come to them

**HOT TOPICS IN  
BANKRUPTCY  
UNDERWRITING:**

**PROPERTY OF THE ESTATE**

# PROPERTY OF THE ESTATE (§541)

- Immediate/Automatic Impact of the filing of a bankruptcy petition
  - Creates an Estate
- Includes all of the Debtor's property interests at time of case commencement
  - Very broad
  - All legal or equitable interests of the debtor in property
- Estate property also includes:
  - Certain property acquired within 180 days of petition
    - by bequest, inheritance
    - divorce decree or settlement agreement with spouse
    - beneficiary of life insurance policy

# TITLE UNDERWRITING

## IMPLICATIONS OF BANKRUPTCY

### ESTATE

- New entity automatically created (the bankruptcy estate) that obtains an interest in debtors' pre-petition property
- Equivalent to an involuntary automatic transfer of property without the parties in interest necessarily having actual or constructive notice
- Real property records may not reveal the estate creation and title transfer

# **TITLE UNDERWRITING IMPLICATIONS OF BANKRUPTCY ESTATE CONTINUED**

- Until estate property is abandoned back into the debtor (or otherwise reverts in the debtor through a confirmed plan, exercise of an exemption right, etc.) A DEED SOLELY FROM THE DEBTOR DOES NOT TRANSFER TITLE.

- Trustee, as representative of the estate, must execute transfer document.

# **ADDITIONAL MATTERS OF CONCERN RELATING TO UNDERWRITING BANKRUPTCY ESTATE ISSUES**

- Only property of the estate can be sold “free and clear” under §363(f); discussed further below
- Unscheduled and unadministered property of the estate **REMAINS** property of the estate upon case closure. See §554(d)

# **ADDITIONAL MATTERS OF CONCERN RELATING TO UNDERWRITING BANKRUPTCY ESTATE ISSUES CONTINUED**

- A transfer by the debtor after case closure of “estate” property creates a title defect.
- Cure: reopen the bankruptcy, schedule the property and administer or abandon that property.

# Hypothetical

- I became aware recently of a debtor who filed Chapter 7, fully exempted the substantial equity in his home, entered into a Purchase and Sales Agreement for the home after the bankruptcy was filed, and closed on the home sale prior to obtaining a discharge. The problem here is that the bankruptcy case had not yet closed and the trustee had not abandoned the real estate when the closing occurred. It would have been a simple matter to get the trustee to abandon the property but the debtor mistakenly believed he did not need such authorization so he did not even bother to tell his attorney about the pending sale.
- In some manner, the closing agent found out about the seller's bankruptcy. They conducted the closing but would not release the net proceeds from the sale to the debtor until they got "authorization" from someone, meaning the court or the trustee. So the debtor called his attorney, told him the problem, and the attorney basically told the debtor that he had no authorization to sell the home. The debtor was advised that he could do one of two things. He could go to the trustee and request some kind of abandonment, which he undoubtedly would have gotten, or he could wait until the case closed. Since it appeared that the case was going to close imminently, everything seemingly incident to that result having taken place, and it would take around three weeks for the abandonment to be final, he chose the latter approach. It actually took longer for the case to close and the title company, apparently exasperated with the delay, gave up and gave him the money anyway. The case closed about six days later.
- No harm, no foul. Right?

# Hypothetical

- **Not necessarily. The deed and the mortgage were signed and recorded before the case was closed and since there was no abandonment, the debtor signed a deed for real estate he legally did not own. The new “owner” signed a mortgage conveying a property interest which he legally did not have. The closing agent turned over money to the debtor to which he was not entitled because the debtor had legally transferred nothing. Suggestions of liability abound all around. What is case did not close soon and debtor defaulted on mortgage? What if the trustee refused to abandon the property?**
- **Lesson: Always make sure debtor has ability to sell the property**

**HOT TOPICS IN  
BANKRUPTCY  
UNDERWRITING:**

**ABANDONMENT (§554)**

# ABANDONMENT

- One of many tasks confronting a title insurance underwriter when determining whether to insure a real property transaction impacted by a bankruptcy proceeding is analyzing whether the property remains property of the bankruptcy estate.
- Earlier we discussed the creation of the estate upon bankruptcy case commencement and characterized the administration of the bankruptcy proceeding as the process of disposing of estate property.

