

# Table of Contents

## Volume 1

### CHAPTER 1. BORROWING AUTHORITY OF STATE AND LOCAL GOVERNMENTS..... 1

#### I. SOURCES OF BORROWING AUTHORITY

§ 1:1 General overview

#### II. STATE DEBT

§ 1:2	Sources of power to incur debt by states and political subdivisions	
§ 1:3	Constitutional considerations	
§ 1:4	Public purpose	
§ 1:5	Assessed valuation limitations	
§ 1:6	Voter approval	
§ 1:7	Full faith and credit	
§ 1:8	Periods of probable usefulness	
§ 1:9	Duration of bond resolutions and ordinances	
§ 1:10	Income and revenue limitations	
§ 1:11	Voluntary indebtedness: monetary debt ceilings	
§ 1:12	First Amendment limitations and protections	
§ 1:13	Impairment of the obligation of contracts	
§ 1:14	Commerce Clause and federalism considerations	
Appendix 1A.	Compilation of State Constitutional Debt Provisions	
	.....	53

### CHAPTER 2. GOVERNMENT BORROWING UNITS ..... 63

§ 2:1	General Principles	
§ 2:2	The State	
§ 2:3	Counties	
§ 2:4	Cities	
§ 2:5	Towns and villages	
§ 2:6	School districts	
§ 2:7	Special districts	
§ 2:8	Public authorities	
§ 2:9	Native American tribal governments	

## CHAPTER 3. THE PROCESS AND MECHANISMS OF FUNDING PUBLIC PROJECTS..... 87

### I. INTRODUCTION

- § 3:1 In general
- § 3:2 Background
- § 3:3 Capital planning
- § 3:4 Public input
- § 3:5 Feasibility analysis
- § 3:6 —Consulting engineers
- § 3:7 —Financial/fiscal advisors
- § 3:8 —Rate consultants
- § 3:9 The underwriting process
- § 3:10 —Statutory requirements
- § 3:11 —Competitive sales
- § 3:12 —Negotiated sales
- § 3:13 —Underwriting syndications
- § 3:14 Preliminary and final official statements
- § 3:15 Sales on the Internet

### II. GENERAL-OBLIGATION BONDS

- § 3:16 In general
- § 3:17 Backing by ad valorem tax
- § 3:18 Full faith and credit
- § 3:19 Applicability of debt ceilings

### III. SPECIAL OBLIGATION OR SPECIAL-TAX BONDS

- § 3:20 In general
- § 3:21 Tax-increment financing
- § 3:22 Applicability of debt ceilings

### IV. SPECIAL-ASSESSMENT BONDS

- § 3:23 In general
- § 3:24 Continuing charges on land
- § 3:25 Inapplicability of debt ceilings
- § 3:26 Revenue bonds, in general
- § 3:27 Inapplicability of debt ceilings and voter approvals
- § 3:28 Covenants and revenue pledges
- § 3:29 Tax anticipation notes
- § 3:30 Revenue anticipation notes upon their receipt
- § 3:31 Bond anticipation notes

TABLE OF CONTENTS

**V. MORAL OBLIGATION BONDS**

- § 3:32 In general
- § 3:33 Applicability of debt ceilings

**CHAPTER 4. CREDIT RATING AGENCIES ..... 129**

- § 4:1 In general
- § 4:2 Credit ratings
- § 4:3 Credit rating agencies
- § 4:4 The credit rating process
- § 4:5 Historical overview of credit agency regulation
- § 4:6 The role of credit rating agencies in the Enron bankruptcy
- § 4:7 The Sarbanes-Oxley Act
- § 4:8 The Credit Rating Agency Reform Act of 2006
- § 4:9 CRARA—Dodd Frank—General background
- § 4:10 —Legislative findings
- § 4:11 —General amendments
- § 4:12 —Internal controls over the ratings process
- § 4:13 —Additional powers of censure, suspension, and revocation
- § 4:14 —Management of conflicts of interest
- § 4:15 —Duties of NRSRO compliance officers
- § 4:16 —Duties and authority of the Securities Exchange Commission

