| **Assets into BK Estate** | **Assets Out of BK Estate** | **Liens** | **Stay** |
| --- | --- | --- | --- |
| * All assets at date of filing [11 USC 541](https://www.law.cornell.edu/uscode/text/11/541) * Community Property of debtor’s Spouse [11 USC 541](https://www.law.cornell.edu/uscode/text/11/541) (a)(2) * Tenancy with others, including entirety property – but may be exempt if immune from execution – so look for joint debts/liens on T by E property. [11 USC 363](https://www.law.cornell.edu/uscode/text/11/363)(h) * After-acquired Property * within 180 days after filing if from inheritance, divorce or life insurance. 11 USC 541 (7, 11, 13) * All Property, including proceeds of labor, during 13 – prior to conversion to 7, 11, or 12. [11 USC 1306](https://www.law.cornell.edu/uscode/text/11/1306). See Wiki – [After Acquired Property](https://uww.wfgnationaltitle.com/index.php/After_Acquired_Property) * Income & property during course of 11 * Doesn’t apply to 7, but have to ask where the property came from? If purchased w/estate assets…. * Property recovered by Trustee (7, 11, 13) * Preferential Transfers [11 USC 547](https://www.law.cornell.edu/uscode/text/11/547) * Fraudulent Transfers [11 USC 548](https://www.law.cornell.edu/uscode/text/11/548) | **Claimed as Exempt** under State or Federal Law. [11 USC 522](https://www.law.cornell.edu/uscode/text/11/522)(b)(1) & (2). Final 30 days after Creditor meeting or addition to schedule. [Bankruptcy Rule 4003](https://www.law.cornell.edu/rules/frbp/rule_4003) – unless objection filed. Then final upon court ruling | Liens remain attached to exempt assets unless removed as a lien impairing an exemption [11 USC 522](https://www.law.cornell.edu/uscode/text/11/522)(f) |  |
| **Abandoned or Surrendered** (7, 11, 13 – [11 USC 554](https://www.law.cornell.edu/uscode/text/11/554)); (7 – [11 USC 725](https://www.law.cornell.edu/uscode/text/11/725)) (13 – “surrendered” terminology [11 USC 1325](https://www.law.cornell.edu/uscode/text/11/1325)) if “burdensome to the estate or that is of inconsequential value and benefit to the estate” after notice & hearing | Liens remain attached to asset, unless specific order/ruling | Stay continues to apply to enforcement of pre-BK liens, even though it is no longer “property of the estate” it is property of the debtor. [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(a)(5). [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(c)(1) can be read to the contrary, but note (c)(2). |
| **Constructive Abandonment** at end of Bankruptcy. (7, 11, 13) “Unless the court orders otherwise, any property scheduled … not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered….” [11 USC 554(c)](https://www.law.cornell.edu/uscode/text/11/554)  In 11, Unless sold during bankruptcy, confirmation of plan vests property back in the debtor. 11 USC 1141(b)  In 13, unless otherwise provided, or disposed of during course of BK, confirmation of plan vests property back in Debtor. 11 USC 1327(b) | Liens pass through unaffected, unless specific order/ruling | Stay no longer applies after BK ended. [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(c) |
| **Sale/Lease in Ordinary Course of Business.** [11 USC 363](https://www.law.cornell.edu/uscode/text/11/363)(c)   * + - No notice or hearing required     - Business must be permitted to operate. (Court approval required under 11 USC 721 for 7).     - Trustee may sell or lease property, in the ordinary course of business     - RARELY APPLIES TO real property. Unless debtor is R.E. developer. Request UW review. Generally require comfort order identifying land.     - 21 day notice of sale unless changed by court. [BK Rule 2002](https://www.law.cornell.edu/rules/frbp/rule_2002)(a) 14 day stay applies [BK Rule 6004](https://www.law.cornell.edu/rules/frbp/rule_6004)(h) applies from date of comfort order, not from sale in ordinary course. | Liens against asset continued unless stripped in order.  BK may not strip underwater liens in a chapter 7. Bank of America v. Caulkett 135 S.Ct. 1995 (SC 2015). See Wiki – [Stripping of Liens in Bankruptcy](https://uww.wfgnationaltitle.com/index.php/Stripping_of_Liens_in_Bankruptcy) for more detail. | Asset removed from BK Estate and is no longer “property of the debtor” [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(a)(5) , so stay doesn’t affect pursuit of liens against new owner. |
