Powers of the Chapter 7 Trustee: Carve-out, Sale of Assets and Short Sales in Chapter 7

Diane P. Furr, Moderator
Poyner Spruill LLP; Charlotte, N.C.

C.R. "Chip" Bowles, Jr.
Bingham Greenebaum Doll LLP; Louisville, Ky.

Richard M. Dauval
Leavengood, Nash, Dauval & Boyle, P.A.; St. Petersburg, Fla.

American Bankruptcy Institute

DISCOVER

asset sales databank
363.abi.org

Retrieve Asset Sales Information

Asset Sales Databank – The Key to § 363

With 363:

- **View by asset sales price, circuit, date and court**
- **Read summaries of key terms of recent asset sales**
- **Receive notification of new asset sales via email or RSS**
- **Use it FREE as an ABI member**

Stay Current on Sales Trends
363.abi.org

44 Canal Center Plaza • Suite 400 • Alexandria, VA 22314-1546 • phone: 703.739.0800 • abi.org

Join our networks to expand yours:

A. Calculation of Trustee Fee Under 11 U.S.C. § 326 in Credit Bid/Fully Secured Sale Situation

11 U.S.C. § 326 sets forth a mathematical formula for calculating the maximum fee allowable to a trustee and clearly states that calculations are limited to "monies distributed."[1] The question confronting Trustee is what constitutes "monies distributed" for purposes of this section.

Courts have grappled with the question of how to treat distributions of property in the context of 11 U.S.C. §326 trustee fees. Although the turnover of properties or abandonment of property by a trustee would not be included in calculations of 11 U.S.C. § 326 compensation,[2] a harder question arises when ownership of property of an estate is actually transferred to satisfy the claims of creditors. *Matter of England*[3] is one of the leading cases on this issue. In *England,* the trustee reached a settlement with several of the creditors in a chapter 7 case where they accepted certain of the debtor's real estate in full satisfaction of their claims. In return those creditors would provide sufficient funds to the estate to pay the remaining creditors in full. The trustee requested 11 U.S.C § 326 fees calculated on the value of the property distributed to the settling creditors as well as to the cash distributed to the other creditors. The Bankruptcy Court refused to award fees for the distributed property, but the District Court reversed and allowed the

---

[1] 11 U.S.C. § 326(a) provides:

> *See, also, Pilch v. Bareham*, 2008 U.S. Dist. Lexis 53351 (W.D. Mich. July 14, 2008) (holding trustee entitled to include entire recovery from a lawsuit in 11 U.S.C. § 326(a) calculations when retained law firm was entitled to 50% of recovery as its fee).

[2] *See, e.g., In* re Music Merchandisers, Inc., 131 B.R. 377 (Bankr. M.D. Tn. 1991); *In* re B&L Enterprises Inc., 26 B.R. 220 (Bankr. W.D. Ky. 1982); In *re* SMS Inc., 15 B.R. 496 (Bankr. D. Kan. 1981).

[3] 153 F.3d 232 (5th Cir. 1998).

fee. The Fifth Circuit reversed the District Court based on the plain language of 11 U.S.C. § 326(a). It held that the term "money" should be read literally, not liberally.[4]

There are some cases that have allowed 11 U.S.C. § 326(a) compensation to be calculated to the value of property distributed, including *In re Greenley Energy Holdings of Pa., Inc.*,[5] which allowed a trustee to include the value of guarantee future contracts in calculating his 11 U.S.C. § 326(a) fees, and *In re Stanley*,[6] which allowed lien assumptions by creditors to be included in calculations of 11 U.S.C. § 326 trustee fees. But these cases, though not expressly overruled, have likely been effectively reversed by their respective circuits.[7]

Credit bids by secured creditors used to acquire encumbered property of the estate have generally been considered a form of property distribution that cannot be considered in calculating the 11 U.S.C. § 326 fee cap.[8] In *In re Lan Associates XI, L.P.,* [9] the court noted that, although excluding credit bids could result in an instance "in which a trustee receives less compensation than he deserves,"[10] such an unfortunate result was required by the language of the statute. This result also will occur when an assignee or designee of a secured debt executes the credit bid.[11]

14609721_1.docx

---

[4] *Id.* at 237.

[5] 102 B.R. 400, 404 (E.D. Pa. 1989).

[6] 120 B.R. 409, 413 (Bankr. E.D. TX. 1990).

[7] *See In re England*, 153 F.3d 235-37 (5th Cir. 1998) (*criticizing In re Stanley*) and *In re Lan Assocs. XI L.P.,* 192 F.3d 109, 118 (3rd Cir. 1999) (*criticizing In re Greenley*).

[8] *See In re Hokulani Square, Inc*., 460 B.R. 763 (9th Cir. BAP 2011) (credit bid was not monies distributed and could not be counted in determining 11 U.S.C. § 326(a) fee cap).

[9] 192 F.3d 109, 120 (3d Cir. 1999).

[10] *Id.*

[11] *See U.S. Trustee v. Tamm*, 460 B.R. 763, 768 (9th Cir. BAP 2011 (discussing secured creditor excises their 11 U.S.C. § 363(k) rights to credit bid through a designee).

Caveat Emptor:
Current Issues in Acquiring Distressed Businesses

The ancient Latin phrase, *caveat emptor* ("let the buyer beware") is frequently invoked in situations involving business issues related to the purchase of distressed assets. However, recently, several important decisions concerning secured creditors rights and the finality of bankruptcy sales have risen, which make this traditional proverb applicable to the legal aspects of purchasing assets from debtors in bankruptcy cases.

A. "Free and Clear" Sales under 11 U.S.C. § 362: Is there clarity after Clear Channel Outdoor, Inc. v. Knupfer, 391 B.R. 25 (9th Cir. BAP 2008).

Two years ago, the Bankruptcy Appellate Panel of the Ninth Circuit issued its opinion in Clear Channel Outdoor, Inc. v. Knupfer, 39 B.R. 25 (9th Cir. BAP 2008) ("Clear Channel") which raised serious issues about the ability of courts, under the provisions of 11 U.S.C. § 363, to sell assets, free and clear of non-consenting junior liens.[1] Given the frequency of underwater judicial liens in bankruptcy cases and the scope of the Clear Channel decision, this decision was the subject of significant comment.[2]

The facts of Clear Channel are fairly straight forward. Prior to the bankruptcy filing, the Debtor owned real estate near Burbank, California ("Real Estate"). The property was encumbered by a first lien in the amount of over $40,000,000 and a second lien in the amount of approximately $25 million.

