

## **What happens to a Contract Purchase of Real Estate when the Purchaser files for Bankruptcy?**

When a property is purchased on contract, land contract or some other form of agreement where the purchaser is renting to own real estate and the purchaser files for bankruptcy it can leave the seller in a precarious position. One of three things is likely to happen depending on the circumstances:

First, the seller may file a Motion for Relief from Stay and seek to foreclose the land contract and evict the purchaser from the property. A Motion for Relief from Stay allows the seller to commence eviction proceedings after the Court issues an Order lifting the Automatic Stay as to that property. The purchaser will likely not be making his/her/their payments and after the Order is issued then the seller can file a civil lawsuit or a small claims eviction lawsuit seeking eviction. Purchaser's obligation will generally be discharged in the bankruptcy and seller can only seek return of his/her/its possession of the property and not any back rent, damages or other money claims against purchaser.

Another option is that the purchaser and seller may agree to allow the contract to remain in effect. Generally, a purchaser must be up to date in his/her payments to keep the contract and possession of the property. In this case, the parties must execute a Reaffirmation Agreement which must be approved by the Court. If this occurs, then the contract is not discharged and the purchaser basically remains responsible for all terms of the land contract as though no bankruptcy has been filed.

Another outcome will be that the purchaser and seller can continue forward as though no bankruptcy has been filed. If the purchaser receives a discharge, it will discharge the contract's terms as to the seller and the seller will have no recourse for damages unless a new contract is signed after the bankruptcy was filed or a reaffirmation agreement has been approved by the Court. This is the preference of most parties because it avoids cost and obligations; however, it is not recommended that seller's proceed with this type of arrangement because they lose the ability to claim damages from the purchaser if a default occurs in the future.

Whether you are a Seller or a Purchaser, Wischmeyer Law Office can help you negotiate a Reaffirmation Agreement and get it approved by the Bankruptcy Court. Give us a call today to see our solutions for land contracts in bankruptcy.

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