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Bankruptcy Basics and Considerations Related to COVID-19

Presented by Kelsea Laun
NATIC SE Regional Underwriting Counsel

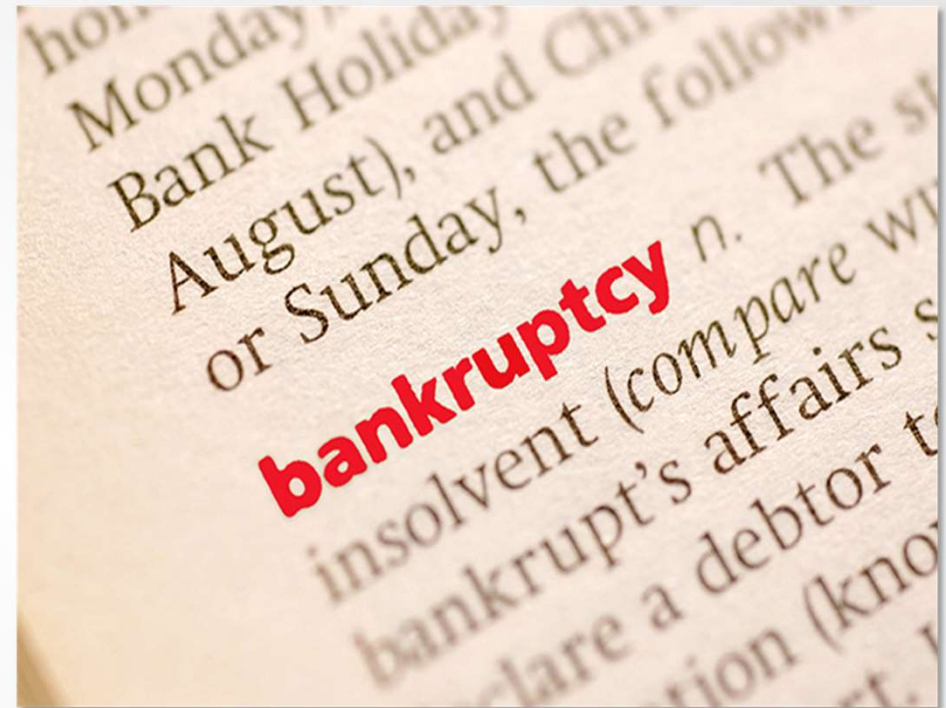
Disclaimer

This information is not a substitute for legal advice. It is for your reference only, and is not intended to represent the only approach to any particular issue.

This information should not be construed as legal, financial or business advice, and users should consult legal counsel and subject-matter experts to be sure that the policies adopted and implemented meet the requirements unique to your company.

■ Today's Topics

- Overview of Chapters 7, 11, and 13
- The Automatic Stay
- The Bankruptcy Estate
- Selling or Refinancing in Bankruptcy
- Lien Stripping
- Lien Avoidance



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Common Terms

■ Common Bankruptcy Terms and Concepts

- **Bankruptcy Petition:** The compilation of pleadings filed by an individual or entity seeking bankruptcy relief.
- **Debtor:** The Debtor is the person, couple, or entity who filed for protection under the Bankruptcy Code.
- **Co-Debtor:** The Co-Debtor is a person or entity who is obligated, or whose rights may be affected, under the terms of the debt, but who did not file the pending bankruptcy petition.

■ Common Bankruptcy Terms and Concepts

- **Liabilities:** Debtor's liabilities include any debt or financial obligation of the Debtor.
- **Assets:** Debtor's assets include any property, both tangible and intangible, that the Debtor owns or may claim an interest in.
- **Claim:** Under the Bankruptcy Code:
 - (1) a right to payment;
 - (2) or a right to an equitable remedy for a failure of performance if the breach gives rise to a right to payment. Creditors file claims to be included in the disbursement of liquidated funds in a Chapter 7, or to be treated in Chapter 11 or Chapter 13 plans of reorganization.