**CHAPTER 5. CREATIVE FINANCING TECHNIQUES ..... 159**

**A. CREDIT ENHANCEMENT**

**I. LETTERS OF CREDIT**

- § 5:1 General
- § 5:2 Characteristics and form
- § 5:3 Banking law issues
- § 5:4 Federal tax issues
- § 5:5 Bankruptcy Code issues

**II. BOND INSURANCE**

- § 5:6 Introduction
- § 5:7 Characteristics
- § 5:8 Federal tax issues
- § 5:9 Federal securities law issues
- § 5:10 Risk factors

**B. FINANCING MODES**

**I. TENDER OPTION BONDS**

- § 5:11 Introduction
- § 5:12 Structure
- § 5:13 Potential problems and proposed solutions

**II. VARIABLE-RATE BONDS**

- § 5:14 Introduction
- § 5:15 Potential problems and proposed solutions

**III. ZERO COUPON, MODIFIED ZERO COUPON,  
AND COMPOUND-INTEREST BONDS**

- § 5:16 Introduction
- § 5:17 Indenture requirements
- § 5:18 Potential problems and proposed solutions

**IV. AUCTION RATE SECURITIES**

- § 5:19 Introduction
- § 5:20 Auction process
- § 5:21 Risk factors
- § 5:22 Disclosure
- § 5:23 Recent developments

**V. FORWARD DELIVERY CONTRACTS**

- § 5:24 Introduction
- § 5:25 Structure
- § 5:26 Risk factors
- § 5:27 Sample rights of termination language
- § 5:28 Sample disclosure language

**VI. TAX INCREMENT FINANCING**

- § 5:29 Tax Increment Bonds

**VII. INTEREST RATE HEDGES**

- § 5:30 Swaps and swap options for hedging risk

**VIII. CONDUIT FINANCINGS (FOR TABLE OF  
CONTENTS ONLY)**

- § 5:31 Tax exempt conduit financings

Appendix 5A. Sample Direct-Pay Letter of Credit

..... 206

## TABLE OF CONTENTS

Appendix 5B.	Irrevocable Letter of Credit	223
Appendix 5C.	Sample Opinion of Counsel to Letter of Credit Provider	229
Appendix 5D.	Opinion that Structure is Preference Proof	232
Appendix 5E.	Sample bond purchase agreement insurance conditions	235
Appendix 5F.	Sample bond insurance disclosure in official statement	236
Appendix 5G.	Sample Indenture Provisions for Tender-Option Bonds	238
Appendix 5H.	Sample Table Determining Compound Accreted Value	241
Appendix 5I.	Sample Table Setting Forth the Accrued Interest on Compound-Interest Bonds	243
Appendix 5J.	Sample Indenture Provisions for Redemption of Zero Coupon Bonds	245
<b>CHAPTER 6. FEDERAL TAXATION.....</b>		<b>251</b>

### I. GENERAL CONSIDERATIONS

§ 6:1 Introduction

### II. TAX EXEMPT BONDS

§ 6:2 Tax exemption

§ 6:3 Interest defined

§ 6:4 Political subdivisions

### III. TAX CREDIT BONDS

§ 6:5 In general

### IV. PRIVATE ACTIVITY BONDS

§ 6:6 General Considerations

§ 6:7 Qualified bonds, generally

§ 6:8 Exempt facility bonds

§ 6:9 Facilities furnishing certain utilities

## STATE AND LOCAL GOVERNMENT DEBT FINANCING

- § 6:10 High-speed intercity rail facilities
- § 6:11 Qualified public educational facilities
- § 6:12 Recovery Zone Facility Bonds and Opportunity Zone Bonds

### V. GENERAL REQUIREMENTS

- § 6:13 Qualified broadband projects
- § 6:14 Qualified highway or surface freight transfer facilities
- § 6:15 Qualified carbon dioxide capture facilities
- § 6:16 General allocation rules
- § 6:17 Special rules for eligible mixed use projects
- § 6:18 Partnerships
- § 6:19 Allocations in refunding of multipurpose issues
- § 6:20 Reimbursement of advanced funds
- § 6:21 Exercise of borrowing power
- § 6:22 Issuers acting on behalf of state and local subdivisions
- § 6:23 Obligations of states and subdivisions
- § 6:24 Volunteer fire departments
- § 6:25 Tribal governments
- § 6:26 Reporting requirements
- § 6:27 Registration requirements