After a Chapter 11 Trustee was appointed in the case, she entered into an auction process, with the agreement of the first lien holder, for the Real Estate. Under the auction process, the first lien holder ("DB") would purchase the property with a credit bid of over $41,000,000 and make additional payments of $800,000 to the Chapter 11 bankruptcy estate and $750,000 to pay other senior lien holders, real estate taxes and the costs of closing. If no higher confirming bid was received by the Chapter 11 Trustee, under this bid, the second lien holder ("Clear Channel") would not be paid in full.

The auction did not produce a qualified overbid and DB purchased the property and paid the additional costs. As part of the order approving the sale ("Sale Order"), the Bankruptcy Court found that DB was a good faith purchaser under 11 U.S.C. § 363(m)

---

[1] See e.g. In re Nashville Senior Living, LLC, 407 B.R. 222 (6th Cir. BAP 2009) (rejecting Clear Channel's holding that the 11 U.S.C. § 363(m) did not apply to "free and clear" determinations under 11 U.S.C. § 363(f)); In re Jolan, Inc., 403 B.R. 866 (Bkrtcy. W.D. Wash. 2009) (Discussing numerous legal and equitable procedures which permit property to be sold and a junior lien released for less than full payment of the junior liens).

[2] See e.g. Lawless BAP Prohibits Sale Free and Clear of an Underwater Lien, 28 Bankr. L. Ltr. (No. 10. 2008) Oswald and Winchell, Missing the Forest for the Trees in § 363; How the Ninth Circuit Bankruptcy Appellate Panel Neglected the Big Picture in the *Clear Channel Decision,* 2009 No. 4 Norton Bankr. L. Advisor 2 (2009).

and refused to stay the sale order pending an appeal. Despite the lack of a stay, Clear Channel appealed the Sale Order.

On appeal, the Ninth Circuit Bankruptcy Appellate Panel ("BAP") considered three primary issues: First, was the Sale Order moot. Second, if the approval of the sale of the Real Estate was moot, were the provisions of the sale order relating to the stripping of the second lien also moot. Finally, did any provisions of 11 U.S.C. § 363(f) permit the sale of the Real Estate, by credit bid, free and clear of the non-consenting second lien.

On the first issue, the BAP's motion panel ruled that the appeal of the underlying sale was moot.[3] The BAP, after a discussion of constitutional, equitable and 11 U.S.C. § 363(m)[4] mootness, also held that the sale of the Real Estate was moot under both 11 U.S.C. § 363(m) and the doctrine of equitable mootness.[5]

On the issue of whether the "stripping" of the second lien of Clear Channel was moot, the BAP held that neither the doctrines of constitutional mootness, equitable mootness nor 11 U.S.C. § 363(m) prevented the issue of whether the free and clear nature provisions of the sale which stripped Clear Channel's second lien, could be judicially reviewed.[6] The BAP reasoned that 11 U.S.C. § 363(m) only protected provisions of a sale order related to 11 U.S.C. § 363(b) and (c) (which govern the actual sale of assets) and not any other provisions of 11 U.S.C. § 363 related to a sale including the free and clear provisions of § 363(f), finding:

> First, § 363(m) by its terms applies only to "an authorization under subsection (b) or (c) of this section …." Here, the remaining challenge is to the authorization under subsection (f) to sell the property free of Clear Channel's lien. Section 363(m) thus cleaves a distinction between authorizations to "use, sell or lease … property of the estate" as set forth in § 363(b) and authorizations under § 363(f) to "sell property under subsection (b) or (c) of this section free and clear of any interest in such property …." Section 363(m) thus protects the court's authorization of a sale, in this case, out of the ordinary course of business, again making a distinction between the authorization of a sale and the terms under which the sale is to be made.
>
> Second, the subsection limits only the ability to "affect the validity of a sale or lease under such authorization…." Here, the telling location is the limitation of § 363(m) to "sale[s] or lease[s]" authorized under § 363(b) or (c). Omitted is the "use" prong of authorization. As a result, a

[3] 391 B.R. at 32 n.6. However, it also ruled that the question of whether the second lien could be "stripped" was not moot.
[4] 11 U.S.C. § 363(m) provides:
[5] Id. at pp. 33-37.
[6] Id.

> plain-language reading of the section would not give § 363(m) protection to an out-of-the-ordinary-course use approved by a bankruptcy court.
>
> This limitation leads us to conclude that Congress intended that § 363(m) address only changes of title or other essential attributes of a sale, together with the changes of authorized possession that occur with leases. The terms of those sales, including the "free and clear" term at issue here, are not protected.

The final issue addressed by the BAP in Clear Channel was whether any provision of 11 U.S.C. § 363(f) would allow the sale of the real estate free and clear of Clear Channel's second lien.[7] The BAP initially determined that 11 U.S.C. § 363(f)(1)-(4) did not apply to permit the sale free of Clear Channel's second lien. It then reviewed 11 U.S.C. § 363(f)(5) to determine whether it provided a basis to sell the Real Estate free and clear of Clear Channel's lien.

Initially, the BAP rejected the plain language of 11 U.S.C. § 363(f)(5) and interpreted this provision as requiring that a legal or equitable proceeding exist under state or federal law that could require a non-consenting junior lien holder to release its lien for less than full payment of the junior lien holder's claim.[8]

The second and more puzzling holding is that the BAP seemed to believe that 11 U.S.C. § 363(f)(5) had a "relatively small role" in sales under 11 U.S.C. § 363.[9] This language, which may have resulted from poor argument,[10] ignored the numerous proceedings, including stale foreclosure law and provisions under the UCC for a senior lien holder to sell collateral free and clear of junior liens.[11] Based on their view of the extremely limited role 11 U.S.C. § 363(f)(5), they reversed and remanded the case for further consideration of whether any law permitted the sales free and clear of junior liens which are not paid in full.

Since its publication, Clear Channel has been either roundly rejected or heavily distinguished by courts which have considered both its section 363(m) mootness interpretation and the 11 U.S.C. § 363(f)(5) ruling. In In re Nashville Senior Living,

---

[7] The BAP started its opinion by stating: "This appeal presents a simple issue: outside a plan of reorganization, does § 363(f) of the Bankruptcy Code permit a secured creditor to credit bid its debt and purchase estate property, taking title free and clear of valid, nonconsenting junior liens? We hold that it does not." Id. at 29. It is this extremely general statement which has raised concerns for purchasers of property under 11 U.S.C. § 363(f) and criticism of Clear Channel.

[8] Id. at 41.

[9] Id. at 43. The BAP rejected using 11 U.S.C. § 1129(b) outside of the confirmation of a Chapter 11 plan as a basis for sales free and clear under 11 U.S.C. § 363(f)(5).

