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# Southeast Bankruptcy Workshop

*Consumer Session*

## **Real Property Potpourri**

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## Real Property Potpourri

- Presented by:
  - Hon. Selene D. Maddox (N.D. Miss)
  - Mary Beth Ausbrooks, Esq (Nashville, TN)
  - S. Ryan Starks, Esq. (Atlanta, GA)
  - Laurie K. Weatherford (Chapter 13 Trustee, M.D. Fla)

## Reverse Mortgages

- *In re Godwyn*, 651 B.R. 669 (Bankr. E.D.N.C. May 10, 2023): Section 1322(c) permits a reverse mortgage to be modified in a Chapter 13 plan as it is no longer a long term debt.
- *In re Stevenson*, 2023 WL 7401456 (Bankr. E.D. Va. Nov. 8, 2023): That there is not privity of contract between the owner of the property and the reverse mortgage company does not preclude the Chapter 13 plan from dealing with and modifying the rights of the creditor.

## Other considerations with Reverse Mortgages

- Providing a post-petition projected escrow for the reverse mortgage.
- Loss mitigation
- Rights of heirs

## Post Petition Changes to Value/Vesting

- *In re Elassal*, 654 B.R. 434, (Bankr. E.D. Mich. Aug. 28, 2023): Court allowed Debtor to use \$175,000 net proceeds from sale of house to replenish the estate.
- *In re Marsh*, 647 B.R. 725, (Bankr. W.D. Mo. Jan. 17, 2023): Court examined five different approaches courts have used:
  - *Estate Termination Approach*
  - *Estate Preservation Approach*
  - *Conditional Vesting Approach*
  - *Estate transformation Approach*
  - *Estate Replenishment Approach*

## More on Post-Post Appreciation/Vesting

- *In re Castleman*, 75 F.4<sup>th</sup> 1052, (9<sup>th</sup> Cir. July 28, 2023): Appreciation of value belongs to the Chapter 7 estate if case is converted.

What interest rate should be used? Till or something else??

- *Farm Credit Servs. of Am., FLCA v Topp*, 75 F.4<sup>th</sup> 959, (8<sup>th</sup> Cir. August 2, 2023): Court held that the goal is to ensure that the total present value of future payments to the lender over the plan period equals or exceeds the allowed value of the claim. Should the treasury bond rate or prime rate be used?

Cleaning up the mortgage at the end of the Chapter 13 case?

- Final Cure: Does your Trustee file a Notice of Final Cure or a Motion?
- What if the mortgage servicer does not release a paid in full lien? See *Buettner v. PHH Mortg. Corp*, 2023 WL 6623362 (Bankr. E.D. Cal. Oct. 17, 2023). The Court used FRBP 7070 – federal lien removal power.

## Pros of Conduit plans!

- *In re Perez*, 339 B.R. 385 (Bankr. S.D. Tex. 2006): created a list of factors for the court to use in determining who should be the disbursing agent of mortgage payments. These factors include are:
  - *The degree of the debtor's responsibility toward her creditors.*
  - *The debtor's reason for filing Chapter 13.*
  - *The risk of delay in payments associated with the Trustee disbursement vs direct payments by the debtor.*
  - *Sophistication of the creditor.*
  - *Nature of the debt- consumer or commercial*
  - *Long term or short term mortgage?*
  - *Whether a direct payment would hinder the Trustee in performing her duties?*
  - *Are there unique circumstances?*
  - *Trustee's salary considerations*

*In re Mahler*, 2023 WL 3880465, (Bankr. E.D. Wis. June 7, 2023) applied the Perez factors and stated that the Debtor has the duty to establish sufficient cause to the exception that the Trustee should be the disbursing agent.

## What if the Debtor does not make direct mortgage payments?

- *In re Heinzle*, 511 B.R. 69 (W.D. Tex. 2014): Direct mortgage payments are payments under the plan. Case was dismissed at the end of the case when it was discovered that the Debtor was \$33,000 behind in payments.

# Faculty

**Mary Beth Ausbrooks** is the sole owner in the consumer debtor firm of Rothschild & Ausbrooks, PLLC, in Nashville, Tenn. She is a Fellow of the American College of Bankruptcy and is Board Certified in Consumer Bankruptcy Law by the American Board of Certification, for which she presently serves as chair. Ms. Ausbrooks has served as the Tennessee State chair for the National Association of Consumer Bankruptcy Attorneys and is a member of its board of directors. She has served as president, vice president and secretary for the Middle Tennessee Association of Consumer Bankruptcy Attorneys. Ms. Ausbrooks has been recognized in *Super Lawyers* for many years. She has presented on best practices for consumer debtor attorneys and on other aspects of the consumer debtor practice, and she is admitted to practice in the state of Tennessee, the District Court for the Middle District of Tennessee, the Sixth Circuit Court of Appeals and the U.S. Supreme Court. Ms. Ausbrooks received her J.D. in 1996 from the University of Memphis.