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Bankruptcy Concepts

■ The Bankruptcy Estate

- Legal interest
- Equitable interest
- Co-Debtors
- Exemptions

■ Real Property Exemption

Each bankruptcy debtor is entitled to exempt a certain amount of equity in various types of assets.

- Assets that are exempt are not considered property of the bankruptcy estate.
- Caution: Exempt assets are still property of the debtor and may be subject to the automatic stay.
- Exemptions vary from state-to-state
 - Georgia
 - Alabama
 - Mississippi

Trustee and/or creditors can object to the debtor's exemptions

- FRBP 4003 requires any objections to debtor's claimed exemptions to be filed within 30 days after creditor's meeting or 30 days after any amendment to schedules or supplemental schedules is filed, whichever is later




■ The Automatic Stay

Section 362(a) automatic stay

- Prohibits creditors from taking action to collect debts and from enforcing or perfecting liens. Some practical implications include:
 - Creditors must cease all collection efforts
 - No filing of lawsuits
 - Foreclosure stops
- **When does the automatic stay end?**
 - As to the debtor
 - Stay lasts until entry of discharge.
 - As to property:
 - When the bankruptcy is terminated, either by dismissal or closure (notice I didn't say *discharge*)
 - Upon entry of an order lifting stay
 - By operation of law



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Common Types of Bankruptcy Proceedings

■ Common Types of Bankruptcy Proceedings

- **Chapter 7** - Liquidation
- **Chapter 11** - Reorganization
- **Chapter 13** - Reorganization
- **“Chapter 20”** - Term used when a Chapter 13 is filed shortly after a debtor receives a discharge in a Chapter 7



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Why Bankruptcy Matters to Real Estate Professionals

■ Sale of Real Property During Bankruptcy

- **Underwriting perspective:** Court order is always preferred and may be required
- **Abandoned by Chapter 7 Trustee**
 - Must be formal abandonment
 - “No Asset Report” doesn’t count
 - May be reversed!
- **Sale provided for in confirmed Plan**
 - Review docket for modifications to Plan
 - Review Plan to verify proper notice
- **Common pitfalls**
 - Sale amount greater than value stated in Plan
 - Sale deemed preferential or inside transfer
 - Sale proceeds may be deemed property of the estate



■ **Want to be sure?**

Require a
court order!



Final and Non-appealable Order

Appeal Periods:

- General Orders: 14 days
- Discharge or dismissal: 30 days
- Can be extended by Motion and Order
- Court cannot waive appeal period
- Appeal period rarely ever waived
- Orders of lien avoidance are reversed if the bankruptcy is dismissed
 - Upon dismissal, the “avoided” liens are reinstated against the subject property



■ Effect of Discharge on Debts

■ Unsecured

- Debtor's responsibility to pay dischargeable unsecured debts: Personal loans, credit cards, medical bills, is generally discharged.
- Certain unsecured debts are given priority and are not generally dischargeable in bankruptcy:
 - Certain taxes
 - Child support obligations
 - Student loans



■ Effect of Discharge on Liens

- **Secured Liens**

- **Judgment Liens**

- Survive discharge to the extent not crammed or avoided
 - Review bankruptcy docket for order avoiding or valuing the lien
 - Record a copy of the Order in the real property records with a cross-reference to the avoided lien, and legal description

- **Mortgage Liens**

- Survive discharge to the extent not crammed down or avoided
 - Certain wholly unsecured mortgage liens against the debtor's residence may be stripped off/avoided in Chapters 13 and 11
 - Review docket for order avoiding lien. If none found, review Regoganzation Plan to determine whether it provides for stripping a junior mortgage lien.

■ Red Flags for Title Issues

- Preference
- Priority
- Proper Recording
- Missing Interests
- Finality of Bankruptcy Orders



■ What's the big deal?

