



# AMERICAN BANKRUPTCY TRUSTEE JOURNAL

THE OFFICIAL PUBLICATION OF THE NATIONAL  
ASSOCIATION OF BANKRUPTCY TRUSTEES

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VOLUME 34  
ISSUE 02  
SPRING 2018



# CONFESSIONS OF A FOREIGN ASSET BOUNTY HUNTER

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## KEY POINTS

Items to Consider in Administering a Foreign Real Estate Asset:

1. Unlicensed Agents
2. Language Barriers
3. Currency Exchanges
4. Procedures—Notaries vs. Notaires
5. Ethics
6. Expedited Services
7. Need for All-Cash Buyers

**T**his article is based on a lecture I gave at a recent NABT general session. In the writing of this article, I am taking into account the positive and negative comments received after the lecture in order to give you the full perspective and better insight into tracking, finding, and liquidating foreign assets, namely real estate.

As a trustee, you are charged with administering bankruptcy cases and making meaningful distributions to the creditors. The majority of cases are fairly routine. A piece of real estate located within 50 miles of your office is usually a standard asset to administer, just like a Rolex watch or an RV.

What I have discovered, after nearly thirty years spent navigating the world of bankruptcy, is that foreign assets present a unique challenge for the trustee. In my conversations with trustees, they often say that they had assets in a foreign country that they were unable to do anything with and were ultimately left to abandon the estate's interest.

I want to share with you some interesting discoveries I have experienced when dealing with assets outside of the United States.

### DISCOVERY

In most foreign asset cases that I have been involved, the discovery of the asset's existence was the result of a tooth pulling exercise performed by the trustee. Through conversations with debtors, I have come to realize that the reason they have reluctantly disclosed the foreign asset was because they do not feel as though properties they own abroad should be included in a bankruptcy in the United States. We all know this is not true, but that still does not remove the fact that, overwhelmingly, this is the debtor's mindset. Discovery is the first hurdle that needs to be overcome.

### LOCATION

Here's another universal experience: very rarely has a debtor disclosed the exact location of the subject property. Understanding the formatting of overseas addresses is one thing, verifying an incomplete or incorrect address is another. This is another reason the trustees end up abandoning – they simply can't make sense of the asset or how to find it.

### LIQUIDATION

While it may seem relatively simple to contact a real estate agent in a foreign country and ask them to give you an opinion

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of price, it's not usually as easy as it sounds. The first of many issues is the language barrier. However, once a connection has been made with someone who speaks English and has access to the information needed, you're well on your way.

The issue, then, is real estate agents in many other countries are not required to hold any form of license. In the United States, Real Estate Commissions in almost every state help to standardize and regulate the sale of property, as well as protect both the buyer and seller. This just doesn't exist in many foreign countries.

The biggest caveat: net listings. These have been outlawed in the United States, but in foreign countries, net listings allow the broker to give a price of what it would take to sell the property and, once you agree, they can move forward and sell it for any price they choose, as long as they net you the agreed price. This is a common practice in many countries around the globe.

If you have been fortunate enough to find a competent English-speaking real estate professional, your next steps will include the following:

1. Determine whether there is equity in the property.
2. Verify that there is a viable market in which the property can be sold; and
3. Make the determination that the net equity will be worth the time, trouble, and expenses to the estate at the end of the day.

As you can imagine, it will be far costlier to administer this asset in a foreign country than it would be in the United States.

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### About the Author

John A. Palumbo is the principal of Bankruptcy Asset Management, based in Jacksonville, Florida, as well as one of the nation's leading authorities on the evaluation and liquidation of unusual assets in bankruptcy. His ability to recover and monetize assets (oftentimes deemed unworthy) has helped trustees achieve the maximum value for countless asset cases. He is a member of the National Association of Bankruptcy Trustees and is invited regularly to their Spring Seminars and Annual Conventions as an expert speaker. Currently serving attorneys, CPAs, and bank trust officers nationwide, John consults, advises, and serves as principal in matters of bankruptcy, probate, and trust estates with banks, and has assisted in liquidating assets in foreign countries such as Greece, Jamaica, Morocco, Italy, Guam, and Mexico, just to name a few.

