

Sale pursuant to a bankruptcy order

Question: Our seller will be selling pursuant to a bankruptcy order. The closing is scheduled for the day after the order will be entered. Can we insure this?

Answer: Probably not.

Bankruptcy Rule 6004 addresses the sale, use or lease of property of the bankrupt estate. Subsection (h) of that rule provides:

(h) Stay of Order Authorizing Use, Sale or Lease of Property. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.

This means that except for orders which specifically provide to the contrary, an order allowing property of the Bankruptcy estate to be sold or leased is virtually ineffective for 14 days following its entry (which is the date the order is entered on the docket of the bankruptcy clerk, not the date it is signed). For our purposes this specifically includes orders authorizing the sale of property free and clear of liens.

If the order specifically provides that the 14 day stay under the Rule is not applicable, insuring the transaction should still be approached with caution (as should any title deriving through a bankruptcy). A member of our underwriting staff is always available to help with these issues.

Obviously the 14 day period mentioned above tracks the 14 day period for a notice of appeal from a bankruptcy order to be filed under Rule 8002. If a notice of appeal is filed during the 14 day period, title should not be insured until the appeal has been adequately disposed of. Our underwriting staff should be consulted in this case.

(For your information, prior to a series of 2009 rule amendments, the 14 day periods recited above were 10 days.)