### VI. REMEDIATION OF VIOLATIONS

- § 6:28 Alternative voluntary closing agreement program: TEB VCAP
- § 6:29 Alternative voluntary closing agreement program: TEB VCAP—limited availability
- § 6:30 TEB VCAP identified violations and prescribed closing standards
- § 6:31 Methods and effect of case resolution
- § 6:32 Procedures for requesting a closing agreement under TEB VCAP

Appendix 6.1. Internal Revenue Notice 2008-31 and Internal Revenue Internal Manual 7.23 .....	316
---	-----

## CHAPTER 7. ARBITRAGE AND REFUNDINGS ..... 335

- § 7:1 Overview
- § 7:2 Proceeds
- § 7:3 Investment Property, Purpose and Non-purpose Investments
- § 7:4 Yields on bond issues generally
- § 7:5 Yield Restriction Rules
- § 7:6 Yields on fixed-yield bonds subject to mandatory or contingent early redemption

## TABLE OF CONTENTS

§ 7:7	Substantially identical bonds subject to mandatory early redemption	
§ 7:8	Yield on certain fixed-yield bonds subject to optional early redemption	
§ 7:9	Recomputation of yield upon transfer of certain bond rights	
§ 7:10	Special aggregation rules	
§ 7:11	Yield on variable rate issues	
§ 7:12	Payments on bonds included in variable yield computation	
§ 7:13	Conversion from variable yield issue to fixed-yield issue	
§ 7:14	Rebate generally	
§ 7:15	Payments and receipts	
§ 7:16	Computation dates	
§ 7:17	Required rebate payments	
§ 7:18	Penalties in lieu of loss of tax exemption	
§ 7:19	Recovery of rebate overpayments	
§ 7:20	Value of bonds	
Appendix 7A.	Sample Arbitrage Certificate	
	.....	364

## **CHAPTER 8. QUALIFIED GUARANTEES AND QUALIFIED HEDGES** .....

403

### **A. GENERAL CONSIDERATIONS**

§ 8:1	Qualified guarantees: general	
§ 8:2	Guarantees of purpose investments	
§ 8:3	Allocation of qualified guarantee payments	
§ 8:4	Refunds or reductions of guarantee payments	
§ 8:5	Yield on certain mortgage revenue and student loan bonds	
§ 8:6	Qualified hedges in general	
§ 8:7	Qualified hedges: hedge requirement	
§ 8:8	Qualified hedges: no significant investment element	
§ 8:9	Qualified hedges: parties	
§ 8:10	Qualified hedges: hedged bonds requirement	
§ 8:11	Qualified hedges: interest based contract requirement	
§ 8:12	Qualified hedges: requirement that time of hedge payments closely respond to certain issuer payments	
§ 8:13	Qualified hedges: source of payments requirement	
§ 8:14	Qualified hedges: identification requirement	
Appendix 8A.	IRS Form 8038-T	
	.....	412