**Hon. Selene D. Maddox** is a U.S. Bankruptcy Judge for the Northern District of Mississippi in Aberdeen, sworn in on Oct. 22, 2018. Previously, she was a solo practitioner with Maddox Law Office in Tupelo, where her practice focused on the general practice of law with an emphasis in consumer debtor and small business debtor bankruptcy law. She also served as a chapter 7 bankruptcy panel trustee in the Northern District of Mississippi. Judge Maddox served as vice president of the Lee County Bar Association from 1998-99 and as president of the Lee County Bar Association from 1999-2000, and she is an active member of many professional legal associations. She was appointed by the Mississippi Supreme Court to serve as a commissioner to the Mississippi Commission on Continuing Legal Education on June 30, 1999, and she completed her seventh consecutive term on July 31, 2018. Judge Maddox was a member of the Mississippi Bar President-Elect Nominating Committee for 2011 and for 2014-2015. She served on the Ethics Committee of the Mississippi Bar from 2005-08. Judge Maddox currently serves on the Women In Profession Section Executive Committee of the Mississippi Bar beginning 2023 through 2026, and she chaired the 31st Annual Evelyn Gandy Lecture Series in January 2024. She served two one-year terms as president of the Mississippi Bankruptcy Conference from 2005-06 and served on the board of directors of the Mississippi Bankruptcy Conference from 2003-07. Judge Maddox assisted in drafting new Local Rules for the U.S. Bankruptcy Court for the Northern and Southern Districts of Mississippi and served on the Advisory Committee on Local Rules for the U.S. Bankruptcy Court for the Northern and Southern Districts of Mississippi from 2010-15. She has been an active presenter of the Credit Abuse Resistance Education (CARE) Program in high schools in Northeast Mississippi. Judge Maddox was inducted in 2007 as a Mississippi Bar Foundation Fellow and subsequently served as a trustee on the Mississippi Bar Foundation Board of Trustees from 2011-13; she currently is serving for 2022-24. Judge Maddox was appointed to the Lawyer Advisory Committee by Hon. Jason D. Woodard, Chief U.S. Bankruptcy Judge for the Northern District of Mississippi, for a term that began in June 2016 and continued until her appointment to the bankruptcy bench. She also was an adjunct professor at the University of Mississippi's Tupelo campus, teaching undergraduate classes on wills and estates, commercial law and bankruptcy law from 1996-98. She has participated as a speaker in numerous seminars on bankruptcy sponsored by University of Mississippi Continuing Legal Education, Mississippi Bankruptcy Conference, ABI, National Association of Chapter Thirteen Trustees, Association of Chapter 12 Trustees, Federal Judicial Conference, and the Center for American and International Law (Fifth



Circuit Bankruptcy Bench Bar Conference), and she has spoken for programs for Mississippi Home Extension Service, Lee County Extension Service and other public service organizations and local bar associations. Judge Maddox received her B.B.A. from the University of Mississippi in 1983 and her J.D. from the University of Mississippi School of Law in 1987.

**S. Ryan Starks** is a senior associate at Brock & Scott, PLLC in Atlanta and has more than two decades of experience representing mortgage, automobile and credit card creditors. He also leads the firm's Georgia bankruptcy operations. Prior to his current role, Mr. Starks held key positions at Phelan Hallinan Diamond & Jones PLLC, Berry & Associates, PC., Sicay-Perrow, Knighten & Bohan P.C., and Clark & Washington, P.C., where he honed his skills in managing complex legal matters on creditors' rights cases and represented individual debtors. He is licensed to practice law in Georgia and Pennsylvania, and he is currently a member of the Northern District of Georgia's Bench and Bar Committee. Mr. Starks received his B.A. in criminal justice with honors from the University of Georgia and his J.D. from Georgia State University.

**Laurie K. Weatherford** is the chapter 13 standing trustee for the Middle District of Florida in Orlando. Prior to her appointment in 1996, Ms. Weatherford was Of Counsel with the law firm of McGuire, Voorhis & Wells, representing primarily debtors and creditor committees in chapter 11 cases, and was a chapter 7 panel trustee. She tried a jury trial in the *In re Braniff* case and helped develop the Mortgage Modification Mediation Program for the U.S. Bankruptcy Court in Orlando. Ms. Weatherford frequently lectures on mortgage modification, student loan and various chapter 13 issues. Ms. Weatherford is a member of the National Association of Chapter 13 Trustees and serves on its Mortgage Committee. She also has served on the board of directors of the Central Florida Bankruptcy Law Association and is a past chairman of the Bankruptcy Committee of Orange County, Fla. Ms. Weatherford received her B.A. with honors from the University of Florida and her J.D. with honors from Cumberland School of Law, where she was an honor court justice, a member of the International Law Moot Court Team and copy editor for the *Cumberland Law Review*.