

**FORCED VESTING OF PROPERTY a/k/a "Dirt for Debt" in Chapter 13
(S.D. Texas Chapter 13 Plan Form Paragraph 14)**

The Facts:

Debtor owns two residential properties, his principal residence and a rental property nearby. He has been maintaining his principal residence, but has not been making payments on the first lien to Big Mortgage Company, the second lien to Little Mortgage Company, the Homeowners Association dues, or county property taxes and ISD property taxes. The undisputed value of the Property is \$100,000.00, the amount due to Big Mortgage Company is \$95,000.00, and the amount due to Little Mortgage Company is \$85,000.00. Debtor is in arrears 48 months on both mortgages.

The rental property is a different story. Debtor has not been maintaining the property, and somehow a tenant left toxic materials in the back yard, which have seeped into the dirt and which Debtor has not remediated. The Debtor is significantly in arrears to the first lien to Big Mortgage Company, and on the second lien to Mrs. Smith, a 90 year old widow who sold the property to the Debtor. Debtor is arrears on HOA dues, county property taxes, and ISD property taxes. Debtor has not provided any proof of insurance. The evidence is that Debtor has been collecting rent sufficient to pay the first and second liens, but has elected not to do so. At the 341 Meeting of Creditors, Debtor explained that the rent money has been spent. It is undisputed that the value of the Property is \$75,000.00, \$70,000.00 is owed to Big Mortgage Company, and \$40,000.00 is owed to Mrs. Smith. Debtor is in arrears 48 months on both mortgages

None of the mortgage lienholders have foreclosed because no one wants the Properties. In Chapter 13, Debtor has selected to paragraph 14 of the Southern District of Texas Local Rules Plan Form, to provide "Dirt for Debt" in satisfaction of each of the claims on both properties. The Plan would transfer the principal residence to the second lien holder, Little Mortgage Company, and the rental home, complete with rotting wood, plumbing in disrepair, and toxic waste to Mrs. Smith.

How Would You Rule?

- Allow Forced Vesting as to Principal Residence and Rental Property?
- Allow Forced Vesting as to Rental Property only?
- Deny confirmation of plan providing for forced vesting of real property?

E. Each claim secured by a security interest is designated to be in a separate class.

12. Modification of Stay and Lien Retention. The automatic stay is modified to allow holders of secured claims to send the Debtor(s): (i) monthly statements; (ii) escrow statements; (iii) payment change notices; and (iv) such other routine and customary notices as are sent to borrowers who are not in default. The preceding sentence does not authorize the sending of any (i) demand letters; (ii) demands for payment; (iii) notices of actual or pending default. The holder of an Allowed Secured Claim that is proposed to be paid under this Plan shall retain its lien until the earlier of (i) the payment of the underlying debt as determined under non-bankruptcy law; or (ii) the entry of a discharge under 11 U.S.C. § 1328. The holder of a claim secured by a valid lien may enforce its lien only if the stay is modified under 11 U.S.C. § 362 to allow such enforcement.

13. Maintenance of Taxes and Insurance. The Debtor(s) must pay all ad valorem property taxes on property that is proposed to be retained under this Plan, with payment made in accordance with applicable non-bankruptcy law not later than the last date on which such taxes may be paid without penalty. The Debtor(s) must maintain insurance on all property that serves to secure a loan and that is proposed to be retained under this Plan, as required by the underlying loan documents. This Paragraph 13 does not apply to the extent that taxes and insurance are escrowed. Any holder of a secured claim may request in writing, and the Debtor(s) must promptly provide proof of compliance with this Paragraph. If the Debtor(s) fail to provide such proof within 30 days of receipt of a written request, the holder of the debt secured by a lien on the property may purchase such insurance or pay such taxes in accordance with its rights under applicable non-bankruptcy law. Unless otherwise ordered by the Court, payment under this Paragraph may not be undertaken by a transfer of the tax lien on the property.

14. Secured Claims Satisfied by Transfer of Real Property in Satisfaction of Secured Claim.

A. The secured claims set forth in this table will be satisfied by the transfer of title to the real property from the Debtor(s) to the transferee identified below.

Priority	Name and Address of Holder of Security Interest	Estimated Claim of Lien Holder
First lien		
Second lien		
Third lien		
Fourth lien		

B. The transferee is _____.

C. The value to be credited to the transferee's claim secured by the lien is:

Value of property	\$
Total amounts owed to all holders of senior liens	\$
Net value to be credited by transferee	\$

D. The address and legal description of the property to be transferred is _____.

E. This Paragraph applies only if 100% of the property to be transferred is included in the estate under 11 U.S.C. § 541(a), including without limitation community property included in the estate by 11 U.S.C. § 541(a)(2).