[10] Id. at 46. (noting that neither the appellees nor the Bankruptcy Court had identified any proceeding which could compel Clear Channel to accept less than the amount of its claim.)

[11] See In re Jolan, Inc., 403 B.R. 866 (Bkrtcy. W.D. Wash. 2009) (listing numerous ways 11 U.S.C. § 363(f)(5) can be satisfied under Clear Channel and state law.)

LLC,[12] the court flatly rejected Clear Channel's holding that 11 U.S.C. § 363(m) does not moot appeals related to 11 U.S.C. § 363(f) free and clear issues, stating:

> We conclude that Clear Channel does not support the Committee's position for two reasons. First, Clear Channel cited no case law for its conclusion and the overwhelming weight of authority disagrees with its holding that the § 363(m) stay does not apply to the "free and clear" aspect of a sale under § 363(f). See, e.g., Canzano v. Ragosa (In re Colarusso), 382 F.3d 51, 61-62 (1st Cir.2004); Wintz v. Am. Freightways, Inc. (In re Wintz Companies), 230 B.R. 840, 844-45 (8th Cir. BAP 1999); Whatley Ranch Joint Venture, Ltd. v. Whatley (In re Whatley), 169 B.R. 698, 701 (D.Colo.1994); In re Wieboldt Stores, Inc., 92 B.R. 309, 311 n. 1 (N.D.Ill.1988); Int'l Union v. Morse Tool, Inc., 85 B.R. 666, 668 (D.Mass.1988); Apex Oil Co. v. Vanguard Oil & Serv. Co., Inc. (In re Vanguard Oil & Serv. Co.), 88 B.R. 576, 579-80 (E.D.N.Y.1988); Key Bank N.A. v. IRS (In re Lake Placid Co.), 78 B.R. 131, 135 n. 1 (W.D.Va.1987); Hicks v. Pearlstein (In re Magwood), 785 F.2d 1077, 1080-81 (D.C.Cir.1986). Perhaps more significantly, in a case that Clear Channel ignored, the Ninth Circuit had previously applied § 363(m) to a free and clear sale under § 363(f). In re Robert L. Helms Const. & Dev. Co., Inc., 110 F.3d 1470, 1475 (9th Cir.1997), vacated as to one of the consolidated appeals on other grounds, In re Robert L. Helms Const. & Dev. Co., Inc., 139 F.3d 702, 704 n. 2 (9th Cir.1998). Accordingly, Clear Channel appears to be an aberration in well-settled bankruptcy jurisprudence applying § 363(m) to the "free and clear" aspect of a sale under § 363(f).

In In re Jolan, Inc.,[13] a Bankruptcy Court, sitting in the Ninth Circuit, did not go as far in its criticism of Clear Channel holding that Clear Channel's broad statements rejecting the ability of parties to use 11 U.S.C. § 363(f) to sell assets free and clear of non-consenting junior liens were based primarily on the failure of the parties to properly address the issue of non-bankruptcy law which allows such sales, rather than a controlling analysis of the law.[14] The Jolan Court listed numerous legal and equitable proceedings where an entity could be compelled to accept a monetary satisfaction for their liens.

Therefore, while Clear Channel's unfortunately broad language has raised numerous concerns about the ability of parties to purchase assets in bankruptcy cases free

[12] 407 B.R. 222 (6th Cir. BAP 2009).
[13] 403 B.R. at 866.
[14] Id. at 869.

and clear of underwater, non-consenting, junior liens, the case law interpreting it has done much to restrict, if not to overrule, its impact. However, until it is reversed, its holding must be carefully considered in any bankruptcy case filed in the Ninth Circuit.

B. Secured Claims which are Not So Secured: In re Philadelphia Newspapers, LLC and Credit Bids.

While the secured creditor in Clear Channel had to fight to ensure that its credit bid purchased the property free and clear of junior liens, in In re Philadelphia Newspapers, LLC[15] ("Philadelphia Newspapers"), the secured creditor had difficulty in even attempting to use their valid and undisputed debt to credit bid for the debtors' assets under the terms of the debtors' proposed plan.[16]

In Philadelphia Newspapers, the pre-petition secured lenders ("Lenders") were owed approximately $318,000,000. Their secured claims against the debtors were undisputed. In August of 2009, the debtors' proposed a plan under which all of the debtors' assets would be sold at an auction. At the time the plan was filed, the debtors entered into an asset purchase agreement with insiders of the debtors, which under the plan would pay the Lenders $37,000,000 in cash and transfer ownership of the debtors' headquarter, (valued at $29,000,000) to the Lenders, subject to a two year rent free lease. The lenders would also receive any additional cash generated by the plan's auction. The terms of the plan auction and related bidding procedures did not allow the Lenders to "credit bid" (i.e. bid their secured debt instead of cash) at the plan auction. The Debtors argued that as the sale was being conducted under 11 U.S.C. § 1129(b)(2)(A)(iii), there was no absolute right to credit bid as there was under sales for 11 U.S.C. § 363, and that they only had to provide the "indubitable equivalent" of the Lenders' claim under 11 U.S.C. § 1129(b)(2)(A)(iii). The Lenders, the Creditor's Committee, and numerous other creditors objected to the proposed plan and "no credit bid" provisions.

The Bankruptcy Court agreed with the Lenders and held that, as the proposed plan was in all respects a plan sale under 11 U.S.C. §1129(b)(2)(A)(ii) (which requires credit bidding) except for allowing credit bidding, its failure to permit credit bidding was inappropriate. It also held that although 11 U.S.C. § 1129(b)(2)(A)(iii) did not specifically require credit bidding, under an integrated reading of Sections 363, 1111(b) and 1129(b) allowing credit bidding in a plan which contemplated a sale of assets was required. It approved the bidding procedures, but allowed the lenders to bid up to the entire amount of their secured debt of over $318,000,000 claim. The debtors appealed to the District Court.

The District Court reversed the Bankruptcy Court holding that the plain reading of 11 U.S.C. § 1129 demonstrated that the provisions of 11 U.S.C. § 1129(b)(2)(A) were clearly stated in the alternative and that 11 U.S.C. § 1129(b)(2)(A)(iii), the provisions under which the plan sale was being completed, did not require, as a matter of law, that the lenders be given credit bidding rights in the proposed auction.

---

[15] 599 F.3d at 298 (3rd Cir. 2010).

[16] See also In re Pacific Lumber Co., 554 F.3d 229 (5th Cir. 2009) (holding, among other things, that a plan, which failed to provide a secured creditor the right to credit bid its secured debt, could be confirmed).