**CHAPTER 9. FEDERAL SECURITIES**

<b>LAWS</b> .....	413
§ 9:1 Securities Act of 1933; Exchange Act of 1934	
§ 9:2 Trust Indenture Act and Investment Company Act	
§ 9:3 Applicability of Exchange Act § 10B and Rule 10b-5 to state and local debt securities	
§ 9:4 Section 12(2) and section 17 of the Securities Act	
§ 9:5 Rule 15c2-12 regulatory purpose	
§ 9:6 Rule 15c2-12 definitions	
§ 9:7 Rule 15c2-12 requirements	
§ 9:8 Rule 15c2-12 exemptions	
§ 9:9 Issuer responsibility	
§ 9:10 Issuer protections under MSRB Rules G-17 and G-23	
§ 9:11 Underwriters	
§ 9:12 Brokers and dealers	
§ 9:13 Financial advisors	
§ 9:14 Bond counsel	
§ 9:15 Underwriter's counsel	
§ 9:16 Issuer's counsel	
§ 9:17 Auditors	
§ 9:18 Origin and powers of the MSRB	
§ 9:19 MSRB Rule G-32 introduction	
§ 9:20 Disclosure under MSRB Rule G-32 customer disclosure requirements	
§ 9:21 Disclosure under MSRB Rule G-32 underwriter submissions to EMMA	
§ 9:22 Principal and agent transactions	
§ 9:23 Central repositories and NRMSIRs	
§ 9:24 The MSRB Electronic Municipal Market Access system	
Appendix 9A. Text of Rule 240.15c2-12 .....	504
Appendix 9B. Notice 2009-28 Form G-32 Requirements .....	514
Appendix 9C. MSRB Rule 32-G(vi) .....	524
Appendix 9D. MSRB Rule G-32(e) Transitional Provisions .....	526
Appendix 9E. Sample Continuing Disclosure Undertaking .....	528
Appendix 9F. Issuer Counsel Opinion .....	532
Appendix 9G. Sample Auditor Agreed Upon Procedures Letter .....	534



**CHAPTER 10. TAXES AND OTHER  
REVENUE SOURCES STANDING BEHIND  
BONDS AND NOTES ..... 539**

**I. REVENUE SOURCES AVAILABLE TO STATE AND  
LOCAL GOVERNMENTS**

§ 10:1 Overview

**A. TAXES**

§ 10:2 Federal constitutional restrictions upon state and local  
taxation

§ 10:3 State restrictions upon state and local taxation

§ 10:4 Real estate taxes

§ 10:5 Sales taxes and other consumption taxes

§ 10:6 Personal and corporate income taxes

§ 10:7 Gift and estate taxes

§ 10:8 Severance taxes

§ 10:9 Other taxes

**B. FEES AND CHARGES, GAMBLING REVENUES,  
AND FINES**

§ 10:10 License fees

§ 10:11 Development impact taxes and exactions

§ 10:12 Service charges

§ 10:13 Lotteries and legalized gambling

§ 10:14 Fines

§ 10:15 Damages produced by litigation

**C. INTERGOVERNMENTAL AID**

§ 10:16 Federal aid to state and local governments and state  
aid to local governments

**II. REVENUE SOURCES STANDING BEHIND  
PARTICULAR BONDS AND NOTES**

§ 10:17 General obligation bonds and pledge of “full faith and  
credit”

§ 10:18 Revenue bonds

§ 10:19 Various special-tax bonds

§ 10:20 Special assessment bonds

§ 10:21 Private activity bonds

§ 10:22 Short-term notes

§ 10:23 Investment income

**CHAPTER 11. DEBT CEILINGS AND OTHER  
RESTRICTIONS ON DEBT FINANCING:  
COMPLIANCE, AVOIDANCE, AND  
EVASION ..... 607**

**I. HISTORY AND OVERVIEW**

- § 11:1 19th Century origins of debt ceilings
- § 11:2 Principles behind debt ceilings today
- § 11:3 —The Orange County bankruptcy

**II. CURRENT STRUCTURE OF DEBT CEILINGS  
AND PROCEDURAL REQUIREMENTS**

- § 11:4 Percentage of assessed property valuation
- § 11:5 —Computation of property values involved
- § 11:6 Interest rate limits and term restrictions
- § 11:7 Voter approval requirements
- § 11:8 Administrative approval requirements

**III. OTHER RESTRICTIONS ON DEBT FINANCING**

- § 11:9 Restrictions on short-term debt
- § 11:10 Restrictions on the giving or lending of public credit
- § 11:11 Public purpose requirement

**IV. DEVICES EMPLOYED TO AVOID DEBT  
CEILINGS AND PROCEDURAL  
REQUIREMENTS**

- § 11:12 Use of special funds
- § 11:13 Special funds from special assessments
- § 11:14 Revenue bonds
- § 11:15 —Nonappropriation clauses
- § 11:16 Tax increment financing
- § 11:17 Creation of special districts
- § 11:18 Long-term contracts and the contingent obligation doctrine
- § 11:19 —Service contracts versus installment purchase contracts
- § 11:20 —Leases with options to purchase: true leases or installment purchase contracts?
- § 11:21 Short-term debt instruments