- **Powers of Trustee to Avoid Certain Transfers**
 - Avoidance under 11 U.S.C. §544, et seq.
 - Priority
 - Proper Recording
 - Missing Interests
 - Avoidance pursuant to 11 U.S.C. §547
 - Preferential transfer



■ Examining the Bankruptcy Case

■ Review the docket

- Is there an Order avoiding the lien?
 - Review to make sure it fully avoids rather than crams/values
 - Review stated value of property vs. value of proposed transaction (i.e. is the current sales price relatively the same as the value stated in the schedules).
 - Review service upon the affected party
 - Is the Order final?
 - 14 days following entry on the docket
 - VOID upon dismissal or conversion of the bankruptcy

■ Review the schedules

- Is the subject debt listed as secured or unsecured?
- Does the address for the creditor appear to match the address on the lien?

The Docket



Query Reports Utilities Logout

CLOSED, CASECHECKED

**U.S. Bankruptcy Court
Eastern District of Michigan (Bay City)
Bankruptcy Petition #: 13-20686-dob**

Assigned to: Judge Daniel S. Opperman.BayCity
Chapter 13
Voluntary
Asset
[Show Associated Cases](#)
[Claims Register](#)

Date filed: 03/15/2013
Date terminated: 05/30/2018
Debtor discharged: 05/01/2018
Plan confirmed: 05/09/2013
341 meeting: 04/11/2013
Deadline for filing claims: 07/10/2013

Debtor disposition: Standard Discharge



Query Reports Utilities Logout

ECF	Query	Reports	Utilities	Logout
03/22/2013	(1 pg)			document(s) Flags Set CASECHECKED, 11 Meeting of Creditors Chapter 13). (Yelsik, Michael) (Entered: 03/22/2013)
03/26/2013	15 (2 pgs)			Certificate of Service of Plan. (^McDonald, Thomas) (Entered: 03/26/2013)
03/27/2013	16 (2 pgs; 2 docs)			Notice of Appearance and Request for Notice Filed by Creditor Ocwen Loan Servicing LLC. (Attachments: # 1 Certificate of Service) (Atallah, Mary) (Entered: 03/27/2013)
04/11/2013	17 (8 pgs; 3 docs)			Adversary case 13-02081. (21 (Validity, priority or extent of lien or other interest in property)): Complaint by Alfred C. Schreur against Ocwen Loan Servicing. Receipt Number EXEMPT, Fee Amount of \$ 293.00 is Exempt. (Attachments: # 1 Exhibit Coversheet # 2 Exhibit Proposed Order) (Yelsik, Michael) (Entered: 04/11/2013)
04/11/2013	18			Complaint by Alfred C. Schreur against Ocwen Loan Servicing 13-02081-dob ; Nature of Suit(s): 21 (Validity, priority or extent of lien or other interest in property) , Fee Amount \$ 293.00. Filed by Alfred C. Schreur . (Yelsik, Michael) (Entered: 04/11/2013)
04/12/2013				Meeting of Creditors Held on 4/11/2013 . (McDonald, Thomas) (Entered: 04/12/2013)
05/09/2013				Minute Entry. Confirmation Granted by Consent. (kt) (Entered: 05/09/2013)
05/09/2013	19 (1 pg)			Order Confirming Chapter 13 Plan; Fees for Michael Gary Yelsik, Debtor's Attorney, Fees awarded: \$3000.00, Expenses awarded: \$0.00; Awarded on 5/9/2013 (RE: related document(s) 2 Chapter 13 Plan filed by Debtor Alfred C. Schreur). (ts) (Entered: 05/09/2013)
05/31/2013				Disposition of Adversary 1:13-ap-2081 : Granted by Default Judgment. (H, Laura) (Entered: 05/31/2013)
05/31/2013				Adversary Case 1:13-ap-2081 Closed. (H, Laura) (Entered: 05/31/2013)

Chapter 13 Plan Provision to Avoid Mortgage Lien

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.

Check if applicable.

The plan provides for the payment of a domestic support obligation (as defined in 11 U.S.C. § 101(14A)), set out in Section 4.4.