The Third Circuit, in a 2-1 decision, affirmed the District Court, holding that: (i) the plain meaning of 11 U.S.C. § 1129(b)(2)(A)(iii) allowed the Debtors to propose a sale of the property without allowing the lenders to credit bid their claims;[17] (ii) the provisions of 11 U.S.C. § 1129(b)(2)(A)(iii) did not require Debtor to allow secured creditors to credit bid at a plan sale conducted under this provision of the Bankruptcy Code;[18] and (iii) neither section 363(k)[19] nor section 1111(b)[20] of the Bankruptcy Code required the Debtors to permit credit bidding in a sale under 11 U.S.C. § 1129(b)(2)(A)(iii).[21]

However, two years later, the Supreme Court, in RadLAX Gateway Hotel LLC v. Amalgamated Bank, ___ U.S. ___ 132 S.Ct. 2065 (2012), effectively overruled Philadelphia Newspapers and similar cases and held that 11 U.S.C. § 363(k) gives the holder of an allowed secured claim an absolute right to credit bid its claim. This means that no matter the context, secured creditors will have credit bid rights unless there is some way to legitimately dispute their claim.

3952910_1.doc

[17] 599 I.3d at 304-310.
[18] Id. at 310-311.
[19] This provision required credit bidding in 11 U.S.C. § 363 sales.
[20] 11 U.S.C. § 31111(b) allows nonrecourse lenders the right to elect to treat any deficiency claim as fully secured.
[21] 599 F.3d at 311-318.

Introduction to Bankruptcy Short Sales
and the reasons why mortgage lenders should be happy to learn their borrower filed Chapter 7 bankruptcy.

Bankruptcy Short Sales.
When a homeowner files Chapter 7 bankruptcy the standard play called by the lender is to (a) hire a lawyer to file the motion to lift the automatic stay; and once the stay is lifted, (b) initiate or continue the foreclosure process. This is an outdated, knee-jerk strategy aimed at limiting the foreclosure delay caused by Chapter 7 bankruptcy. In the past three years, outside of the bankruptcy arena, mortgage lenders have learned the benefit of the "short sale." A "short sale" occurs when the debtor-homeowner tries to sell his or her home but is unable to generate enough sales proceeds to pay off all liens and closing costs associated with the property. Therefore, the lender must consent to the sale of a home despite not receiving 100% of what's owed on the mortgage note. Many times the deficiency debt is negotiated down to a fraction of the total owed, if not outright cancelled by the lender. The logic is simple: cash out now while the market is trending down or bottoming out without having to endure the cost and time of foreclosing, maintaining and remarketing the property.

Short sales are part of the new way of doing business for mortgage lenders. This begs the question, is the "lift the stay & foreclose the property" strategy the best strategy? Arguably, it is not.[1] Mortgage lenders need to reconsider their outdated bankruptcy strategy and instead consider a new, more efficient and solution-minded strategy that a few regional banks have recently discovered, the "Bankruptcy Short Sale." As discussed in further detail below, closing a short sale within the bankruptcy arena has a few extra steps but has a great deal of benefit to the lender – benefits that most attorneys, let alone lenders know nothing about.

Back to Business.
Whether debtors are surrendering their home or an investment property, once a property is surrendered in a Chapter 7 bankruptcy, by operation of law, the Trustee of the bankruptcy estate becomes the new owner of the property. This is good for the mortgage lender because the typically unsophisticated, distraught homeowner has been replaced with a sophisticated, emotionless fiduciary who can proactively manage the efforts to sell the property. Unfortunately, many times debtors who are faced with surrendering their home are losing their primary residence and are frustrated with their financial situation. A popular strategy employed by these frustrated debtor

[1] See 11 U.S.C 363(f).

homeowners is to not only fail to cooperate with the mortgage lender, but in many instances, proactively stall the foreclosure of the home so as to live “rent free” for as long as possible. While the debtor homeowner may be "maintaining" the property, the cost and consequence to the lender of carrying this "toxic asset" can be material...and something it would like to avoid.

Once the debtor's home becomes property of the bankruptcy estate the debtor's ability to stall is over and the lender can focus on liquidating their collateral, just in a new, more expeditious manner. With the Trustee stepping into the shoes of the debtor homeowner, the Trustee and the lender can focus on working together to list the property, procure a buyer and close a sale...all without further debtor-created delay.

Save time and the cost of foreclosure.

A common issue when closing on a short sale outside of the bankruptcy court is that all lien holders must consent to the sale – and gaining their consent can be time-consuming, challenging and expensive. Junior lienholders, like second mortgages and equity lines of credit, will typically ask for $ 4,000 to $ 6,000 to gain their consent to a short sale. Some lien holders, like judgment creditors, can be very difficult to work with and sometimes ask that a lien be paid in full before gaining their consent. In short, if the debtor homeowner cannot "run the gamut" and obtain full lien-holder consent, time and money will have been wasted and the lender no better off.

Under 11 U.S.C. § 363(f), a Chapter 7 Trustee can bypass the need for junior lienholder consent to sell the property by filing a motion to sell the property free and clear of liens. Such a motion is served on all lienholders and has the effect of a foreclosure complaint. Assuming no sustainable objection to the sale is made, the Bankruptcy Court can enter an order that authorizes the Trustee to proceed with the sale of the property and that transfers the liens to the sale proceeds in the same order of priority and effect as they existed on the property that was sold. In most short sales the sale proceeds are not enough to satisfy the senior lienholder, so in effect the junior lienholders are wiped out - just like in a state court foreclosure pursuant to Florida Statutes, Chapter 702.

By virtue of working with the Chapter 7 Trustee, mortgage lenders can derive all the benefits of a short sale, on a faster timetable when the same short sale might not have otherwise been feasible outside of the bankruptcy court.

Time really is money.

Empty homes result in the declining of values. This is a major concern for mortgage lenders. Here in Florida, foreclosures can take as long as three years, sometimes longer if there are problems with the chain of custody with the note and/or the foreclosure

lawsuit is being actively defended. With soaring temperatures, high humidity, mold potential, gigantic palmetto bugs and all the other great things that come with living in Florida, vacant homes don't stand a chance. Plain and simple, no matter where the home is located, homes need to be occupied and attended to if you are going to preserve their value. Limiting vacancies as well as fairly and lawfully dealing with defaulting squatters is vital to mortgage lenders attempting to mitigate their losses.

