

Table of Contents

CHAPTER 1. GENERALLY APPLICABLE FORMS; FORMS FOR LIQUIDATION CASES

I. INTRODUCTION

A. GENERAL CONSIDERATIONS

- § 1:1 Official bankruptcy forms
- § 1:2 —Substantial compliance requirement
- § 1:3 Procedural bankruptcy forms issued by
Administrative Office of the United States
Courts
- § 1:4 Computer-generated forms and electronic filing
- § 1:5 Place of filing
- § 1:6 Signature requirements
- § 1:7 Verification requirements
- § 1:8 Notice
- § 1:9 —Who sends notice
- § 1:10 —To United States trustee
- § 1:11 Transmittal of papers or copies of papers to
United States trustee
- § 1:12 Other miscellaneous considerations

B. CAPTIONS

- § 1:13 Generally
- § 1:14 Caption (Full) (Official Form No. 416A)
[Bankruptcy Rules 1005, 2002(n), 9004(b)]
- § 1:15 Caption (Short title) (Official Form No. 416B)
[Bankruptcy Rules 1005, 9004(b)]
- § 1:16 Caption for use in adversary proceeding other
than for a complaint filed by a debtor (Official
Form No. 416D) [Bankruptcy Rule 7010]

C. SIGNATURE TO PLEADING; CERTIFICATE OF SERVICE

- § 1:17 Signature to pleading

§ 1:18 Certificate of service of pleadings

II. COMMENCEMENT OF VOLUNTARY CASE

A. VOLUNTARY PETITION

1. Voluntary Petition for Individuals

- § 1:19 Voluntary petition for individuals filing for bankruptcy (Official Form No. 101) [11 U.S.C.A. §§ 301, 302; Bankruptcy Rule 1002]
- § 1:20 Initial statement about an eviction judgment against you (Official Form No. 101A)
- § 1:21 Statement about payment of an eviction judgment against you (Official Form No. 101B)
- § 1:22 Notice required by 11 U.S.C.A. § 342(b) for individuals filing for bankruptcy (Official Form B 2010) [11 U.S.C.A. § 342(b)]

2. Voluntary Petition for Corporation or Partnership

- § 1:23 Voluntary petition for non-individuals filing for bankruptcy (Official Form No. 201) [11 U.S.C.A. §§ 301, 302; Bankruptcy Rule 1002]
- § 1:24 Attachment to voluntary petition for non-individuals filing for bankruptcy under Chapter 11 (Official Form No. 201A)
- § 1:25 Declaration under penalty of perjury for non-individual debtors (Official Form No. 202) [28 U.S.C.A. § 1746; Bankruptcy Rule 1008]
- § 1:26 Resolution—Authorizing corporate officer to file petition and act in corporation's behalf in voluntary bankruptcy case
- § 1:27 Certificate of adoption of authorizing resolution
- § 1:28 Corporation's financial interest disclosure [Bankruptcy Rule 1007]

3. Bankruptcy Petition Preparer

- § 1:29 Declaration and signature of non-attorney bankruptcy petition preparer (Official Form No. 119) [11 U.S.C.A. § 110]

4. Electronic Filing

- § 1:30 Declaration under penalty of perjury of accompany petitions, schedules, and statements filed electronically [Bankruptcy Rule 5005]

TABLE OF CONTENTS

5. Foreign Proceedings

- § 1:31 Petition for recognition of foreign proceeding
(Official Form No. 401)

B. SCHEDULES, STATEMENTS, AND LISTS

1. Schedules

a. In General

- § 1:32 A summary of your assets and liabilities and
certain statistical information (individuals)
(Official Form No. 106-Summary) [11 U.S.C.A.
§ 521(a)(1); Bankruptcy Rule 1007]
- § 1:33 A summary of your assets and liabilities (non-
individuals) (Official Form No. 206-Summary)
- § 1:34 Required lists, schedules, statements and fees
(Official Form B 2000)
- § 1:35 Declaration about an individual debtor's
schedules (Official Form No. 106-Declaration)
[28 U.S.C.A. § 1746; Bankruptcy Rule 1008]
- § 1:36 Verification—By petitioner—For amended
schedule [28 U.S.C.A. § 1746; Bankruptcy Rules
1008, 1009]

