



Distressed Real Estate and Bankruptcy II



**NATIONAL
LAW INSTITUTE**
Continuing Legal Education

Distressed Real Estate and Bankruptcy II

- Carlos J. Cuevas, Esq.
- 1250 Central Park Avenue
- Yonkers, New York 10704
- Tel. No. 914.964.7060
- Fax No. 914.964.7064
- E-mail Ccuevas576@aol.com
- www.carloscuevaslaw.com



Distressed Real Estate and Bankruptcy

BANKRUPTCY CODE SECTION 363 SALES

Copyright 2013 Carlos J. Cuevas, Esq.



**NATIONAL
LAW INSTITUTE**
Continuing Legal Education

**Bankruptcy Code Section 363(b): Sales
Outside of the Ordinary Course of
Business**



Bankruptcy Code Section 363(f)
(3):The Aggregate Value of all Liens
on Such Property



Bankruptcy Code Section 363(f)(4): Bona Fide Dispute

- Bankruptcy Code Section 363(f)(4) does not define the phrase “bona fide dispute.” *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 507 (Bankr. N.D.Ala. 2002).



Bankruptcy Code Section 365(f)(5)

- The existence of judicial and non-judicial foreclosure and enforcement actions under state law can satisfy Bankruptcy Code Section 363(f)(5). *In re Boston Generating, LLC*, 440 B.R. 302, 333 (Bankr. S.D.N.Y. 2010).

Bankruptcy Code Section 363(k):
Credit Bid

- Bankruptcy Code Section 363(k) authorizes a secured creditor is authorized to permit the credit bid the amount of its allowed secured claim. 11 U.S.C. § 363(k).

Bankruptcy Code Section 363(m): **Good Faith Protection**

- Bankruptcy Section 363(m) provides:
- The reversal or modification on appeal of an authorization under subsection (b) and (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Distressed Real Estate and Bankruptcy

Successor Liability ||

- An entity that purchases assets pursuant to Bankruptcy Code Section 363(f) buys assets “free and clear” of all claims. *Douglas v. Stamco*, 363 Fed. Appx. 100 (2nd Cir. 2010). The ability to buy “free and clear” of all claims is a major inducement to purchase assets through a bankruptcy auction.

Distressed Real Estate and Bankruptcy

NONRESIDENTIAL REAL ESTATE
LEASES AND BANKRUPTCY CODE
SECTION 365

Copyright 2013 Carlos J. Cuevas,
Esq.



NATIONAL
LAW INSTITUTE
Continuing Legal Education

Bankruptcy Code Section 365(a): The Assumption or Rejection of Unexpired Leases



***Bankruptcy Code Section 365(b)(1):
Cure and Adequate Assurance of
Future Performance***



Distressed Real Estate and Bankruptcy II

- ***Bankruptcy Code Section 365(b)(3): Shopping Centers***



Distressed Real Estate and Bankruptcy II

- ***Bankruptcy Code Section 365(d)(3):
Mandatory Performance of Lease Obligations***



Distressed Real Estate and Bankruptcy II

- **Bankruptcy Code Section 365(d)(4): The Time in which a Lease Must be Assumed**



Distressed Real Estate and Bankruptcy II

- **Bankruptcy Code Section 365(f): Assignments of Leases**
- Bankruptcy Code Section 365(f) permits a debtor to assign a nonresidential lease of real property, and it states:

Distressed Real Estate and Bankruptcy II

Bankruptcy Code Section 502(b)(6): Damage Claims for Rejected Leases

- Bankruptcy Code Section 502(b) governs rejection damages for an unexpired lease of nonresidential real property, and it states:
- (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

* * * *

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds--



**NATIONAL
LAW INSTITUTE**
Continuing Legal Education

Dischargeability of Debts and Real Estate Bankruptcies

Copyright 2013 Carlos J. Cuevas,
Esq.

Distressed Real Estate and Bankruptcy II

- ***Bankruptcy Code Section 523(a)(4): Fraud or Defalcation While Acting in a Fiduciary Capacity***



Bankruptcy Code Section 523(a)(2)(A): The Dischargeability of Fraudulent Claims Against Contractors



Distressed Real Estate and Bankruptcy II

- **Bankruptcy Code Section 523(a)(6): Wilful and Malicious Injury Claims Against Contractors**



Distressed Real Estate and Bankruptcy

MISCELLANEOUS TOPICS IN REAL ESTATE BANKRUPTCY CASES

Copyright 2013 Carlos J. Cuevas,
Esq.



NATIONAL
LAW INSTITUTE
Continuing Legal Education

Bankruptcy Code Section 505: Tax Certiorari

- Bankruptcy Code Section 505 authorizes under certain circumstances a Bankruptcy Court to determine amount due on property taxes. 11 U.S.C. § 505. The pertinent portion of Bankruptcy Code Section 505(a) states:

Bankruptcy Code Section 543: Receivers

- Bankruptcy Code Section 543 governs the treatment of receivers, and it states:
- (a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.
- (b) A custodian shall--
 - (1) deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and
 - (2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.
- (c) The court, after notice and a hearing, shall--

Distressed Real Estate and Bankruptcy

**SELECTED REGULATORY AND
ENVIRONMENTAL IN REAL ESTATE
BANKRUPTCY CASES**

Copyright 2013 Carlos J. Cuevas, Esq.



**NATIONAL
LAW INSTITUTE**
Continuing Legal Education

Judicial Code Section 959(b):
Mandatory Compliance with Local
and State Health and Safety Laws



Bankruptcy Code Section 362(b)(4): Enforcement of the Police Power

- Bankruptcy Code Section 362(b)(4) authorizes the continuation of a proceeding to enforce the state and local police power during a bankruptcy case, and it states:



Distressed Real Estate and Bankruptcy

THE TRUSTEE'S AVOIDING POWERS IN REAL ESTATE BANKRUPTCY CASES

Copyright 2013 Carlos J. Cuevas, Esq.

Bankruptcy Code Section 544(a)(3): Bona Fide Purchaser

- Bankruptcy Code Section 544(a)(3) grants a trustee or debtor-in-possession the status
- of a bona fide purchaser. 11 U.S.C. § 544(a)(3). Bankruptcy Code Section 544(a)(3) states:

Bankruptcy Code Section 544(b)(1):
Claims of Unsecured Creditor Under
State Law



**Bankruptcy Code Section 548: The
Federal Fraudulent Conveyance
Statute**



Bankruptcy Code Section 547(b): **Preferences**

- Bankruptcy Code Section 547(b) governs preferences, and it states:
(b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property--
 - (1) to or for the benefit of a creditor;
 - (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
 - (3) made while the debtor was insolvent;