Before Chapter 7 Trustees and mortgage lenders began engaging in Bankruptcy Short Sales the outlook was pretty grim on vacant homes. The mortgage lender would either need to engage in the lengthy process of state court foreclosure and remarket the property before being able to get cash out of the home and take the asset off the books, or hope that the debtor homeowner (despite little incentives) co-operates with the process of short sale post bankruptcy. As mentioned earlier, people who have to go through the stress of bankruptcy are usually too emotionally and mentally exhausted to go through the document intensive process of gaining short sale approval. Furthermore, the debt and the pressure that goes along with it have been discharged. Some debtor homeowners even blame the mortgage companies for their financial ruin and would rather steal all the counter tops, copper wiring, ceiling fans and light switches than co-operate with the lender to make sure they maximize the value of the home.

In short, the chapter 7 Trustee functions as a savvy, emotionless seller who can work with the lender to ensure that the home is secured and sold as quickly as possible, thereby preserving as much value as possible for the mortgage lender.

No complicated document requirements.

There are two basic components to the average, non-bankruptcy short sale negotiation: (a) does the sale price truly reflect the value of the home; and (b) what is going to happen to the deficiency debt owed to the mortgage lender. When the homeowner files bankruptcy the debt is discharged and--there is no deficiency debt to discuss. Therefore, in a bankruptcy estate short sale, the only issue left to consider is the value of the property – and that's what appraisers, real estate brokers, investors and the free market are for. Chapter 7 Trustees have the ability to list and market surrendered homes and are under a fiduciary duty to get the best, yet most efficient sale price possible. This creates a win-win-win-win scenario. The debtor wins: no final judgment of foreclosure on their record and no ordinance violations or HOA problems to worry about. The lender wins: it is able to quickly and more efficiently sell distressed property. The local community wins: selling surrendered or abandoned properties to caring, solvent owners, helping to stem the tide of declining property values. And finally, the creditors win: through a "carve-out" approved by both the secured lender

and the bankruptcy court, the creditors participate in a meaningful distribution from the estate.

Conclusion.
Many Chapter 7 Trustees already have the relationships in place -- real estate brokers, title companies and special counsel - familiar with the Bankruptcy Code's and Court's requirements, so that properties surrendered in Chapter 7 bankruptcies can quickly and efficiently be liquidated for fair market value, allowing lenders to quickly sell distressed, toxic properties free and clear of liens, ultimately saving them time, money and solving some of their largest problems: dealing with distressed real estate.

Authors:

Richard M. Dauval is a partner with Leavengood, Nash, Dauval & Boyle, P.A. who manages its consumer bankruptcy practice. Richard is also a chapter 7 bankruptcy panel trustee in the Middle District of Florida, Tampa Division. Richard is board certified in consumer bankruptcy law by the American Bankruptcy Institute and has personally been involved in thousands of consumer bankruptcy filings. His experience in consumer bankruptcies and chapter 7 trustee short sales has positioned himself to be hired as special counsel to other chapter 7 bankruptcy trustees, helping them to facilitate and successfully negotiate these 11 U.S.C. § 363 bankruptcy short sales.

Ian R. Leavengood is a partner with Leavengood, Nash, Dauval & Boyle, P.A. who manages its real estate & title practice. Ian too has been involved with thousands of consumer bankruptcies over his career and is very familiar with the consumer bankruptcy process and contested matters in the bankruptcy court. Ian is a licensed member of the Florida Attorneys Title Insurance Fund and has worked with its general counsel to gain approval for the content and form of the 11 U.S.C § 363 short sale.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE: Case No. 8:12-BK-12392 CPM
Chapter 7

Debtor Name

DEBTOR(S)

MOTION TO DETERMINE SECURED STATUS
OF SILVERTHORN / HERNANDO HOMEOWNERS ASSOCIATION, INC.

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

PURSUANT TO LOCAL RULE 2002-04, THE COURT WILL CONSIDER THIS MOTION WITHOUT FURTHER NOTICE OR HEARING UNLESS A PARTY IN INTEREST FILES AN OBJECTION WITHIN 30 DAYS FROM THE DATE OF SERVICE OF THIS PAPER. IF YOU OBJECT TO THE RELIEF REQUESTED IN THIS PAPER, YOU MUST FILE YOUR OBJECTION WITH THE CLERK OF THE COURT AT 801 NORTH FLORIDA AVENUE, TAMPA, FL 33602 AND SERVE A COPY ON THE MOVANT'S ATTORNEY, RICHARD M. DAUVAL, ESQ., 3900 FIRST STREET NORTH, SUITE 100, ST. PETERSBURG, FL 33703.

IF YOU FILE AND SERVE AN OBJECTION WITHIN THE TIME PERMITTED, THE COURT MAY SCHEDULE A HEARING AND YOU WILL BE NOTIFIED. IF YOU DO NOT FILE AN OBJECTION WITHIN THE TIME PERMITTED, THE COURT WILL CONSIDER THAT YOU DO NOT OPPOSE THE GRANTING OF THE RELIEF REQUIRED IN THE PAPER AND WILL PROCEED TO CONSIDER THE PAPER WITHOUT FURTHER NOTICE OR HEARING AND MAY GRANT THE RELIEF REQUESTED.

COMES NOW, the Trustee, Richard M. Dauval, by and through his undersigned attorney, and files this, *Motion to Determine Secured Status of Silverthorn / Hernando Homeowner Association, Inc.,* and states:

1. On August 13, 2012, the Debtor commenced this case by filing a Voluntary Petition under Chapter 7 of the Bankruptcy Code.

2. As of the Filing Date, the Debtor maintained and continues to maintain a title interest in certain real property commonly known as 5423 Legend Hills Lane, Brooksville, FL 34609 and legally described as:

Lot 193, Silverthorn Phase 2B, according to the map or plat thereof as recorded in Plat Book 31, Pages 21 through 24, inclusive, Public Records of Hernando County, Florida ("the Property")

3. Based upon the Hernando County Property Appraiser, John C. Emerson, CFA, (see attached Exhibit "A"), and a recent written offer to purchase the Property as of the date of the filing of this Motion, the Trustee approximates the value of the Property to be $165,000.00.

4. Prior to the Filing Date, the Debtor granted a first mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for SunTrust Mortgage, dated January 26, 2007 and recorded in O.R. Book 2394, Page 715, and assigned to SunTrust Mortgage, Inc. by virtue of Assignment recorded in O.R. Book 2882, Page 51, Public Records of Hernando County, Florida, Doc. No.: 2007007155 of the official records of Hernando County, encumbering the Property in order to secure its claim for the remaining balance of $ 255,511.01.

