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Getting paid by a client who is in bankruptcy

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The Record

Q: I am a commercial real estate broker representing a seller who has filed a Chapter 11 case. Will the bankruptcy proceeding affect my ability to receive a commission?

When a company files a Chapter 11 petition, Section 327 of the Bankruptcy Code permits the debtor to employ professionals to assist with the reorganization effort.

Professionals in a Chapter 11 case may include attorneys, accountants, appraisers, and, in certain cases, real estate brokers. The debtor must submit a written application to retain the professional to the bankruptcy judge for approval. Such approval will be granted so long as the services for which the professional is being employed are necessary, the proposed compensation is reasonable, and there are no conflicts of interest.

It should also be noted that the retention application should be submitted to the court as early as possible in the bankruptcy proceedings, as courts generally disfavor granting payments or commissions to professionals for work done for a Chapter 11 debtor prior to the approval of a retention application.

Assuming the bankruptcy court has approved a broker's retention, if the terms of the retention so provide, the broker may be paid upon closing. Alternatively, if the retention does not permit this, then after a sale of the debtor's real property is consummated, the broker will have an administrative claim as a creditor of the estate pursuant to Section 503 of the Bankruptcy Code, which accords

priority status to “wages, salaries, and commissions for services rendered after the commencement of the case.”

For a more detailed explanation of your rights as a real estate broker for a Chapter 11 debtor, you should consult a bankruptcy attorney.

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