

Does a Tangible Lien Survive Bankruptcy?

Very possible, and likely that an intangible security interest (lien) will survive a bankruptcy discharge of an intangible obligation. There is no issue with a source of value finding it's originality within an intangible obligation governed under Uniform Commercial Code Article 9/RA9. Example would be as cotton bails: the obligor borrows and executes an intangible promissory note to repay the borrowed value. Under UCC 9, the intangible obligor also secures an alternate repayment method in pledging the value of personal property collateral (the value received from the sale of the cotton bales) as an alternate source of payment (intangible security interest.) Here it is clear to see that the bankruptcy estate has a known value that could be applied to the estate. Also clear to see, if the intangible obligation has no value and the security interest has value, such value should not be dischargeable.

However the laws governing a Tangible Obligation differ from that of an Intangible Obligation. Additionally, federal preemption does not apply as to over ride a states law governing the attachment, perfection and continuous perfection of a Tangible Security Instrument (Real Property) securing to a "Tangible Obligation." As each of the states has adopted a version of the UCC one must be reminded that the UCC Article 9 only applies to personal property and state laws apply to real property.

By logical process, where a bankruptcy court discharges the tangible obligation and not citing the many court decisions, the (tangible) security instrument could not survive a moment beyond the life of the tangible obligation. This creates a critical paradox for the securities market, for if the

Tangible by way of discharge, how could a security interest in the security instrument survive and have value?

In reviewing many of the security instruments filed of record, there is a commonality in many of them that a interest in the note is to be sold along with the security instrument to be collateral for an intangible obligation. This paradox of selling the interest in might explain the reason that many of the Tangible Notes are indorsed in blank and only conveyed to subsequent parties as UCC Article 3 provides that any negotiation of the tangible note for value less than full value is not a negotiation.

In short, where the tangible security instrument is dependent upon the tangible obligation for life, the discharge of the tangible obligation equals a discharge of the tangible security instrument. As for as a bank coming forward after a discharge of the tangible and claiming there exists a legal basis by utilizing the intangible obligation as a means to over ride the bankruptcy discharge is a falsehood. For if Bank A was noticed as tangible obligee of the discharged tangible, and wherein Bank A was the creator of the intangible obligation, Bank A as servicer for the subsequent purchaser of the intangible should be suing the originating intangible obligor (Bank A should be suing Bank A.)

Does the United States Government and the banks want these facts know, doubt it for it would create a problem beyond jobs, housing and the financial cliff combined. Is there a cover up? Each must find their own answer, and prepare for voting in the next election, better now than later.