5. Prior to the Filing Date, Silverthorn / Hernando Homeowner Association, Inc. filed a claim of lien, recorded on May 2, 2012, at O.R. Book 2900, Page 1015, Instrument No. 2012024829, of the official records of Hernando County, encumbering the Property in order to secure its claim for the estimated remaining balance of $ 5,500.00.

6. Based on the foregoing, the Trustee has brought this Motion pursuant t 11 U.S.C. § 506 (a) & (d) for the purpose of requesting this court to determine the secured status of. Specifically, that Silverthorn / Hernando Homeowner Association, Inc. is a wholly

unsecured creditor as it relates to the Property. Further, that as a consequence of Silverthorn / Hernando Homeowner Association, Inc. status as a wholly unsecured creditor that its security interest in the Property is void pursuant to 11 U.S.C. §506(d).

WHEREFORE, the Debtor respectfully request that this Court enters an order granting this Motion, determining that pursuant to § 506(a) Silverthorn / Hernando Homeowner Association, Inc. is a wholly unsecured creditor as it relates to the Property, that as a consequence Silverthorn / Hernando Homeowner Association, Inc. security interest in the Property is a void pursuant to 11 U.S.C. §506(d), and granting such other and further relief as this Court deems just and proper.

/s/ Richard M. Dauval
Richard M. Dauval, Esq., FBN 0664081
Leavengood, Nash, Dauval, & Boyle, P.A.
3900 First Street North
St. Petersburg, FL 33713
Ph No: (727) 327-3328 x303
Fax No.: (727) 327-3305

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. Mail and/or electronic delivery on this day, June 12, 2013, to the following:

The Lien Holders:
Debtor:
United States Trustee, 501 E. Polk Street, Fifth Floor, Tampa, FL 33602

/s/ Richard M. Dauval
Richard M. Dauval, Esq., FBN 0664081
Leavengood, Nash, Dauval, & Boyle, P.A.
3900 First Street North
St. Petersburg, FL 33713
Ph No: (727) 327-3328 x303
Fax No.: (727) 327-3305

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

Case No. 8:12-bk-08785-KRM
Chapter 7

(Debtor Names)

Debtor(s) ./

AGREED ORDER GRANTING TRUSTEE'S SECTION 363(f) MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS
(Doc #18)

THIS CASE came on for hearing on September 26, 2012 to consider Chapter 7 Trustee, Richard M. Dauval's ("Trustee") Section 363(f) Motion to Sell Free and Clear of Liens (the "Motion") (Doc. #18). Richard M. Dauval, Esquire appeared on behalf of the Trustee. No other appearances were made at the hearing. The Court reviewed the Motion and the record and found that no responses or objections have been filed. For the reasons stated orally and recorded in open court, which will constitute the findings of this Court, it is appropriate to grant the Motion. Accordingly, it is:

ORDERED and **ADJUDGED** as follows:

1. The notice of the Motion and the hearing thereon is approved as proper and adequate under the circumstances.

2. The Motion is GRANTED and the sale to Mr. Name ("Buyer") is approved as the highest and best offer.

3. The Trustee is authorized to sell the real property located at:

Tract 24, Waterbury Grapefruit Tracts, Section 11, Township 35 South, Range 20 East, as per plat thereof recorded in Plat Book 2, Page 37, of the Public Records of Manatee County, Florida, more commonly known as 25510 L & J Road Myakka City, Florida 34251 (the "Real Property"),

to Buyer for the purchase price of $ 150,000.00, and in accordance with the terms and conditions that are set forth in the HUD 1 which is attached to the Motion.

4. The Trustee is authorized to pay the following undisputed liens or claims at closing of the sale:

a. SunTrust Bank $ 125,710.00

5. Pursuant to Section 363(f) of the Bankruptcy Code, effective upon closing, the sale of the Real Property will vest in the Buyer all right, title and interest of the Debtor and the bankruptcy estate in the Real Property, free and clear of the liens, claims or interests listed below (collectively, the "Affected Interests"):

1. (name of debtor husband), Debtor; name on deed
2. (name of debtor wife), Debtor; name on deed
3. SunTrust Bank, Mortgage lienholder

6. Unless the holders of the liens, claims or interests identified in paragraph 5 above have agreed to other treatment, or their interest have been stripped under 11 U.S.C § 506(d), their liens, claims or interests shall attach to the proceeds of the sale with the same force, effect, validity and priority that previously existed against the Real Property.

7. This Order is and shall be effective as a determination that, upon and subject to the occurrence of the closing of the sale, all Affected Interests have been and hereby are adjudged and declared to be unconditionally released as to the Real Property.

8. The Buyer have not assumed any liabilities of the Debtor.

9. The Trustee is authorized to execute any such releases, termination statements, assignments, consents or instruments on behalf of any third party, including the holders of any liens, claims or interests identified in paragraph 5 of this Order, that are necessary or appropriate to effectuate or consummate the sale.

10. The Trustee, and any escrow agent upon the Trustee's written instruction, shall be authorized to make such disbursements on or after the closing of the sale as are required by the purchase agreement or order of this Court, including, but not limited to, (a) all delinquent real

property taxes and outstanding post-petition real property taxes pro rated as of the closing with respect to the real property included among the purchased assets; and (b) other anticipated closing costs:

a. Total Sales/Brokers Commission:
6% to RE/MAX Realtec Group $ 9,000.00
Seller's Agent (Order, Doc. No. __)

b. Title Charges:
Leavengood, Nash, Dauval & Boyle $ 3,875.00
(not to include attorney fees)

c. Government recording / transfer charges $ 1,050.00

11. The Trustee is hereby authorized to execute the purchase agreement, or other related documents that are reasonably necessary or appropriate to complete the sale, and to undertake such other actions as may be reasonably necessary or appropriate to complete the sale.

12. Except as otherwise provided in the Motion, the Real Property shall be sold, transferred, and delivered to Buyer on an "as is, where is" or "with all faults" basis.

13. Buyer is approved as a buyer in good faith in accordance with Section 363(m) of the Bankruptcy Code, and Buyer shall be entitled to all protections of Section 363(m) of the Bankruptcy Code.

14. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order and the purchase agreement, all amendments thereto, any waivers and consents thereunder, and each of the documents executed in connection therewith in all respects, including retaining jurisdiction to (a) compel delivery of the Real Property to the Buyer, (b) resolve any disputes arising under or related to the purchase agreement, and (c) resolve any disputes regarding liens, claims, or interests asserted against the Real Property.

15. The purchase agreement and any related documents or other instruments may be

modified, amended or supplemented by the parties thereto, in a writing signed by both parties without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's bankruptcy estate.