b. Schedule of Assets and Liabilities

- § 1:37 Schedule A/B: Property (individuals) (Official
Form No. 106A/B) [11 U.S.C.A. § 521(a)(1);
Bankruptcy Rule 1007(b)]
- § 1:38 Schedule A/B: Property (non-individuals) (Official
Form No. 206A/B) [11 U.S.C.A. § 521(a)(1);
Bankruptcy Rule 1007(b)]
- § 1:39 Schedule C: The property you claim as exempt
(Official Form No. 106C) [11 U.S.C.A.
§ 521(a)(1); Bankruptcy Rule 1007(b)]
- § 1:40 Schedule D: Creditors who hold claims secured by
property (against individuals) (Official Form No.
106D) [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule
1007(b)]
- § 1:41 Schedule D: Creditors who hold claims secured by
property (against non-individuals) (Official Form
No. 206D)
- § 1:42 Schedule E/F: Creditors who have unsecured
Claims (against individuals) (Official Form No.
106E/F) [11 U.S.C.A. § 521(a)(1); Bankruptcy
Rule 1007(b)]

- § 1:43 Schedule E/F: Creditors who have unsecured claims (against non-individuals) (Official Form No. 206E/F) [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule 1007(b)]

c. Schedule and Statement of Current Income and Current Expenditures

- § 1:44 Schedule I: Your income (individuals) (Official Form No. 106I) [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule 1007(b)]
- § 1:45 Schedule J: Your expenses (Official Form No. 106J) [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule 1007(b)]
- § 1:46 Schedule J-2: Expenses for separate household of debtor 2 (Official Form No. 106J-2) [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule 1007(b)]
- § 1:47 Chapter 7 statement of your current monthly income (Official Form No. 122A-1); Chapter 7 statement of exemption of presumption of abuse (Official Form No. 122A-1 Supp)
- § 1:48 Chapter 7 means test calculation (Official Form No. 122A-2)

d. Other Schedules

- § 1:49 Schedule G: Executory contracts and unexpired leases (individuals) (Official Form No. 106G) [Bankruptcy Rule 1007]
- § 1:50 Schedule G: Executory contracts and unexpired leases (non-individuals) (Official Form No. 206G)
- § 1:51 Schedule H: Your codebtors (individuals) (Official Form No. 106H) [Bankruptcy Rule 1007]
- § 1:52 Schedule H: Your codebtors (non-individuals) (Official Form No. 206H) [Bankruptcy Rule 1007]

2. Statements

- § 1:53 Statement of Intention for Individuals Filing Under Chapter 7 (Official Form No. 108) [11 U.S.C.A. § 521(2); Bankruptcy Rule 1007(b)]
- § 1:54 Your statement of financial affairs for individuals filing for bankruptcy (Official Form No. 107) [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule 1007(b)]
- § 1:55 Statement of your financial affairs (non-individuals) (Official Form No. 207)
- § 1:56 Statement of understanding by debtor

TABLE OF CONTENTS

§ 1:57 Statement of military service (Official Form B 2020)

§ 1:58 Statement about your social security numbers (Official Form No. 121) [Bankruptcy Rule 1007(f)]

3. Lists

§ 1:59 Debtor's list of creditors [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule 1007]

§ 1:60 Debtor's list of creditors—Alternate form [11 U.S.C.A. § 521(a)(1); Bankruptcy Rule 1007]

4. Extension of Time for Filing

§ 1:61 Voluntary case—Motion for extension of time in which to file schedules and statements [Bankruptcy Rule 1007(c)]

§ 1:62 Order—Extending time for filing schedules [Bankruptcy Rule 1007(c)]

§ 1:63 Motion for extension of time to obtain and file evidence of credit counseling [11 U.S.C.A. §§ 109(h), 521(b)]

5. Amendments to List of Creditors and Schedules

§ 1:64 Motion—By party in interest—To amend voluntary petition, schedules, or statements [Bankruptcy Rule 1009]

