



Bankruptcy

April 2002

Chapter 13 Bankruptcy

Chapter 13 Bankruptcy is essentially a restructure of debt. It allows the debtor protection from creditors while a plan for repayment of debts is worked out with the approval of the Bankruptcy Court.

Chapter 13 is available for debtors with a regular income. An income is necessary in order to fund the plan. It may be used by salaried individuals or small self-employed business owners. Corporations or partnerships may not use this chapter; they will use Chapter 11 instead.

A trustee may be appointed to supervise the estate of the debtor, or the debtor, as the debtor in possession, may be authorized to continue operation of the business or affairs. Usually the debtor retains possession of assets and a plan of repayment is set up. The repayment plan is a written proposal setting out a schedule of payment to creditors. The plan cannot be longer than three years, but may be extended to five years with Court approval.

If all payments required under the plan are made by the debtor at the end of the three year period, the debtor is discharged.

When the seller is in Chapter 13...

When a debtor files bankruptcy, title to all real estate vests as follows: "The Estate of (Seller's Name), Debtor in Bankruptcy Case No. _____."

When the plan has been approved by the Bankruptcy Court, the title vests back into the debtor.

Title Requirements:

These requirements will remain on the title commitment until the particular transaction has closed:

1. If the plan has been approved the following requirements will be made:

"Certified copy of order approving the Chapter 13 plan for Bankruptcy Case No.

_____. Further requirements may be necessary upon review of the bankruptcy plan."

and

"Deed from the debtor in possession (or trustee if the plan so designates) to the buyer."

Note: The plan must provide for the sale of the subject property. If the plan does not, then a requirement must be made calling for an amended plan stating that the subject property can be sold.

2. If a Chapter 13 Bankruptcy has been filed, but the plan has yet to be approved, the following requirement will be made:

"Certified order from the Court authorizing the sale of the subject property."

Note: The property is still subject to all pre-bankruptcy liens under a Chapter 13.

When the buyer is in Chapter 13...

1. If the bankruptcy plan has been confirmed, no additional requirements are necessary and the buyer may purchase the property.
2. If the plan has not been confirmed, the following requirement will be made:

"Order from the Bankruptcy Court that pre-bankruptcy assets are not being used for the purchase of the subject property."

Bankruptcy exception for Chapter 7 and Chapter 13:

When a bankruptcy case is still open, the following exception will appear on the title commitment under Schedule B-2:

"Provisions of Bankruptcy Code 1978 and of the terms, conditions, and provisions of any order which may be entered in Bankruptcy Case No. _____."

Chapter 7 Bankruptcy

Chapter 7 is a liquidation action and is commonly thought of as straight bankruptcy.

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It is used when the debtor's debts are overwhelming or the assets are nominal.

A trustee is appointed by the Bankruptcy Court and has the duty to quickly convert the debtor's assets, subject to certain exemptions such as the homestead exemption, into cash for distribution to the creditors.

When the seller is in Chapter 7

When the seller of real estate is in Chapter 7 Bankruptcy, title vests as follows:

"The Estate of (Seller's Name), Debtor in Bankruptcy Case No. _____."

Title requirements:

1. If the property is going through foreclosure, the following requirement would be made on the title commitment:

"Certified Order from the Bankruptcy Court lifting the automatic stay from subject property for Bankruptcy Case No. _____."

2. If the property is not going through foreclosure and the Bankruptcy Estate has not been discharged and closed, the following would be required:

"Certified copy of Order from the Bankruptcy Court for an Order of Abandonment pursuant to Bankruptcy Case No. _____."

The property may be abandoned by the Bankruptcy Court if it has no value. Title to the property will revert in the seller and will be subject to all pre-bankruptcy liens.

3. If the property is not otherwise exempt from sale or has value, the Trustee in Bankruptcy may choose to sell the property. In this situation, the following requirement would be made:

"The following documents must be obtained and recorded from the Estate of (Seller's Name), Bankruptcy No. _____, District Court of the United States, District of Colorado:

A. Certified copy of Order approving the Trustee of Bankruptcy Case No. _____.

B. Certified copy of Order of Court confirming the Trustee's sale of subject property; and

C. Trustee's Deed, pursuant to proper Order of said court, from _____, Trustee, to (Buyer)."

When the buyer is in Chapter 7...

The Bankruptcy Code does not prevent a debtor from purchasing property after a bankruptcy case has been filed. Purchase in this situation is referred to as a post-petition purchase. The bankruptcy file must be checked to see if the bankruptcy case has been discharged and closed.

1. If the bankruptcy case has not been discharged and closed, it needs to be determined if any cash is being brought to the closing and how much is being put down to purchase the property. A determination must be made as to whether or not pre-bankruptcy assets are being used to purchase the property. The use of funds from "hidden" assets could result in the trustee's recovering any property purchased with those funds; therefore, the following requirement should be made:

"Order from the Bankruptcy Court authorizing the purchase of the subject property,"

or

"Order from the Bankruptcy Court stating that pre-bankruptcy assets are not being used to purchase the property."

2. If the debtor has been discharged and the Bankruptcy Case has been closed, no additional requirements will be made.

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