F. On or after the 30th day following entry of an order confirming this Plan:

(i) The Debtor(s) shall file as soon as practicable, a Notice of Transfer Pursuant to Bankruptcy Plan in the real property records of the County in which the property is located. A Notice of Transfer Pursuant to Bankruptcy Plan that attaches a certified copy of this Plan and a certified copy of the Order confirming this Plan shall, when filed with a legal description of the property in the real property records of the County in which the property is located, constitute a transfer of ownership of the property to the holder of the Secured Claim. The transfer will be effective upon the later to occur of (i) the filing of the Notice of Transfer Pursuant to Bankruptcy Plan that attaches a certified copy of this Plan and a certified copy of the Order confirming the Plan in the real property records of the applicable County; or (ii) if the Order is stayed pending appeal, the termination of the stay.

(ii) The transferee of the transferred property must credit its claim with the Net Value to be credited by Transferee as shown in the preceding table (unless a different amount is ordered by the Court at the confirmation hearing on this Plan), not to exceed the balance owed on the claim on the date of the transfer. If the transfer is to the holder of a junior lien, the transfer is made subject to all senior liens. The holder of any senior lien may exercise its rights in accordance with applicable non-bankruptcy law. If the transfer is to the holder of a senior lien, the transfer is free and clear of the rights of the holder of any junior lien.¹⁰

(iii) The senior liens must be satisfied, if at all, out of the property in accordance with applicable non-bankruptcy law. The transfer to the transferee and the relief granted by this Paragraph are in full satisfaction of the Debtor(s)' obligations to any holder of a security interest that is senior in priority to the security interest held by the transferee. No further payments by the Debtor(s) are required.

(iv) The automatic stay is modified to allow any holder of a security interest or other lien on the property to exercise all of its rights against the property in accordance with applicable non-bankruptcy law.

G. Notwithstanding the foregoing Section F:

¹⁰ The property may not be transferred to the holder of an oversecured senior lien if there is a junior lien.

(i) At its sole election prior to the 30th day following entry of an order confirming this Plan, the transferee may demand in writing, and the Debtor(s) must execute, a special warranty deed transferring the property to the transferee.

(ii) At its sole election prior to the 30th day following entry of an order confirming this Plan, the transferee may elect in writing to foreclose its security interest in the subject property. Any foreclosure must be completed within 90 days following entry of an order confirming this Plan. This Plan, the order confirming this Plan and a proper election hereunder constitute a judicial authorization to proceed to foreclose to the extent required under applicable law. If an election is made under this subsection, the transferee shall be responsible for all loss associated with the property and all charges, liens, fees, etc. against the property from the 30th day following entry of an order confirming this Plan.

(iii) If a proper demand is made under this Section G, the provisions of Section F(i) are not applicable.

H. On and after the date on which the title to the real property (as reflected in the real property records) is not held by the Debtor(s), and except as otherwise agreed in writing between the Debtor(s) and the holder of the entity to which the property has been transferred, the Debtor(s) will immediately vacate the property.

I. The third party costs incurred on behalf of the Debtor(s) to obtain a lien search or title report and to file the Notice and certified copies will be borne by the Debtor(s). If such third party costs are advanced by Debtor(s)' counsel, the Debtor(s) must promptly reimburse such costs.

J. The Debtor(s) must file a certificate of service at least 7 days prior to Plan confirmation reflecting that a copy of this Plan was mailed by both certified mail, return receipt requested and by regular US mail to all of the following, with the mailings to have occurred not later than 31 days prior to the hearing on this Plan to:

- (i) Any attorney representing the holder of any security interest against the property who has filed a request for notice in this bankruptcy case.
- (ii) The holder of any security interest against the property, in accordance with FED. R. BANKR. P. 7004 and the address for notice shown on any proof of claim filed by a holder. The identities of the holders must be identified from the deeds of trust filed in the real property records.

15. **Secured Claims on Which Lien is Avoided Under 11 U.S.C. § 522(f).** To the extent that the property described in this Paragraph is exempted under 11 U.S.C. § 522(b)(1), the following secured claims are avoided pursuant to 11 U.S.C. § 522(f) of the Bankruptcy Code. The only amount securing any such avoided lien is the lesser of (i) the amount shown as Remaining Value in this table; and (ii) the amount of the Allowed Claim secured by the lien: