

# **I WANT TO SELL MY HOUSE (SO, WHAT CAN I EXPECT?)**

## **CHAPTER 7 CASES**

Chapter 7 is a form of bankruptcy which is also known as “liquidation” or “straight bankruptcy.” When you file for relief under Chapter 7, an individual is appointed by the court system to be your trustee. The trustee’s job is to determine whether you have any assets which can be sold to help pay your debts. Once your case is filed, almost all of your assets and property come under the trustee’s control – you will no longer have the right or legal ability to sell or transfer your assets. If you are in a Chapter 7 case and have found a buyer for your property, the sale must be made through your trustee. Bring us the information listed below and we can help you to coordinate the process with your trustee. The process for selling the property can take months, so please do not have any expectations for a speedy sale. Upon closing, the proceeds will first pay the costs of the sale, the liens against the property, the trustee’s administrative fee, and your claimed exemption [O.C.G.A. 44-13-100(1) and (6)]. The remaining balance will be disbursed to creditors. Remember, however, that the trustee does not have to accept your proposed contract or buyer and can market the property on his or her own – even over your objection. Further, you are required by law to cooperate with the trustee and you cannot simply back out of or dismiss your Chapter 7 case if you do not like how the process is going. If you have any questions, please schedule an appointment to consult with one of our attorneys.

## **CHAPTER 13 CASES**

Although the Chapter 13 trustee generally does not actively seek to liquidate your assets, you still must obtain the Court’s approval to sell your property. One reason for this requirement is that, when you filed for relief under Chapter 13, your creditors were prevented by law from collecting from your property. Since your creditors are prohibited from pursuing your property, it would not be fair to allow you to dispose of it without the Court’s oversight. **THEREFORE, YOU CANNOT SELL, QUICLAIM, GIVE, TRANSFER, OR OTHERWISE DISPOSE OF YOUR PROPERTY WITHOUT FIRST GETTING THE COURT’S PERMISSION.**

The following are general guidelines to consider if you wish to sell your real estate while you are in Chapter 13:

1. Depending on the type of payment plan you are in, and the number of months you have been in your plan, it might not be in your best interests to sell your property at this time. Review your plans and present goals with one of our attorneys to see if the sale makes the most sense in your situation.
2. The sale must be for reasonable, fair market value.

3. You are free to place the house on the market, but any proposed sales contract must say that it is subject to the approval of the Bankruptcy Court.
4. Typically, it takes approximately 45 to 60 days to get the sale approved **AFTER YOU PROVIDE THE CONTRACT TO US.**
5. Short sales are not approved by the Court.
6. The Chapter 13 trustee will want most, if not all, of the sale proceeds (after payment of the sales costs and liens against the property). Do not count on keeping the money for yourself. We might have to negotiate with the trustee to allow you to keep any of the money. Remember: the trustee will want to maximize the amount you repay to your creditors.
7. Any transfer or sale made while you are under Chapter 13 and without the Court's permission will be void; the Court may find you in contempt and take such action against you as it deems fit.
8. Keep us informed of your intentions and progress. Each new contract must be approved by the Court, so if you have a sale fall through, you must start the process again when you get a new buyer.

If you want to sell your real estate, please do the following:

- (a) discuss your plans/options with one of our attorneys;
- (b) put the property on the market;
- (c) obtain a sales contract that says that it is subject to the Bankruptcy Court's approval;
- (d) provide us with:
  - i. a copy of the signed contract,
  - ii. the name, address and phone number of your real estate agent (if you have one);
  - iii. the name and address of the buyer, and his/her relation to you;
  - iv. the name, address and phone number of the closing attorney (if you know it);
  - v. the approximate amount of money the sale will provide to you and,
- (e) allow 45 to 60 days to obtain the Court's approval.
- (f) Some judges require even more information – we will let you know when you come in

***AS ALWAYS, IF YOU HAVE ANY QUESTIONS, PLEASE ASK!***

**CLARK & WASHINGTON, P.C.**  
3300 Northeast Expressway  
Building 3, Suite A  
Atlanta GA 30341  
404-522-2222  
Please visit our website at [www.CW13.com](http://www.CW13.com)