That, coupled with the currency and applicable exchange rate, become fundamental considerations.

## PROCEDURE

Perhaps the biggest challenge presented to the trustee comes after buyer and seller have agreed on a price. The process by which paperwork is legalized is different in every country, and it's common that U.S. bankruptcy documents and final orders will have to be completely redone in order to be legalized according to the law where the property is located. A notarized document may also require an Apostille.

"An Apostille is a certificate issued by a designated authority in a country where The Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents, Apostille Convention, is in force. See a model Apostille. Apostilles authenticate the seals and signatures of officials on public documents such as birth certificates, notarial, court orders, or any other document issued by a public authority, so that they can be recognized in foreign countries that are parties to the Convention."

– U.S. Department of State

Source: <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/international-judicial-assistance/authentications-and-apostilles/Notarial-and-Authentication-Apostille.html>

This process can take months. I've personally been involved with cases where it took years. This is a daunting undertaking for any trustee.

## DEBTOR RELATIONS

Each country offers its own unique challenges for closing a transaction through the bankruptcy court. Depending on your buyer and your relationship with the debtor, it can be easier to allow the debtor to assist in the closing of the transaction in a foreign country, rather than going through the complete procedures of the court. Not only will this simplify the process, it prevents it from becoming overly complicated and costly to the estate. Keep in mind that the objective here is to maximize the monetary recovery to the estate. In suggesting this, I fully understand that the debtor may not be willing to cooperate or assist in closing the property transaction. However, I have seen cases where it did work, and I would always advise employing this strategy whenever possible.

Another strategy that can be used to help maximize efficiencies in closing a property transaction in a foreign country is the simple execution of a proxy and/or power of attorney by the debtor. This would allow someone else to go into the foreign country and act on the debtor's behalf in order to close the transaction, rather than completing administration through the bankruptcy court.

These tips alone are worth the price of reading this article, should you end up with assets in another country.

## EXPEDITED SERVICES

Major slowdowns are to be expected in closing a foreign real estate transaction between the buyer and seller. It is a complex

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process and can take a tremendous amount of time. And while nobody will like to read what I'm about to say, it needs to be said because the fact of the matter is that it is a reality in many countries around the world except the United States. Because of the complexity of the paperwork involved and lack of experience by the sellers and buyers, many months can go by without closing, leaving you in a position where you may have to pay for what I will refer to as expedited services. No one wants to use the word "bribes" because they are neither legal nor ethical. But you may find yourself needing to pay for some expedited services to get the transaction completed. These fees, by the way, are considered an ethical and normal part of the process in many other countries. You will simply have to be the judge of when and if you are willing to incur these kinds of expenses.

## CASH BUYERS

Another fact in dealing with foreign real estate transactions is that, more than likely, you are going to be dealing with all-cash buyers. Getting bank financing in foreign countries for these types of transactions is nothing like getting bank financing in the U.S.

If you've read this far, you're either thinking of the foreign asset cases you've handled in the past, or the ones you'll likely encounter in the near future. The United States has become more of a melting pot than ever before in history, and more and more trustees will see cases in which foreign assets will appear. Remember, it's not just limited to foreigners coming to the United States leaving assets or inheritances behind. More and more today, there are U.S. residents who own property abroad such as second and third homes, future retirement homes, or investment properties.

I know this simply scratches the surface of questions that can arise in recovery of foreign assets, including fractional interests, remainder interests, and inheritances, but hopefully you will have a better understanding of the process by which you can obtain sizeable monetary gains for the estate. While foreign assets do require far more patience and due diligence, they have great potential to deliver huge gains for the estate. If you have a more specific question regarding the nuances of recovering foreign assets, you're welcome to drop me a note at [palumboj@aol.com](mailto:palumboj@aol.com). 🏠