# **ABANDONMENT CONTINUED**

- Whether property remains or is no longer property of the estate directly impacts the requirements for the transfer of the interest insured.
- Done improperly, a title defect (and possible claim) is created, requiring you to either pass on a transaction or require curative action before you insure.

# ABANDONMENT CONTINUED

- For example, if the deed transferring property is from the debtor, but at the time of the transfer the property was property of the estate, title to the property was not transferred and a title defect was created. The trustee, not the debtor, held title to the property.
  
- Understanding the difference between Property of the Estate, and Property of the Debtor, for example, is foundational knowledge required to underwrite in bankruptcy.

# **ABANDONMENT CONTINUED**

Abandonment occurs in two ways:

By motion under §554 (a) & (b)

By operation of law §554 (c)

# ABANDONMENT CONTINUED

- Abandonment by motion:
  - Under §554(a) and (b) the trustee may abandon, or a party in interest may request the trustee to abandon, after notice and a hearing, any property of the estate that is:
    - 1) Burdensome to the estate or
    - 2) of inconsequential value and benefit to the estate.

# **ABANDONMENT CONTINUED**

Underlying Theory: property of the estate that lacks equity or does not have enough equity to cover the cost of marketing and selling same, will not realize any money to distribute to general unsecured creditors such that it is better to get rid of it through abandonment than to administer it.

Remember that bankruptcy is designed to be an orderly process (using Chapter 7 as a reference) whereby the debtor's assets are liquidated, and after paying costs of administration, distributed equitably to the unsecured creditors.

# **ABANDONMENT CONTINUED**

- Abandonment by operation of law §554(C)
- Scheduled but unadministered property of the estate is abandoned to the debtor upon case closure.

# **ABANDONMENT CONTINUED**

- Unscheduled and unadministered property of the estate remains property of the estate (unless the court orders otherwise).
- This is significant from a title insurance underwriting standpoint, and requires analysis of the bankruptcy court records of property coming out of bankruptcy, as well as properties that passed through bankruptcy up the chain of title.
- If a property remains property of the estate after case closure, the bankruptcy proceeding must be reopened, and the property must be scheduled and administered.

# **HOT TOPICS IN BANKRUPTCY UNDERWRITING:**

**AUTOMATIC STAY**

# **AUTOMATIC STAY**

- §362 of the Bankruptcy Code provides that the filing of a bankruptcy petition “operates as a stay, applicable to all entities”, of most actions, against the debtor, property of the estate, or property of the debtor, relating to a pre-petition obligation of the debtor.
- This includes actions to obtain a judgment, to collect on a judgment, perfect a security interest in property of the estate, and enforce a security interest in property of the estate.

# Critical Points about the Automatic Stay:

1. It arises **AUTOMATICALLY**  
**(DUH!)**
2. It is a very **BROAD** (applies to all entities).
3. Actual knowledge not necessary.

# **PRIMARY IMPACT OF THE AUTOMATIC STAY UPON TITLE INSURANCE UNDERWRITING**

- Actions taken in violation of the automatic stay is VOID.
- From an underwriting standpoint, this result creates a problem that must be addressed either through curative action or declining to insure the transaction.

# **AUTOMATIC STAY ISSUES ARISE OFTEN IN TITLE INSURANCE UNDERWRITING**

- Why is this the case?
- Foreclosures, and other actions to enforce security interests in the debtor's pre-petition property, frequently **TRIGGER** the filing of the bankruptcy petition.
- The creditor's subjective good faith in proceeding with the foreclosure (due to lack of notice or actual knowledge of the bankruptcy filings) **DOES NOT** cure the defect.
- Where the foreclosure or other action adverse to the Debtor or the Debtor's property occurred after the filing of the petition, it is defective!! Regardless of the creditor's good faith or lack of actual knowledge of the bankruptcy filing.