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless the Bankruptcy Court orders otherwise. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015.

To receive payments under this plan, you must have an allowed claim. If you file a timely proof of claim, your claim is deemed allowed unless a party in interest objects. See 11 U.S.C. § 502(a).

The amounts listed for claims in this plan are estimates by the debtor(s). An allowed proof of claim will be controlling, unless the Bankruptcy Court orders otherwise.

The following matters may be of particular importance. Debtor(s) must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not included," if both boxes are checked, or if no box is checked, the provision will be ineffective even if set out later in the plan.

1.1	A limit on the amount of a secured claim, that may result in a partial payment or no payment at all to the secured creditor, set out in § 3.2	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in § 3.4	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.3	Nonstandard provisions, set out in Part 8	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

Part 8: Nonstandard Plan Provisions

8.1 Check "None" or list Nonstandard Plan Provisions.

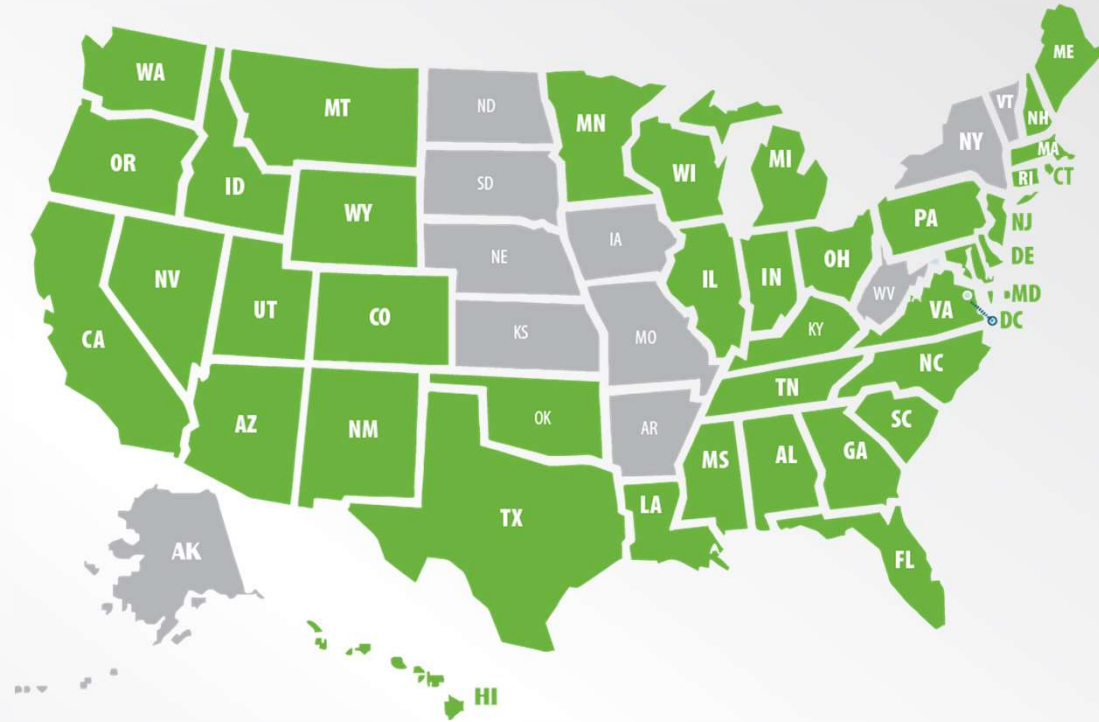
None. If "None" is checked, the rest of Part 8 need not be completed or reproduced.

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in this N.D. Ga. Chapter 13 Plan Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3. (Insert additional lines if needed.)

■ North American Title Insurance Company

- For more information, visit us at www.natic.com
- E-mail Kelsea Laun:
GAunderwriting@natic.com
ALunderwriting@natic.com
MSunderwriting@natic.com



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Thank you!