DONE AND ORDERED at Tampa, Florida, this _____.

_____
K. Rodney May
United States Bankruptcy Judge

Copies furnished to:
Debtor, Debtor's counsel, Chapter 7 Trustee, United States Trustee, All creditors

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

Case No. 8:bk-12-17980-CPM
Chapter 7

(Debtor Name)

Debtor(s).
_____/

TRUSTEE'S MOTION TO COMPEL INSPECTION
AND TURNOVER OF PROPERTY OF THE ESTATE

COMES NOW the Trustee, Beth Ann Scharrer; by and through her undersigned attorney, and hereby moves, pursuant to 11 U.S.C. §§521(3) and 542(a), for an Order compelling the Debtor to allow the Trustee and her agents access to inspect, inventory and photograph property of the estate and to turn over documents / keys necessary to enable the Trustee to administer the estate and, in support thereof, states as follows:

1. The Debtors are in possessory control of non-exempt real property of the estate that the Trustee is marketing for sale. The Debtors have not cooperated with the Trustee's efforts to schedule a walk through inspection of the property nor indicated that they would cooperate with future efforts to show the property to prospective buyers. The Trustee seeks an Order compelling the Debtors to cooperate with her efforts to inspect the property and allow her listing agent an opportunity to show the property to prospective buyers.
2. Beth Ann Scharrer is the duly appointed, qualified and acting Trustee of the above styled bankruptcy estate.

3. Debtors, (name) and (name), filed the instant Chapter 7 case on November 29, 2012 at which time they owned real property located at: 8705 30th Street East (hereinafter "the Property").
4. The Debtors did not claim the Property as exempt on their Schedule C and testified at the § 341(a) Meeting of Creditors that their intent was to surrender the Property.
5. In order for the Trustee to effectively market the Property for sale it is necessary for the Trustee to inspect the Property, photograph the interior and exterior of the Property, and allow prospective buyers and buyer's agents an opportunity to personally inspect the Property (i.e., *show* the Property).
6. The Trustee and/or her agents (legal assistants, approved listing agents, etc.) have made several attempts to coordinate dates and times with the Debtors as to when the Property can be inspected, photographed and/or inspected by prospective buyers. The Debtors have not cooperated with the Trustee or her agents.
7. The Debtor(s) have an express duty, under 11 U.S.C. § 521(3) to " … cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title."
8. The Trustee believes that an Order will be necessary for the Debtors' to comply with the duties imposed upon them to cooperate with the Trustee and provide the Trustee with the access, items and documents necessary for the administration of the estate.
9. The Trustee specifically seeks the following relief:
    a. An opportunity to inspect / photograph the Property within 3 (three) days of an order granting the instant motion;

b. Prospective relief in that the Debtors make the Property available for inspection by the Trustee, her agents and/or a prospective buyer within 3 (three) days of telephonic or electronic written request of the Debtors or Debtors' counsel;

c. Failure to allow the Trustee the ability to inspect / photograph in accordance with an order granting the instant motion shall create a rebuttable presumption that:

   i. the Debtors have failed to comply with the duties imposed under 11 U.S.C. § 521(3);

   ii. that the Order of Discharge shall be denied / revoked for failure to obey a lawful order of the court under 11 U.S.C. § 727(a)(6)(A); and

   iii. that a pecuniary sanction be imposed against the Debtors for any and all costs actually incurred by the Trustee, and/or her agents, in attempting to coordinate or actually coordinating an inspection of the Property. The aforementioned sanction shall be sought by separate motion of the Trustee or an otherwise adversely affected party.

WHEREFORE, the Trustee moves for the entry of an Order Granting the Trustee's Motion to Allow Inspection and Turnover of Property of The Estate compelling the Debtors to schedule an inspection of the Property within 3 (three) days; to prospectively make the Property available for inspection by the Trustee, her agents and/or a prospective buyer within 3 (three) days of written request; and further ordering that in the event the Debtors fail to cooperate with the Trustee's efforts to inspect, photograph or show the Property shall create the rebuttable presumption that the Debtors have failed to comply

with the duties imposed under 11 U.S.C. § 521(3), that the Order of Discharge should be denied or revoked, and that a pecuniary sanction could be imposed against the Debtors for any and all costs actually incurred by the Trustee, and/or her agents, in attempting to coordinate or actually coordinating an inspection of the Property, and for such other an further relief as the Court may deem just and proper.

/s/ Richard M. Dauval
Richard M. Dauval, Esq.
Florida Bar No. 664081
3900 1st Street North, 100
St. Petersburg, Florida 33703
Phone (727) 327-3328 x 303
Attorney for the Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 12, 2013, a true and correct copy of the foregoing Trustee's Motion For Debtor To Turnover Property Of The Estate has been sent by regular U.S. Mail or the Court's CM/ECF system to:

U.S. Trustee, USTPRegion21.TP.ecu@usdoj.gov
Debtors
Debtors Counsel

/s/ Richard M. Dauval
Richard M. Dauval, Esq
Florida Bar No. 664081
3900 1st Street North, 100
St. Petersburg, Florida 33703
Phone (727) 327-3328 x 303

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

Case No.: 8:12-bk-00630-MGW
Chapter 7

Rankl, Robert
Rankl, Michele

DEBTOR(S).

MOTION TO SELL REAL PROPERTY FREE AND CLEAR OF LIENS, ENCUMBRANCES AND INTERESTS WITH CONSENT OF SENIOR LIENHOLDER (1731 Scarlett Avenue, North Port, Florida 34289)

COMES NOW Richard M. Dauval, Chapter 7 Trustee, by and through his undersigned counsel, and hereby moves for authority to sell certain improved real property free and clear of all liens, encumbrances and interests, and in support thereof states as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The basis for the relief requested herein are, *inter alia*, 11 U.S.C. §§ 105, 363(b) and Federal Rules of Bankruptcy Procedure 2002 and 6004.

BACKGROUND

4. On January 18, 2012, the Debtor commenced this case by filing a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the "Petition Date").
5. Richard M. Dauval was appointed Chapter 7 trustee (the "Trustee").

