

Advising a Debtor regarding selling real estate

In a Chapter 7, the debtor can sell their real estate as soon as the trustee abandons it. That is usually the “Report of No Distribution” found on the docket. The Trustee also abandons when he fails to oppose an MFR on the property.

If the debtor has not gone to the 341 yet, they should bring 2 copies of the contract to the 341 – they offer the contract to the Trustee and if he wants to do the sale he will. He might also try and sell it to someone else for more money. If he does not want to sell, he will abandon it and the debtor can sell.

If the debtor wants us to prepare a notice of abandonment that the Trustee may or may not sign, we can do it for \$150.

In a Chapter 13, the Debtor should bring us a copy of the contract, let us know the name of the buyer and if the buyer is an insider or a relative, how much money they anticipate getting out of the sale and what they propose to do with that money. They must propose to give all of the proceeds to the Trustee for distribution to creditors. They **might** be able to keep \$1500 to \$2000 for moving expenses. It will take about 2 months to get an order.

If the debtor is paying the case in full (100%) there are rarely objections. Of course, no one can pay off their composition plan unless they have been in and paying for more than three years. Even if they have been in a composition plan for 3 or more years, they probably won't be able to keep more than their exemption.

JEM and MHM have very stringent demands for documentation. The debtor will need to get from the closing attorney a copy of the proposed HUD-1 form (showing where all the money will go at closing) plus a copy of the title report (showing all liens on the property.) The real estate agent might or might not get paid -- technically they are professionals employed by the estate. Very rarely has a debtor gotten me what I need for MHM/JEM motions and none of those deals had agents

Many times, a Debtor who brings in a contract does not wind up with a motion to sell. Here are some examples:

Is the mortgage the only debt in the case? Why not voluntarily dismiss the case as soon as the debtor is SURE they are going to close? I have seen debtors choose this option when they have even 3 or 4 unsecured debts: they simply pay off (or even settle with) the creditors directly. If we have substantial fees left to be paid, get the name of the closing attorney and ask him to pay us our fees out of closing. **Always** let the Debtor know voluntary dismissal is **their** choice.

Is the mortgage the only debt being funded in a 1% plan? Or, viewed another way, would you expect the debtor to continue to fund the plan after the house has sold and the debtor has moved? Sometimes it is quicker to convert to 7 and sell as soon as the 7 Trustee abandons.

SHORT SALE? REB has said he will not allow short sales. With other judges, try to dissuade the debtor – can you ethically state that you know a short sale plus a bankruptcy makes for a better credit report than a foreclosure and a bankruptcy???? If the debtor persists, we need to have the original of a document signed by an officer of the corporation stating they agree to the short sale.

Finally, why not surrender? I have told many debtors facing MFR to add up the instanter money plus 2 months of regular payments plus 2 months of cure payments. Usually they choose to ‘pocket’ that money and let the house foreclose rather than risk that money to see if they can get a little bit of it back at a closing.

As always, see me or Rich with any questions

CJK