## **DURATION OF THE AUTOMATIC STAY §362(C)**

- The stay of acts against property of the estate remains until such property is no longer property of the estate.
- Property can be removed from the Bankruptcy estate through abandonment, revesting into the debtor or a third party after a plan is confirmed, creditor exercise of enforcement remedy after lifting the stay, property sales, and the debtor's exercise of exemption rights in fully exempt property.
- Property of the estate abandoned to the Debtor becomes property of the Debtor.
- The automatic stay continues against Property of the Debtor until the earliest of –
  - Case closure
  - Case dismissal
  - Grant or denial of Debtor's discharge
  - Relief from the Stay is granted.

# **EFFECT OF AUTOMATIC STAY** **REGARDING MULTIPLE FILINGS**

- The automatic stay as to property of the debtor expires 30 days after the filing of the bankruptcy petition if a previous case was dismissed within one year of the pending case being filed; §362(c)(3).
- If a debtor has had 2 or more cases dismissed within one year of the filing of the current case, no stay (as to property of the debtor or the estate, comes into play); §362(c)(4)(A)
- Be aware that neither of the above sections mention the co-debtor stay and as such, relief from co-debtor stay must be obtained if the

# UNDERWRITING TIPS:

- Curative actions should be undertaken for properties impacted by actions that violated the automatic stay.
- The lift stay order should employ broad language, such as:
  - The automatic stay is hereby lifted to allow [creditor] to foreclose its mortgage on whiteacre or to exercise such other state law remedies available to it.
  - This broader language would allow the lender to accept a deed-in-lieu of foreclosure. More limited lift stay language would not be as permissive.
- When asked to insure property that has at one time been owned by an individual who filed bankruptcy, make sure that if there is a co-debtor who did not file bankruptcy, an order has been entered terminating the co-debtor stay in addition to the automatic stay (applicable to chapter 13 cases)

**HOT TOPICS IN  
BANKRUPTCY  
UNDERWRITING:**

**LIEN SURVIVAL**

# DISCHARGE

- Principal Goal and Primary Benefit of Bankruptcy
- Very Broad
- Extinguishes Debtor's Personal Liability on scheduled, dischargeable debts
  - Does not extinguish the obligation  
e.g. co-obligors remain liable

# DISCHARGE CONTINUED

## Bankruptcy Code Text

- §727(b) provides in pertinent part:

- (b) Except as provided in §523 of this title, a discharge... discharges the debtor from all debts that arose before the date of the order for relief....

- Plain English Translation:

- The discharge “discharges” the pre-petition debts of the Debtor that are not determined to be non-dischargeable under Code §523.

# DISCHARGE CONTINUED

- Does the Bankruptcy Code define this central concept? **NO!**
- So what does it mean to “discharge” a debt?
  - The discharge extinguishes the Debtor’s in personam (personal) liability for his/her pre-petition obligations.

# **IMPACT OF THE DISCHARGE UPON PRE-PETITION LIENS**

- The Debtor's Discharge alone does not extinguish valid, pre-petition Liens.
- Widely misunderstood
- Based upon the view that the discharge extinguishes the debt, and under state law you need a valid underlying obligation to have a valid lien.

# **CORRECT VIEW**

- The Discharge does not extinguish the debt.
- Only the Debtor's personal liability is extinguished.
- Therefore, a valid underlying obligation technically survives bankruptcy
  - State law requirement that a lien must have a valid underlying obligation that it secures is satisfied.

# **FUNDAMENTAL BANKRUPTCY MAXIM**

- Pre-petition liens affecting the Debtor's pre-petition interests in property "ride-through" bankruptcy unless specific action is taken to void or avoid those liens.

**HOT TOPICS IN  
BANKRUPTCY  
UNDERWRITING:**

**JUDICIAL LIEN AVOIDANCE**

# JUDICIAL LIEN AVOIDANCE

- Permitted under §522(f)(1)(A) of the Bankruptcy Code.
  - “the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent such lien impairs an exemption to which the debtor would have been entitled...if such a lien is... a judicial lien....”

# JUDICIAL LIEN AVOIDANCE

- 3 things to look for:
  - 1) Under 522(f), the lien must be a judicial lien
  - 2) Exemption must apply – In Alabama, homestead property is subject to a \$5,000 exemption-
  - 3) the judicial lien must impair the exemption

# WHAT CONSTITUTES IMPAIRMENT OF AN EXEMPTION RIGHT

- Simple arithmetic (See §522 (f)(2)(A)):

A judicial lien impairs an exemption right if the sum of –

- The lien
- Other liens on the property, and
- The permitted exemption amount

Exceeds the value of the Property.

