

## **BANKRUPTCY CHECKLIST**

### **Seller in Bankruptcy**

1. **INSURING A SALE** of property where the seller is/was in bankruptcy, requires either:
  - a. The bankruptcy case is **closed**, or
  - b. The bankruptcy case is **dismissed** (that's "dismissed", not "discharged"), or
  - c. The property is **abandoned** by the Court or the Trustee, or
  - d. 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.)

[NOTE: Do not rely on a debtor's homestead exemption when the debtor sells property. The property remains in the estate until the case is closed. The exemption only gives the debtor an *interest* in the property up to the amount of the exemption. Also, the bankruptcy estate is entitled to post-petition appreciation. See *In re: Gebhart*, 621 F.3d 1206 (9th Cir. 2010).]

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Documents needed to analyze Bankruptcy questions:

- a. Bankruptcy petition
  - b. Schedules (usually attached to the petition)
  - c. Docket (i.e. a list of all documents filed in the bankruptcy case)
  - d. Plan (Chapter 11 and 13)
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### **2. ELIMINATING A JUDGMENT LIEN RECORDED PRIOR TO BANKRUPTCY:**

- a. Record a certified copy of a final Court Order avoiding the lien.
- b. NOTE: A discharge in bankruptcy eliminates only the personal liability of the debtor. **It does NOT eliminate a judgment lien.**

### **3. ELIMINATING FEDERAL AND STATE TAX LIENS:**

Tricky because some tax liens can be avoided, others cannot. Requires approval of underwriting counsel.

### **4. ELIMINATING REAL PROPERTY TAXES:**

No! Show real property taxes as an exception until they are removed from the tax roll.

### **5. JUDGMENT LIEN RECORDED DURING BANKRUPTCY:**

Show the lien as an exception in the absence of a court order setting it aside. Recording a judgment during the debtor's bankruptcy violates the automatic stay. The debtor clearly has the right to go into Bankruptcy Court and have the lien set aside. But if the debtor does not do so, it is doubtful whether a subsequent purchaser has standing to challenge the lien.