**V. DEVICES EMPLOYED TO EVADE DEBT  
CEILINGS**

- § 11:22 Overview of “creative accounting” devices

## TABLE OF CONTENTS

- § 11:23 Overestimating revenues while underestimating expenses
- § 11:24 Mixing or changing accounting bases
- § 11:25 Continual rollover of short-term debt
- § 11:26 Recharacterization of parts of debt

## Volume 2

### CHAPTER 12. STATE LAWS REGARDING ISSUANCE OF BONDS AND NOTES .....

1

#### I. INTRODUCTION

- § 12:1 Overview

#### II. AUTHORIZATION BY GOVERNING BODY

- § 12:2 Legislative approval—Constitutional limitations and enabling legislation
- § 12:3 —State bonds
- § 12:4 —County and municipal bonds
- § 12:5 —Short-term notes
- § 12:6 — —Revenue bonds; authority to issue
- § 12:7 — —Revenue bonds; underlying security
- § 12:8 Certificates of participation
- § 12:9 —Notes
- § 12:10 Tax-exempt derivatives
- § 12:11 —Local bond ordinance or resolution
- § 12:12 Other governmental approvals
- § 12:13 —State bonds
- § 12:14 —County and municipal bonds
- § 12:15 —State intervention to resolve local debt management problems
- § 12:16 Notice and hearing requirements
- § 12:17 Open public meeting laws
- § 12:18 —County and municipal bonds
- § 12:19 Levy of taxes at time of issuance
- § 12:20 —State bonds
- § 12:21 —County and municipal bonds
- § 12:22 Checklist of required authorizations for issuance of bonds and notes

#### III. ELECTIONS

- § 12:23 When required
- § 12:24 —To authorize indebtedness
- § 12:25 —To authorize debt in excess of debt ceiling

## STATE AND LOCAL GOVERNMENT DEBT FINANCING

- § 12:26 Use of direct election (initiative) procedures
- § 12:27 The one-person, one-vote standard
- § 12:28 —Exceptions
- § 12:29 Dual majority requirements
- § 12:30 Super majority requirements
- § 12:31 Notice requirements
- § 12:32 —Ballot wording requirements
- § 12:33 Effect of election irregularities
- § 12:34 Checklist of election requirements

### **IV. ISSUANCE AND SALE**

- § 12:35 The process of “issuance”
- § 12:36 —Notice requirements for issuance
- § 12:37 —Enforcement of authorization commitments
- § 12:38 —Use of bond proceeds
- § 12:39 Public sale or private placement—When required or authorized
- § 12:40 —Procedure for public sale
- § 12:41 Public sale through the Internet
- § 12:42 —Procedure for private placement
- § 12:43 Sales of bonds at a discount
- § 12:44 Registration requirements
- § 12:45 Bond covenants
- § 12:46 —Resolving ambiguities regarding priorities on default
- § 12:47 Sinking funds
- § 12:48 Use of surplus funds
- § 12:49 Lost, stolen, destroyed, or mutilated bonds or notes
- § 12:50 Funding and refunding bonds
- § 12:51 Redemption and cancellation of bonds
- § 12:52 Municipal bond banks
- § 12:53 Taxable bonds
- § 12:54 Private activity bonds
- § 12:55 Checklist

### **V. LIMITATIONS ON COSTS AND OBLIGATIONS TO PAY**

- § 12:56 Cost of issuance
- § 12:57 —Bond counsel
- § 12:58 —Financial advisor and other consultants
- § 12:59 —Advertising and printing expense
- § 12:60 Restrictions on bidding by consultants

### **VI. ATTACKS ON VALIDITY OF BONDS AND DEFENSES**

- § 12:61 Challenges to validity

## TABLE OF CONTENTS

- § 12:62 —Validation procedures
- § 12:63 —Statutory validation
- § 12:64 —Initiative and referendum
- § 12:65 Defenses
- § 12:66 —Statutes of limitation
- § 12:67 —Certification of proper issuance
- § 12:68 —Restrictions on appeals

