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Buyer Beware: The Bits And Bytes Could Get You

Joshua Cohen and Clifford Nichols authored an article, titled, "Buyer Beware: The Bits and Bytes Could Get You," for the *ABI Bankruptcy Litigation Committee Newsletter*. The article discusses Section 363 of the Bankruptcy Code, which provides for a trustee or debtor-in-possession to sell property of the bankruptcy estate outside of the ordinary course of business. To facilitate such sales, § 363(f) of the Bankruptcy Code permits a trustee or debtor-in-possession to sell such property "free and clear of any interest in such property" under certain circumstances. Pursuant to § 363(f), bankruptcy courts throughout the country routinely enter orders approving sales of assets free and clear of interests, liens, claims and encumbrances. However, "buyer beware," Cohen and Nichols write. "There may be hidden discovery obligations that give rise to unexpected claims and potential liabilities and costs. One place to look for such hidden claims, liabilities and costs is in the electronic files, records and data a buyer may acquire out of a bankruptcy estate."

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