Sale Hypothetical Section 522		
Property Value=	\$245,000	
Unavoidable Debt		
1 <sup>st</sup> Mortgage=	\$175,000	
2 <sup>nd</sup> Mortgage=	\$35,000	
Tax Lien=	\$15,000	
Less Total Unavoidable Debt=	<u>\$225,000</u>	
	Gross Equity=	\$20,000
Less Exemption Claimed=	\$5,000	
	Net Equity=	\$15,000
Judgment 1 (03/03/02)= (subtract from net equity)	\$2,100	
Remaining Net Equity=	<u>\$12,900</u>	
Judgment 2 (04/13/03)= (subtract from remaining net equity)	\$17,500	
Remaining Net Equity=	<u>\$0.00</u>	(negative \$4,600)

Judgment 2 is unavoidable to the extent of \$12,900 and avoidable to the extent of \$4,600. Sum on judgment 1 (\$2,100), unavoidable liens (\$225,000) and exemption (\$5,000) is \$232,100. Because that is less than the value of the property (\$245,000), judgment 1 is not avoidable.

Sum on judgment 2 (\$17,500), unavoidable liens (\$227,100) – which includes judgment 1 because it is not avoidable and exemption (\$5,000) is \$249,600, which exceeds the property value by \$4,600. \$4,600 of judgment 2 impairs the exemption and is avoidable, leaving the second judgment unavoidable to the extent of \$12,900.

# **UNDERWRITING CHALLENGES RELATING TO JUDICIAL LIEN AVOIDANCE**

- The court order must
  - Conclude there is impairment
  - Expressly identify the lien or liens that are extinguished (preferably by identifying the lienholder and recordation information (Book and Page)).

# UNDERWRITING!!

- Do not remove a judicial lien as a Schedule B exception where the court order:
  1. Did not make a finding on impairment
  2. Failed to expressly specify that the lien is extinguished, or
  3. Failed to provide sufficient information to clearly identify the affected lien(s).

# **EXAMPLE OF A PROBLEMATIC JUDICIAL LIEN AVOIDANCE ORDER**

- “It is hereby ordered that the judicial liens impairing the debtor’s exemption rights are extinguished.”
- DO NOT underwrite over any judicial lien based upon such a defective order.

# **HOT TOPICS IN BANKRUPTCY UNDERWRITING:**

**PROPERTY SALES  
UNDER CODE §363**

- Quick Refresher – Upon filing a bankruptcy Petition, an estate is created containing the debtor's legal and equitable interests in property.
- From a title underwriting standpoint, understanding the various means by which estate property can be administered and disposed of lies at the core of what constitutes an underwriters fundamental bankruptcy knowledge.

- Generally, estate property can be disposed of and administered in just a few basic ways:
  - Action taken by a secured creditor to foreclose or exercise other state law remedies on its collateral after lifting the stay (§362).
  - Abandonment of the estate property to the debtor or another party after a motion (§554) or by operation of law upon case closure.
  - Revesting in the Debtor pursuant to a plan of reorganization (Chapter 11) or a wage-earners plan (Chapter 13).
  - Fully exempt property reverting in the debtor pursuant to his/her exercise of state or federal exemption rights.
  - Property Sales during Bankruptcy (§363).

- Property Sales under §363 come in different settings:

- Outside the ordinary course of business property sales. §362(b)(1).

- Ordinary course transactions, most typically for a debtor reorganizing under Chapter 11. §363 (c)(I).

- Sales of Estate Property “free and clear” of liens or interests §363(f). (Other sales under §363 are also limited to property of the estate).