## **CHAPTER 13. POTENTIAL LIABILITIES OF GOVERNMENTS AND OTHER PARTIES**..... 157

### **I. FEDERALISM AND CONSTITUTIONAL QUESTIONS**

- § 13:1 Introduction
- § 13:2 Fair Labor Standards Act cases and their progeny:  
shifting Supreme Court approaches to the state  
Sovereignty Doctrine
- § 13:3 *South Carolina v. Baker*
- § 13:4 *South Dakota v. Dole*
- § 13:5 Recent federalism cases: reviving the state sovereignty  
doctrine
- § 13:6 Unfunded Mandates Reform Act
- § 13:7 Local governments in the federal system today

### **II. MUNICIPAL SECURITIES LIABILITY**

- § 13:8 Introduction
- § 13:9 Liability of issuers
- § 13:10 —Passage of 1975 amendments
- § 13:11 —New York City fiscal crisis of the 1970s and its  
aftermath
- § 13:12 Washington public power supply system default of  
1983
- § 13:13 Liability of other parties
- § 13:14 —Underwriters and broker-dealers
- § 13:15 Recent developments
- § 13:16 Liability of other parties—Bond counsel—SEC  
enforcement against bond counsel
- § 13:17 — —Internal Revenue Code liability
- § 13:18 —Underwriters' counsel
- § 13:19 —Rating agencies
- § 13:20 —Accountants
- § 13:21 Sample consent letter for official statement
- § 13:22 Liability of other parties—Engineers, contractors, and  
other third parties

- § 13:23 —Institutional purchasers of municipal securities

### **III. ANTITRUST LIABILITY**

- § 13:24 Introduction
- § 13:25 Immunity under the Parker Doctrine
- § 13:26 Local government antitrust liability
- § 13:27 Immunity under the Noerr-Pennington Doctrine

### **IV. CIVIL RICO LIABILITY**

- § 13:28 Introduction
- § 13:29 Practice and procedure
- § 13:30 Governmental liability

### **V. LIABILITY FOR OTHER GOVERNMENTAL ACTIVITIES**

- § 13:31 Introduction
- § 13:32 Electoral arrangements
- § 13:33 —Bond issue elections
- § 13:34 —Elections in special districts
- § 13:35 —Elections to local government bodies
- § 13:36 Regulation of land
- § 13:37 State and municipal taxation and finance
- § 13:38 Minority set-aside provisions
- § 13:39 Other areas of potential liability

### **VI. 42 U.S.C.A. § 1983**

- § 13:40 Introduction
- § 13:41 —Elements of Section 1983 claim
- § 13:42 —Relief available
- § 13:43 —Immunities
- § 13:44 —Justiciability and procedural concerns

### **VII. FEDERAL ENVIRONMENTAL LIABILITY**

- § 13:45 Introduction
- § 13:46 Clean Water Act liability
- § 13:47 —NPDES permits
- § 13:48 —Pretreatment standards
- § 13:49 —Storm water discharge standards
- § 13:50 —Superfund liability
- § 13:51 Clean Air Act liability
- § 13:52 —Standards applicable to stationary sources
- § 13:53 —Standards applicable to mobile sources
- § 13:54 Other federal environmental liability

TABLE OF CONTENTS

**VIII. OTHER POTENTIAL SOURCES OF LIABILITY**

- § 13:55 Contract
- § 13:56 Tort; proprietary and governmental functions distinction

**CHAPTER 14. MUNICIPAL INSOLVENCY:  
BANKRUPTCY, RECEIVERSHIP,  
WORKOUTS, AND ALTERNATIVE  
REMEDIES.....**

311

**I. THE DEBTOR UNDER CHAPTER 9**

**A. BACKGROUND**

- § 14:1 General background

**B. DEFINITION OF “MUNICIPALITY”**

- § 14:2 Statutory definition of municipality
- § 14:3 Case law interpretations of “municipality”

**C. ELIGIBILITY THRESHOLDS**

- § 14:4 State consent and sovereignty
- § 14:5 The “desire to effect a plan”
- § 14:6 The definition of “insolvency”
- § 14:7 Negotiation with creditors

