

Understanding A Bankruptcy Discharge in Title Transactions



A bankruptcy discharge is a court order that releases a debtor from personal liability for certain debts, meaning the creditor can no longer pursue collection against the individual. However, a discharge does not automatically eliminate all liens or encumbrances recorded against real property. From a title and escrow perspective, this distinction is critical: while the borrower's personal obligation to pay may be wiped out, a properly recorded lien may still attach to the property itself unless it has been avoided, satisfied, or otherwise removed through the bankruptcy process.

In a real estate transaction, title professionals review bankruptcy filings to determine how they impact ownership rights and recorded interests. If a seller has filed bankruptcy, the title company will verify whether the property was included in the bankruptcy estate and whether the case is open, dismissed, or discharged. An open bankruptcy may require court approval before a sale can proceed. Even after discharge, documentation may be required to confirm that the trustee no longer has an interest in the property and that the transfer is permitted.

Judgment liens present a common issue. In some cases, a bankruptcy discharge eliminates the debtor's personal liability for the judgment but does not automatically remove a recorded

judgment lien from title. The debtor must take an additional legal step—typically a motion to avoid the lien—if eligible. If that step was not completed, the lien may still appear in the title search and must be addressed before or during closing, often through payoff, settlement, or court order.

Mortgage and deed of trust liens are treated differently from unsecured debts. A bankruptcy discharge generally does not remove a consensual lien securing a loan against real property. Even if the borrower's personal liability is discharged, the lender may retain the right to enforce the lien through foreclosure if payments are not made. For title and escrow, this means any existing mortgage liens must still be paid, assumed, reconveyed, or otherwise resolved as part of the transaction.

Because bankruptcy affects both personal liability and property interests in different ways, careful review of the bankruptcy case docket, schedules, and discharge orders is essential in real estate closings. Title companies often require additional affidavits, trustee letters, or certified court documents to confirm the status of liens and ownership rights. Properly analyzing how a discharge impacts recorded interests helps ensure that the buyer receives clear, insurable title and that the transaction closes without unexpected claims.

This information is provided as a courtesy of Monarch Title Company. Monarch Title Company is not responsible for any loss or damage due to the use of the information contained herein.



MONARCH
TITLE COMPANY