§ 1:65 Order—Amending voluntary petition, schedules, or statements [Bankruptcy Rule 1009]

§ 1:66 Amendment—To list of creditors—Voluntary case [Bankruptcy Rule 1009]

§ 1:67 Notice to trustee and affected entities—Of amendment to list of creditors [Bankruptcy Rules 1009, 2003(a), 4004(a)]

C. VENUE OF CASE

§ 1:68 Motion to change venue of case, or to dismiss case for improper venue [Bankruptcy Rule 1014]

D. JOINT ADMINISTRATION AND CONSOLIDATION

§ 1:69 Joint administration—Standing order regarding procedure governing jointly administered cases [Bankruptcy Rule 1015]

- § 1:70 Motion—For order of joint administration
- § 1:71 —For substantive consolidation [Bankruptcy Rule 1015]
- § 1:72 Order—Substantive consolidation [Bankruptcy Rule 1015]

E. PAYMENT OF FILING FEE IN INSTALLMENTS; WAIVER OF FILING FEE

- § 1:73 Application for individuals to pay the filing fee in installments (Official Form No. 103A)
- § 1:74 Application to have the chapter 7 filing fee waived (Official Form No. 103B)
- § 1:75 Order—For payment of filing fee in installments—Combined with notice of dismissal hearing in event of nonpayment of fees as ordered [11 U.S.C.A. § 707(a)(2), 28 U.S.C.A. § 1930(a); Bankruptcy Rules 1006(b)(2), 1017(b)]
- § 1:76 —Of dismissal—Nonpayment of filing fee installments [11 U.S.C.A. § 707(a)(2); Bankruptcy Rule 1017(b)]
- § 1:77 Notice—Of dismissal—Failure to pay filing fee installments [Bankruptcy Rule 1017(b)(3)]

F. NOTICE OF COMMENCEMENT OF CHAPTER 7 CASE, MEETING OF CREDITORS, AND FIXING OF DATES

- § 1:78 Notice of Chapter 7 Bankruptcy case - No proof of claim deadline (For individuals or joint debtors) (Official Form No. 309A) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]
- § 1:79 Notice of Chapter 7 bankruptcy case - Proof of claim deadline set (For individuals or joint debtors) (Official Form No. 309B) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]
- § 1:80 Notice of Chapter 7 bankruptcy case - No proof of claim deadline (For corporations or partnerships) (Official Form No. 309C) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]
- § 1:81 Notice of Chapter 7 bankruptcy case - Proof of claim deadline set (For corporations or partnerships) (Official Form No. 309D) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]

TABLE OF CONTENTS

- § 1:82 Certificate—Of commencement of case (Official Form B 2060) [11 U.S.C.A. §§ 301 to 303]

G. NOTICES IN STOCKBROKER AND COMMODITY BROKER LIQUIDATION CASES

- § 1:83 Notice—To SIPC—Of order for relief in stockbroker liquidation case [11 U.S.C.A. §§ 342(a), 743]
- § 1:84 —To SEC—Of order for relief in stockbroker liquidation case [11 U.S.C.A. §§ 342(a), 743]
- § 1:85 —To CFTC—Of order for relief in commodity broker liquidation case [11 U.S.C.A. §§ 342, 762]
- § 1:86 —To commodity broker's customers—Of order for relief in commodity broker liquidation case [11 U.S.C.A. §§ 342, 765]
- § 1:87 Application—By trustee in stockbroker liquidation case—For order regarding notice to customers, customer claims, and disinterestedness hearing under SIPA [11 U.S.C.A. § 342; 15 U.S.C.A. §§ 78eee(b)(3), 78fff-2(a)]
- § 1:88 Notice—In stockbroker liquidation case—Of commencement of liquidation proceeding—Under SIPA [15 U.S.C.A. § 78fff-2(a)(1)]