**II. THE CHAPTER 9 PROCEEDING**

- § 14:8 Initiation of Chapter 9 proceeding and effect on bondholder rights and remedies
- § 14:9 Municipality as secured claimant in developer or debtor bankruptcy
- § 14:10 Limitation on jurisdiction and powers of the states and the bankruptcy court
- § 14:11 Unique features of Chapter 9
- § 14:12 The required maintenance of municipal services
- § 14:13 The automatic stay
- § 14:14 Notice, list of creditors, creditor committees and proof of claim
- § 14:15 Obtaining credit in a Chapter 9 proceeding
- § 14:16 Debtor’s use, sale or lease of property
- § 14:17 Assumption, rejection or assignment of executory contracts and unexpired leases
- § 14:18 Rejection or modification of collective bargaining agreements
- § 14:19 Rejection or modification of collective bargaining agreements or retirement benefits

## STATE AND LOCAL GOVERNMENT DEBT FINANCING

- § 14:20 Rejection or modification of collective bargaining agreements—Section 1113 and corporate rejection of collective bargaining agreements
- § 14:21 —Unilateral rejection: Section 365
- § 14:22 —State labor laws
- § 14:23 Debtor's power to set aside transfers and liens
- § 14:24 "Special revenues" pledged to bondholders
- § 14:25 Status of payments to bondholders
- § 14:26 Nonrecourse debt
- § 14:27 Setoffs
- § 14:28 Enforceability of prebankruptcy subordination and priority agreement
- § 14:29 Security fraud claims and indemnity
- § 14:30 Use of letters of credit as backing for municipal and conduit obligations
- § 14:31 Plan of adjustment for municipalities: time, content, impairment of claims, and acceptance
- § 14:32 Postpetition disclosure and solicitation
- § 14:33 Acceptance of the plan
- § 14:34 Confirmation of the plan

### III. CASE STUDIES

- § 14:35 The Jefferson County Alabama
- § 14:36 The *San Jose School District* and *Medley, Florida* cases
- § 14:37 The Colorado special districts
- § 14:38 City of Bridgeport, CT
- § 14:39 Orange County, CA

### IV. OTHER GENERAL CONSIDERATIONS

- § 14:40 Work out mechanisms; use of consultants, financial advisors, receiverships, financing authorities, compositions, or others
- § 14:41 Impact of reorganization or workout on tax-exempt status
- § 14:42 Types of default
- § 14:43 Distinctions between default and event of default
- § 14:44 The three phases of default
- § 14:45 Tax-exempt conduit financing remedies
- § 14:46 Institution of lawsuit
- § 14:47 The acceleration problem
- § 14:48 Securities fraud action
- § 14:49 Right to select members of board of directors or appoint consultants
- § 14:50 Supplemental indentures
- § 14:51 Rescission of acceleration and waiver of default



## TABLE OF CONTENTS

- § 14:52 Acceptance of default
- § 14:53 Application of proceeds
- § 14:54 Payment of trustees' fees and expenses arising from workout or bankruptcy

## V. GENERAL OVERVIEW AND ANALYSIS OF NEW WORKOUT STRUCTURES

- § 14:55 General statement of problem
- § 14:56 Description of legislative considerations and alternatives
- § 14:57 Summary of municipal debt restructurings and the bankruptcy process

## VI. CHAPTER 9 AND THE U.S. TERRITORIES: PUERTO RICO

### A. GENERAL BACKGROUND

- § 14:58 Historical perspective
- § 14:59 Puerto Rico's Electric Power Authority Act and related debt
- § 14:60 The Puerto Rico Public Corporation Debt Enforcement and Recovery Act
- § 14:61 Constitutional challenges to the Recovery Act
- § 14:62 Appeal to United States court of appeals 1st Circuit
- § 14:63 The Commonwealth's appeal to the U. S. Supreme Court
- § 14:64 Congressional response
- Appendix 14A. State Enabling Statutes ..... 494
- Appendix 14B. An overview of the Plan of Debt Adjustment Process ..... 507
- Appendix 14C. Municipal Financial Crisis ..... 510
- Appendix 14D. The Players: in a Municipal Financial Crisis ..... 511
- Appendix 14E. Needs of a Financially Distressed City ..... 512
- Appendix 14F. Scenario for Successful Municipal Financial Oversight ..... 513
- Appendix 14G. Responses by the State to a Financially Distressed Municipality ..... 514
- Appendix 14H. Oversight and Financing Authority ..... 515

