

HENNEPIN COUNTY EXAMINER OF TITLES BANKRUPTCY MEMORANDUM AND SAMPLE BANKRUPTCY PLEADINGS

Bankruptcy searches are required for all mortgage foreclosure and contract for deed proceedings on the Pacer website.

https://pacer.login.uscourts.gov/cgi-bin/login.pl?court_id=00pcl

No order will be entered in the proceeding if the bankruptcy search discloses a bankruptcy unless:

1. There is a **specific finding** of fact in the order to be entered to the effect that the mortgage foreclosure sale or contract for deed cancellation was not barred by the automatic stay imposed by 11 U.S.C. § 362(a) by reason of said bankruptcy, and
2. There is **documentary evidence** from the Bankruptcy Court in support of said finding.

Even if the debtor has been **DISCHARGED**, 1 and 2 above must be complied with, and the Order of Discharge alone is not sufficient to satisfy requirement 2.

COMMON SITUATIONS:

- A. Non-Identity. If the debtor in the bankruptcy case is not the same person as the person whose name has been searched, this fact should be plead in the petition setting out sufficient facts to support a finding of fact in the order as to the non-identity.
- B. There must be filed with your petition an **Order Granting Relief from the Automatic Stay** pursuant to 11 U.S.C. § 362(d) if, at the time of commencement of the foreclosure or service of the notice of cancellation of contract for deed:
 1. The case was open, and the land was not exempt and had not been abandoned, **OR**
 2. The case was open, and the property was exempt or abandoned, but no discharge had been entered (Note: exemptions apply only to individuals; corporations/partnerships receive no discharge in a chapter 7 proceeding), **OR**
 3. The case had been closed, but the property had not been scheduled.
- C. If the property was **exempt or abandoned** prior to the commencement of the foreclosure or service of the notice of cancellation of contract for deed:
 1. If there was **NO DISCHARGE** prior to the commencement of the foreclosure or service of notice of cancellation of contract for deed, see B above.

2. If there had been a **DISCHARGE** prior to the commencement of the foreclosure or service of notice of cancellation of contract for deed, file with your petition:
 - a. Evidence that the property was scheduled as exempt or abandoned by the trustee, and
 - b. Evidence that the debtor has been discharged.

D. Filing of bankruptcy petition **after**:

1. Mortgage foreclosure sheriff's sale does *NOT* operate as a stay of the running of the redemption period under 11 U.S.C. § 362(a). Johnson v. First National Bank of Montevideo, 719 F.2d 270 (8th Cir. 1983), cert. den. 465 U.S. 1012, 104 S.Ct. 1015, 79 L. Ed.2d. 245 (1984). Affirmed by Maanum v. Rieffer, 828 F.2d 459 (8th Cir. 1987).
2. Service of Notice of Statutory Cancellation Pursuant to M.S.A. § 559.21 does *NOT* operate as a stay of the running of the time allowed for reinstatement of the Contract for Deed under 11 U.S.C. § 362(a). In re Cureton, 38 B.R. 279 (Bkcy. Minn. 1984). *See also* Maanum v. Rieffer, *supra*, stating that "regardless of the type of property interest affected, § 362(a) cannot be read to stay the mere running of a statutory time period." *Id.* at 460.
3. If the search discloses a bankruptcy proceeding filed during the period of redemption or reinstatement of contract for deed, there must be evidence to support a finding that the 60-day period provided by 11 U.S.C. § 108(b) has expired without redemption or the securing of additional time for redemption.

SAMPLE BANKRUPTCY PLEADINGS FOR USE IN A PROCEEDING SUBSEQUENT PETITION:

All the pleadings can begin with the allegation "That no bankruptcy proceedings have been instituted by or against (insert name(s) of fee owners(s)) through the end of the mortgage foreclosure redemption period," and then continue as follows, depending on the circumstances.

1. When an Order lifting the automatic stay has been filed by the Bankruptcy Court:

"except Case No. BKY #, and that an Order lifting the automatic stay imposed by 11 USC § 362(a) to permit the foreclosure of the mortgage was entered on ___" and **please attach a copy of the Order to your Petition.**

2. When a certified copy of the Order lifting the automatic stay has been filed as a memorial on the Certificate of Title:

“except Case No. BKY #, and that a certified copy of an Order lifting the automatic stay imposed by 11 USC § 362(a) to permit the foreclosure of the mortgage has been filed as Document No. #.”

3. When a bankruptcy petition is filed during the redemption period:

“except Case No. BKY #, and that the 60-day period provided by 11 USC § 108(b) has expired without a redemption or the securing of additional time for redemption.”

4. When a bankruptcy case was closed prior to the time the mortgagor owned the premises:

“except Case No. BKY #, and that the case was closed on __, prior to the time the mortgagor was owner of the premises.”

5. When a bankruptcy case was closed prior to the commencement of the foreclosure proceedings, but while the mortgagor owned the premises, **and the premises were claimed as exempt by the debtor (on Schedule C of the Bankruptcy Petition)**:

“except Case No. BKY #, and that the premises were claimed as exempt in said proceeding and the case was closed on __” and **please attach a copy of Schedule C to your Petition.**

6. When a bankruptcy case has been dismissed:

“except Case No. BKY #, and that the case has been dismissed.”