| **Sale/Lease subject to liens** [11 USC 363](https://www.law.cornell.edu/uscode/text/11/363)(b) – special rules for sale of personally identifiable info.   * + - Trustee or DIP.     - Notice & Hearing (if requested)     - No conditions to 363(b)     - Order req’d only if objection     - 21 day notice of sale unless changed by court. [BK Rule 2002](https://www.law.cornell.edu/rules/frbp/rule_2002)(a) 14 day automatic stay applies unless the court orders otherwise [BK Rule 6004](https://www.law.cornell.edu/rules/frbp/rule_6004)(h)     - May sell free and clear of dowry/curtesy §363(g). Has been applied to Entireties property. | Liens continue | Asset removed from BK Estate and is no longer “property of the debtor” [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(a)(5) , so stay doesn’t affect pursuit of liens against new owner. |
| **Sale free and clear** [11 USC 363](https://www.law.cornell.edu/uscode/text/11/363)(f). Notice and hearing required. May sell “free and Clear” **only if**:   * + - * applicable nonbankruptcy law permits sale of such property free and clear of such interest;       * Holder of lien consents;       * price at which such property is to be sold is greater than the aggregate value of all liens on such property;       * lien or other interest “is in bona fide dispute”; or       * Lienholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.   21 day notice of sale unless changed by court. [BK Rule 2002](https://www.law.cornell.edu/rules/frbp/rule_2002)(a) 14 day stay applies [BK Rule 6004](https://www.law.cornell.edu/rules/frbp/rule_6004)(h)  Note: BK Trustee may sell interest of a co-tenant in property.  Safe Harbor for BFP 11 [USC](https://www.law.cornell.edu/uscode/text/11/363) 363(m) | Free and Clear, if and as provided by the unopposed motion or final order. | Stay irrelevant |
| **Sale/mortgage under Ch 7**  Sales may be made under any of above sections in Ch 7. New Mortgage rare in 7, seek underwriting assistance. | Underwater liens may not be stripped.  [*Bank of America v. Caulkett*](https://casetext.com/case/bank-of-am-na-v-david-b-caulkettbank-of-am-na), 135 S.Ct. 1995 (SC 2015). | Asset removed from BK Estate and is no longer “property of the debtor” [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(a)(5) , so stay doesn’t affect pursuit of liens against new owner. |
| **Sale/mortgage under Ch 11 Plan**   * + - * May be free from liens, subject to liens or in ordinary course depending on plan.       * Plan will spell out specific disposition of property.       * Unless sold during bankruptcy, confirmation of plan vests property back in the debtor. [11 USC 1141](https://www.law.cornell.edu/uscode/text/11/1141)(b) | Liens continue or not as set forth in Plan  Court may strip underwater liens in 11 | Asset removed from BK Estate and is no longer “property of the debtor” [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(a)(5) , so stay doesn’t affect pursuit of liens against new owner. |
| **Sale from Chapter 13 Plan**   * + - * Sale May be free from liens, subject to liens or in ordinary course depending on plan. See above.       * Plan may also make other disposition of Real Estate. [11 USC 1322](https://www.law.cornell.edu/uscode/text/11/1322)(b)(9)       * Unless otherwise provided, or disposed of during course of BK, confirmation of plan vests property back in Debtor. [11 USC 1327](https://www.law.cornell.edu/uscode/text/11/1327)(b)       * Except as provided in the plan or in the order confirming the plan, the property (re)vesting in the debtor is free and clear of any claim or interest of any creditor provided for by the plan. [11 USC 1327](https://www.law.cornell.edu/uscode/text/11/1327)(c)       * Debtor remains in possession of all property of estate unless plan provides otherwise. [11 USC 1306](https://www.law.cornell.edu/uscode/text/11/1306)(b) During term of plan any sale, purchase or mortgage should be approved by the BK court.       * While the plan remains open, don’t rely on provisions stripping liens or discharging debts unless expressly stated in plan       * Unconditional right to dismiss a chapter 13 (not a 7, 11 converted to 13), so can sell or mortgage immediately after dismissal | As stated in Plan, or order stripping liens.  Ch 13 allows court in plan to “modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.” [11 USC 1322](https://www.law.cornell.edu/uscode/text/11/1322)(b)(2)  Split of authority to strip liens on underwater second mortgages on homestead. 3rd 5th & 11th Circuits permit. Research needed | Asset removed from BK Estate and is no longer “property of the debtor” [11 USC 362](https://www.law.cornell.edu/uscode/text/11/362)(a)(5) , so stay doesn’t affect pursuit of liens against new owner. |
| **Unscheduled Assets** never come out of BK Estate, and the case must be reopened and the property must be scheduled and administered. In re Dunning Bros. Co., 40 B.R.877 (Bankr.E.D.Cal.2009) Here, the case was reopened after 70 years to administer/sell clear title to real estate. |  |  |

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