Appendix 14I.	Disciplinary Tools	516
Appendix 14J.	An Overview of the Municipal Debt Restructuring Process	518
Appendix 14K.	Timing of the Plan of Reorganization Approval Process	523

## **CHAPTER 15. PROCEDURAL ASPECTS OF MUNICIPAL FINANCE LITIGATION ..... 525**

### **I. INTRODUCTION**

- § 15:1 Introduction and scope of chapter
- § 15:2 Overview of major considerations
- § 15:3 Action for damages
- § 15:4 Declaratory judgment action
- § 15:5 Validation proceedings

### **II. JURISDICTION AND RELATED MATTERS**

#### **A. SUBJECT MATTER JURISDICTION**

- § 15:6 In general
- § 15:7 —Diversity jurisdiction
- § 15:8 Federal question jurisdiction
- § 15:9 Jurisdiction under federal civil rights statutes
- § 15:10 Supplemental jurisdiction

#### **B. PERSONAL JURISDICTION AND SERVICE**

- § 15:11 In general
- § 15:12 Due process principles
- § 15:13 —Federal question cases
- § 15:14 —In state-law cases: state long-arm statutes
- § 15:15 Manner of service

#### **C. VENUE**

- § 15:16 Propriety of venue
- § 15:17 Convenience of venue
- § 15:18 Transfer in multidistrict litigation

#### **D. JUSTICIABILITY**

- § 15:19 In general
- § 15:20 Case or controversy, ripeness, and mootness
- § 15:21 Standing

## TABLE OF CONTENTS

- § 15:22 —Municipal bodies
- § 15:23 —Municipal officers and board members
- § 15:24 —Bondholders
- § 15:25 —Taxpayers
- § 15:26 —Citizen and other forms of standing
- § 15:27 Abstention and stays of proceedings

### III. PLEADING

- § 15:28 In general
- § 15:29 Pleading fraud and special matters
- § 15:30 —Securities cases
- § 15:31 Counterclaims
- § 15:32 Rule 11

### IV. DISPOSITIVE MOTIONS

- § 15:33 Motions to dismiss
- § 15:34 Summary judgment

### V. PARTIES

#### A. CAPACITY

- § 15:35 Capacity of municipal body to sue or be sued

#### B. JOINDER AND THIRD-PARTY PRACTICE

- § 15:36 Joinder of parties
- § 15:37 Third-party practice

#### C. CLASS ACTIONS

- § 15:38 In general
- § 15:39 Class actions under the federal securities laws
- § 15:40 Rule 23(a) prerequisites
- § 15:41 Common questions of law and fact
- § 15:42 Typicality
- § 15:43 Adequacy of representation
- § 15:44 Rule 23(b) requirements
- § 15:45 Rule 23(b)(2) declaratory and injunctive relief
- § 15:46 Rule 23(b)(3) predominance of common questions;  
superiority of class action
- § 15:47 Notice to class members
- § 15:48 Compromise or settlement; attorney's fees

### VI. DISCOVERY AND TRIAL

- § 15:49 Discovery
- § 15:50 —Electronic information

## STATE AND LOCAL GOVERNMENT DEBT FINANCING

- § 15:51 —Stay in federal securities actions
- § 15:52 —Production and inspection of documents and things
- § 15:53 Interrogatories
- § 15:54 Depositions
- § 15:55 Requests for admission
- § 15:56 Sanctions for discovery abuse
- § 15:57 Trial

## **VII. REMEDIES**

- § 15:58 In general
- § 15:59 Mandamus
- § 15:60 Injunction against issuance of bonds

### **Table of Laws and Rules**

### **Table of Cases**

### **Index**