

THE EFFECT OF A DISCHARGE IN BANKRUPTCY ...

On Recorded Judgements And Other Involuntary Liens



Bankruptcy discharges fall under several sections of Title 11 of the United States Code. The discharges most commonly encountered by title companies fall under Chapters 7 (Liquidation), 11 (Reorganization), 12 (Family Farmers or Fisherman) and 13 (Individual with Regular Income – “Wage Earner”) and fall under 11 USC Sections 727, 1141, 1228 and 1328, respectively. The disposition of judgments and other liens under Chapters 11, 12 and 13 will generally be governed by the plan approved by the bankruptcy court until such time as the plan is successfully completed. The provisions of this article only apply to judgments remaining in effect following successful completion of the plan.

Before a decision can be made to remove a judgment following a bankruptcy discharge it must first be determined if the judgment attaches to the real property of the debtor. The primary concept to remember is that a bankruptcy discharge under each of the above sections only releases a debtor from personal liability for those debts which qualify for discharge under the Bankruptcy Code.

Valid judgments recorded while the debtor owns the property will remain a lien against the property even though the debtor is no longer personally liable for the debt. Judgment creditors can exercise their rights to the extent permitted under the law, including the sale of property at a Sheriff’s Sale to satisfy the judgment.

Under 11 USC Section 523, orders discharging debtors do not apply to a variety of debts including, among other things, income tax due within 3 years prior to filing, tax fraud, debts not scheduled in the bankruptcy case, domestic support obligations, HOA fees or assessments, fraud and criminal obligations and penalties, education/student loan debt and judgments resulting from death or personal injury caused while operating a motor vehicle, vessel or aircraft while intoxicated.

A title company should never remove a judgment solely in reliance on information provided by the debtor or another third party. In each instance the bankruptcy case and documentation should be independently examined by the title company to determine its status, including confirmation that the case has been discharged and the applicability of the discharge to the judgment or judgments the title company is being requested to remove. Judgments that are not dischargeable or that attach to real property must be dealt with in one of the following three ways before a title policy is issued:

1. Show the judgment in the title policy.
2. Pay the judgment and obtain and record a satisfaction.
3. Obtain and record an Order Avoiding Lien under 11 USC Section 522(f). Under this option it is often necessary to reopen the bankruptcy case.

Bankruptcy cases are often complex and it is imperative that each case and the circumstances of the transaction be fully analyzed before removing a judgment based on the discharge of the debtor.

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