6. The Debtor owns real property, by virtue of a deed, located at 1731 Scarlett Avenue, North Port, Florida 34289, more particularly known as Lot 6, Block 10, Second Replat of Lakeside Plantation, according to the map or plat thereof as recorded in Plat Book 41, Page 42, Public Records of Sarasota County, Florida (the "Property"). Debtor listed the real property Schedule A that is *encumbered* by a mortgage.
7. The Property is encumbered by a mortgage in favor of HSBC Bank USA, National Association, as Trustee for Wells Fargo Home Mortgage 2007-M11.
8. The Property is encumbered by a valid lien in favor of Lakeside Plantation Village Association, Inc.
9. The Trustee has accepted an offer from James Powell and Christina Powell (the Buyer) to purchase this home in the amount of $160,000.00, as payment in full (subject to Court and Lienholder approval). The current offer was not the only offer on the property but is the highest offer, and not contingent on financing. Moreover, the estate believes it is a fair offer for the current economy and the length the property has remained on the market.
10. The Trustee has conducted a title search and is not aware of any other liens on the Property.
11. Any real property taxes will be paid prorated according to the estimate of $3,885.81
12. The Trustee will seek approval of the sale by the lien holder(s) in this sale.
13. The Trustee has attached a "DRAFT" HUD Settlement Statement that outlines the proposed distribution of the sale proceeds at closing, subject to lien holder(s) approval, as Exhibit "A."

14. The Debtor has also consented to this sale and has cooperated with the Trustee at all times during the marketing of the property and the negotiations with the lien holder.
15. The Buyer is a disinterested party, the Trustee finds him to be acting in good faith, and he should be afforded the protections under Section 363(m).

AUTHORITY TO SELL

16. Pursuant to § 363(b)(1) of the Bankruptcy Code, a trustee, after notice and hearing, may use, sell or lease property of the estate other than in the ordinary course of business. Additionally, pursuant to § 363(f) of the Bankruptcy Code, the trustee may sell property free and clear of any interest in such property of an entity other than the estate if (i) permitted under applicable non-bankruptcy law, (ii) the party asserting such interest consents, (iii) the interest is a lien and the purchase price of the property is greater than the aggregate amount of all liens on the property, (iv) the interest is subject of a bona fide dispute, or (v) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.
17. Section 363(f) of the Bankruptcy Code is stated in the disjunctive. Thus, it is only necessary for the Trustee to satisfy one of the five conditions of § 363(f).
18. The Trustee avers that he shall satisfy section 363(f) (2) insofar as all lien holders, that being HSBC Bank USA, National Association, as Trustee for Wells Fargo Home Mortgage 2007-M11, shall consent to a sale of the property under section 363(f) (2), and that he should then be authorized to sell the Property free and clear of all liens, claims, encumbrances and interests.
19. Accordingly, under section 363(f) (2), the Trustee should be authorized to sell the Property free and clear of all liens, claims, encumbrances and interests.

20. No allegation contained in this Motion or attachments thereto are intended by the Trustee as an attempt to seek approval of professional fees, trustee fees or costs. Amounts denoted for fees or benefit of creditors in the instant motion or attachments thereto are for reference only. Monies collected by the Trustee shall be deposited in an estate account and will be distributed pursuant to applicable bankruptcy law. Moreover, professional compensation and Trustee compensation shall be sought by separate application to the Court.

CONCLUSION

21. The Trustee, in the exercise of his business judgment, believes, and therefore avers, that the proposed sale is in the best interest of the creditors of the bankruptcy estate insofar as there is otherwise no equity in the Property, the Trustee is more familiar with the current market than other interested parties, and a sale under this motion serves the best interest of all interested parties, including the Secured Creditors. The Buyer has agreed, subject to Court approval, to pay to the Trustee the sum of $160,000.00 in exchange for the Property free and clear of all liens, encumbrances, or interests.

WHEREFORE, the Trustee moves for the entry of an Order substantially in the form attached hereto:

A. Authorizing the sale of the Property to the purchaser free and clear of all liens, encumbrances, or interests of any party; and,

B. Authorizing the Trustee to take any all actions and to execute any and all documents necessary and appropriate to effectuate and consummate the terms of said sale of the Property free and clear of all liens, encumbrances, or interests, including without

limitation, executing a deed conveying the interests of the Debtor or any other party claiming an interest in the Property to the Purchaser;

C. Authorizing the Trustee and any escrow agent upon the Trustee's written instruction, shall be authorized to make such disbursements on or after the closing of the sale as are required by the purchase agreement or order of this Court, including, but not limited to, (a) all delinquent real property taxes and outstanding post-petition real property taxes pro rated as of the closing with respect to the real property included among the purchased assets; and (b) other anticipated closing costs:

Total Sales/Brokers Commission:	
3% to RE/MAX Realtec Group Seller's Agent (Application, Doc. No.__)	$ 4,800.00
3% to RE/MAX Anchor Realty Buyer's Agent	$ 4,800.00
Title Charges:	
Leavengood, Nash Dauval & Boyle (not to include attorney fees)	$ 2,600.00
Government recording / transfer charges	$ 1,120.00
Satisfaction of Liens:	
Lakeside Plantation HOA Assessment and Estoppel Fees (calculated as of August 29, 2012)	$ 3,450.00 (estimated)
HSBC Bank USA, N.A., as Trustee for Wells Fargo Home Mortgage	$ 119,719.19

D. Determining that all affected interests , other than the Home Owners' Association (if any), have been adjudged and declared to be unconditionally released as to the Property;

E. Determining that the Buyer has not assumed any liabilities of the Debtor;

F. Determining that the Buyer is approved as a buyer in good faith in accordance with Section 363(m) of the Bankruptcy Code, and that the Buyer is entitled to all protections of Section 363(m) of the Bankruptcy Code, and

G. Granting the Trustee such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. Mail and/or electronic delivery to the Lien Holder: HSBC Bank USA, National Association, as Trustee for Wells Fargo Home Mortgage 2007-M11 c/o Kristia M. Bared, Esquire, Florida Default Law Group, P.L., P.O. Box 25018, Tampa, FL 33622-5018 and HSBC Bank USA, National Association c/o Irene Dorner, President, 452 Fifth Avenue, New York, New York, 10018 (certified mail) and Wells Fargo Home Mortgage 2007-M11 c/o John Stumpf, President, 420 Montgomery Street, San Francisco, CA 94163 (certified mail), Lakeside Plantation Village Association, Inc. c/o Robert W. Anthony, Esquire, Fassett, Anthony & Taylor, 2180 W. SR 434, Suite 5000, Longwood, FL 32779, Debtor: (insert), Debtor's Attorney: (insert), United States Trustee, 501 E. Polk Street, Fifth Floor, Tampa, FL 33602, and all parties of interest on the Matrix this _____ day of _____, 2013.

Respectfully submitted,

/s/ Richard M. Dauval, Esquire
Richard M. Dauval
FBN 0664801
Leavengood, Nash, Dauval & Boyle, P.A.
3900 1st Street North, Suite 100
Saint Petersburg, FL 33703
727-327-3328 x303