- Sales of Property of the Debtor during the bankruptcy proceeding (Estate Property that revested in the Debtor through mechanisms previously noted)

# **SALES OTHER THAN IN THE ORDINARY COURSE**

- Most sales other than in the ordinary course of a debtor's business are pursuant to an order of sale after a hearing
- However, as is apparent from the bankruptcy code (see 11 USC 102), a sale of realty can occur without a court order and without a hearing
- MVT will generally insist upon a confirmatory order of sale even though the bankruptcy code allows a sale without such
- Sale must occur pre-confirmation

# **SALES OTHER THAN IN THE ORDINARY COURSE CONTINUED**

- Title Procedures for both sales in the ordinary course and other than in the ordinary course include the following:
  1. Review the petition and schedules to make sure all creditors on the commitment appear on the schedules
  2. Review a copy of the motion to sell along with proof of service on all creditors
  3. Review final non-appealable order of sale

# **SALES OTHER THAN IN THE ORDINARY COURSE CONTINUED**

- Good football numbers to keep in mind:
  1. Under BR Rule 2002(a)(2), a notice of sale must be given 21 days prior to the proposed sale date;
  2. Under BR Rule 6004(c), creditors have 7 days prior to the proposed sale date to object;
  3. Under BR Rule 6004(h), an order authorizing a sale is automatically stayed for 14 days unless the court orders otherwise

# **SALES OF ESTATE PROPERTY IN THE ORDINARY COURSE OF BUSINESS**

## **PRESUMPTION ABOUT ORDINARY COURSE OF BUSINESS:**

- The sale of property is presumed not to be in the ordinary course of business.
- If it is clear, however, that the business of the debtor includes regular real property sales, this presumption can be overcome.

- Underwriting tip regarding ordinary course transactions –

If in doubt whether it qualifies as “ordinary course”, require a court order.

- Additional Underwriting tip:

Remember that even though a separate court order is not required for an ordinary course transaction, this (absent abandonment) is property of the estate. As such a deed executed by the debtor alone creates a title defect since it is an ineffectual transfer of title to the property.

Correct approach: Trustee must execute transfer deed.

# **SALES IN THE ORDINARY COURSE CONTINUED**

- Presumably, entities that are in the business of buying a selling real estate would qualify for this kind of sale, e.g. a home builder or developer.
- If a sale is effectuated without an order of sale, and if it is not in fact a sale in the ordinary course of a debtor's business, the sale will be void in violation of the automatic stay.
- Due to this risk, in the event there is any question as to whether or not the sale is in the ordinary course of business, an order of sale stating that it is in the ordinary course should be sought.

Example #1 – Car Manufacturing plant seeks to sell its manufacturing plant as an “ordinary course” transaction and argues that it does not need to obtain a court order.

Answer: No, court approval is necessary.

Example #2 - Real estate developer that was in the process of selling newly constructed homes in subdivision at time of commencement of bankruptcy had sales pending at the time bankruptcy was filed and argues that it does not need a court order.

Answer: Legally, it is ok to proceed without court order approving each specific sale SO LONG AS the court authorized the business of the debtor to be operated. MVT still may require an order.

## **363 (F) SALES**

Articulated bases for a §363 (f) sale (sales free and clear of liens)

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest; n/a
- 2) Holder of the adverse interest or lien consents; sometimes applicable
- 3) The interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on the property; sometimes applicable
- 4) The adverse interest is in bona fide dispute;- order should say this **or**
- 5) The holder of the adverse interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of that interest. n/a

# **363(F) SALES CONTINUED**

- 363(f) is written in the disjunctive meaning that the sale may be effectuated if any one of the elements of 363(f) have been met.
- For example, assume a debtor in a chapter 13 bankruptcy proposes a sale free and clear of liens, when the sale proceeds are sufficient to pay off the first mortgage lien and where the second mortgagee consents to the sale, although the proceeds will not fully pay off the second mortgagee's lien
- Courts have allowed this to occur.

# **363(F) SALES CONTINUED**

- The same title procedures for sales in the ordinary course and not in the ordinary course (see slide 52) should be followed for 363(f) sales.
- Additionally, you will want to be certain that all secured parties listed in the title report have been served with the notice of motion for sale.
- Creditors should actually release their lien and you should not rely on wording in an order that says the order divest the creditor's lien.

