

# Bankruptcy Sales – Squeaky Clean Title and Tax Exempt!

*by Christian Savio*

Most investors or purchasers of real estate may be weary of the word bankruptcy. In fact, they may even avoid investing in properties that are in some stage of the bankruptcy process. Bankruptcy sales provide one enormous advantage that your clients may simply be unaware of and that is clean title free and clear of liens, claims and encumbrances!

Unlike in a foreclosure action, where the transfer of title is dependent on naming of lienholder or interested parties in the action, the bankruptcy sale is subject to providing notice to constituents. In other words, there is no requirement that a lienholder participate in the actual process. As long as, the interest holders are provided notice of the sale motion, then title may transfer free of the interests, whereas, the foreclosure is dependent on the party being formally sued and obtaining judgment.

The Bankruptcy Code provides for a sale of property of the bankruptcy estate "... free and clear of any interest in such property..." if certain conditions are met. 11 U.S.C. §363(f). The existing encumbrances attached to the proceeds of the sale, the in rem inter-

est is cut-off.

Effective December 1, 2009, an order authorizing the sale, use, or lease of property is automatically stayed until the expiration of 14 days after the entry of the order, unless the Court orders otherwise. Bankruptcy Rule 6004(h).

Once the time period has elapsed, a certified copy of an order of the bankruptcy court authorizing the sale and record proof that all parties having an interest in the property were given proper notice of the hearing related to the proposed sale is in most cases sufficient for title and insuring purposes. This often provides a much more streamlined closing for the real estate practitioner.

Not only can your buyers purchase the properties free and clear, they may even be able to exempt the documentary stamps taxes if the sale occurs pursuant to a plan. Florida Administrative Code 12B-4.013(19) and 12B-4.014(15) provides in relevant part:

"Transfer in Bankruptcy Sale: Sale of real property by trustees, debtors or receivers in federal bankruptcy

proceedings is subject to tax unless the transfer is made pursuant to a plan confirmed under s. 1129 of the Bankruptcy Code, is a precondition or essential to the confirmation plan, or is necessary to consummate or implement a confirmed plan and the debtor is a party to the transfer. If the bankruptcy court does not ultimately confirm the plan under s. 1129, the transfer would not be exempt pursuant to 11 U.S.C. §1146(c), and would be subject to tax."

Depending on the sale price of the property, this can amount to substantial savings and perhaps seal the deal for your client. ■



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