# 363(F) SALES CONTINUED

- Any sale pursuant to 11 363(f) is subject to the adequate protection requirements of 11 USC 361.
- As such, the order should provide that the sale is being made free and clear of liens, with the liens attaching to the proceeds of the sale as follows:

ABC Bank -\$20,000

Gold Credit Card -\$15,000

IRS-\$10,000

.....and so on

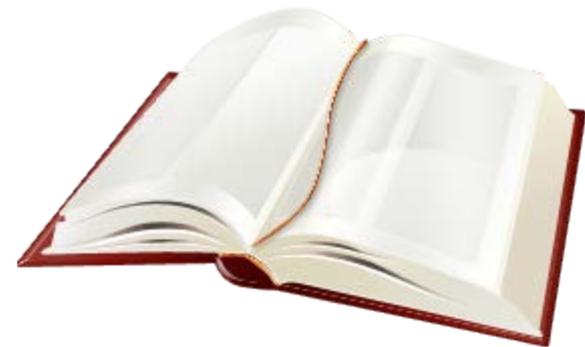
# 363(F) SALES CONTINUED

- Unfortunately, not all motions and orders are created equally. For instance, a motion may seek permission to sell certain property, making no reference to any code section or using the words free and clear.
- Then, to compound this error, the order will be entered simply granting the motion, providing no guidance as to what code section authorized the sale.
- In this situation, even assuming all interested lien holders received appropriate notice, this transaction should not be insured over existing liens and the court should modify their order.

## Fundamental Underwriting Inquiries for all Bankruptcy Sales:

1. Is Bankruptcy Court approval needed? If so, has it been obtained?
2. Has notice been properly provided to all parties in interest?
3. Were the adverse impacts of the requested relief (most typically sales free and clear) expressly stated in plain English so the affected parties were clearly on notice of the adverse impact affecting their rights in the property?
4. Is the Court order (if required) sufficiently clear and with sufficient details such that a future title examiner will not raise title objections to the impact of the ordered relief?

-This necessitates: specific reference (by legal description) of the property being transferred, as well as the liens and other interests that are impacted (by party reference, recording date and related data (e.g. book and page) should all be in the sale order.



# Sales Free and Clear §363(f)

- Done properly, beneficial to a title insurance underwriter since it eliminates liens and other title issues.
  - Similar in impact to a quiet title action under state law.
- Limited to property of the estate
- Risks to underwriter
  - Challenge by lien or interest holder is increased due to procedure utilized (motion practice and not adversary proceeding).
  - Reduce risk by making certain:
    - Appropriate notice
    - Adverse impact clearly delineated
    - Proceeding is legitimate
      - Property of the Estate
      - One of the bases noted in the code section applies
      - Appeal period MUST run before sale proceeds (If not – DO NOT INSURE)
      - Never omit open real estate taxes and assessments

## **CHECKLIST FOR 363(F) SALES**

1. Review commitment to determine parties with liens on real property;
2. Review bankruptcy matrix to determine if all parties with liens on real property have been listed as a creditor;
3. Determine if all lien holders were given notice of motion to sell;
4. Make sure the order for sale specifically references the 11 U.S.C. §363(f) provision which allows the property to be sold free and clear of liens;
5. Make sure the order for sale specifically references 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;

## **CHECKLIST FOR 363(F) SALES CONTINUED**

7. Determine if the order for sale establishes a reserve for mechanic's liens (if needed);
8. Determine if the sales price is sufficient to fully compensate all secured creditors;
9. Determine if the 14 day appeal period has run from the date of the order with no appeal having been filed;
10. If an appeal has been filed, determine if a stay of the order pending appeal has been filed;
11. Collect all necessary transfer taxes;
12. Obtain a certified copy of the order for sale and record it along with all other necessary transactional documents.

To insure a sale free and clear of liens, the following should generally be listed as requirements:

1. A certified copy of the Notice of Sale; not applicable when there will be a motion and an order;
2. Proof of service of the Notice/Motion on all interested parties;
3. A certificate that no objection or request for hearing has been filed; or bankruptcy documents showing the results of a hearing; not applicable when motion and order;
4. A recorded order specifically stating that the sale is to be free and clear of liens and identifying the applicable 363(f) category under which the sale is authorized and giving a legal description of the property;
5. A certificate from the bankruptcy court stating that the order is final and no stay of the sale pending an appeal has been filed;
6. A deed from the proper party;
7. Sufficient sale proceeds to fully pay all secured creditors or, if the sale proceeds are not sufficient to do so, obtain a release from the underpaid secured creditors