III. COMMENCEMENT OF INVOLUNTARY CASE

A. INVOLUNTARY PETITION

1. Involuntary Petition, Summons, and Service

- § 1:89 Involuntary petition against an individual (Official Form No. 105) [11 U.S.C.A. § 303; Bankruptcy Rule 1003]
- § 1:90 Involuntary petition against a non-individual (Official Form No. 205)
- § 1:91 Summons to debtor in involuntary case (Official Form B 2500E) [Bankruptcy Rule 1010]
- § 1:92 Motion—For service of involuntary petition on debtor by mail and publication [Bankruptcy Rule 1010]
- § 1:93 Order—For service of involuntary petition on

debtor by mail and publication [Bankruptcy Rule 1010]

2. Joinder of Petitioners after Filing

§ 1:94 Motion—By creditor in involuntary case—To join in petition [11 U.S.C.A. § 303(c); Bankruptcy Rule 1003(b)]

§ 1:95 Order—Granting leave to creditor to join as petitioner in involuntary case [11 U.S.C.A. § 303(c); Bankruptcy Rule 1003(b)]

3. Responsive Pleadings

§ 1:96 Motion—To require more definiteness and certainty in petition [Bankruptcy Rule 1011]

§ 1:97 Answer to petition; jury demand—By debtor [11 U.S.C.A. § 303(d); Bankruptcy Rule 1011]

§ 1:98 Motion—For leave to answer on debtor's behalf—By transferee of property of defunct debtor

§ 1:99 Demand for jury trial [28 U.S.C.A. § 1411]

§ 1:100 Jury instruction—Involuntary petitions [11 U.S.C.A. § 303(h)]

4. Petitioner's Bond

§ 1:101 Motion—By debtor—To require petitioners to file bond [11 U.S.C.A. § 303(e), (i)]

§ 1:102 Bond of petitioners in involuntary case [11 U.S.C.A. § 303(e), (i)]

5. Motion to Dismiss Involuntary Petition

§ 1:103 Motion to dismiss involuntary petition [11 U.S.C.A. § 303]

B. ORDER FOR INVOLUNTARY RELIEF; SCHEDULES AND STATEMENTS

1. Order for Involuntary Relief

§ 1:104 Order for relief (Official Form B 2530) [Bankruptcy Rules 1003, 1013(c), 1018]

§ 1:105 Specific findings regarding order for relief against debtor

§ 1:106 Notice—Of order for relief [11 U.S.C.A. § 342]

§ 1:107 Motion—To vacate order for relief [Bankruptcy Rule 1018]

TABLE OF CONTENTS

- § 1:108 Order—Vacating order for relief [Bankruptcy Rule 1018]
- 2. Schedules and Statements in Involuntary Case
- § 1:109 Involuntary Case—Order to file schedules, lists and statements [Bankruptcy Rule 1007(c)]
- § 1:110 Involuntary case—Debtor’s motion for extension of time in which to file schedules and statements [Bankruptcy Rule 1007(c)]

IV. TRUSTEES

A. APPOINTMENT OF INTERIM TRUSTEE

- § 1:111 Motion—For order discontinuing debtor’s possession and control of assets—And for appointment of interim trustee pending order for relief [11 U.S.C.A. § 303(f), (g); Bankruptcy Rule 2001]
- § 1:112 Order terminating debtor’s possession and control of assets and ordering appointment of interim trustee pending order for relief [11 U.S.C.A. § 303(f), (g); Bankruptcy Rule 2001]

B. ELECTION

- § 1:113 Motion by creditor—To resolve dispute concerning election of trustee [11 U.S.C.A. § 702; Bankruptcy Rules 2003, 2006]
- § 1:114 Order—Resolving dispute concerning election of trustee and approving election of trustee [11 U.S.C.A. § 702; Bankruptcy Rule 2003]
- § 1:115 —Disapproving election of trustee—Failure to maintain residence or office in judicial district [11 U.S.C.A. § 321(a)]
- § 1:116 — —Appointee incompetent to perform duties [11 U.S.C.A. § 321(a)(1)]
- § 1:117 —For meeting of creditors to elect new trustee on removal, death, or resignation of trustee [11 U.S.C.A. §§ 325, 703; Bankruptcy Rule 2012]
- § 1:118 —Approving election of trustee by creditors to fill vacancy created by death of trustee [11 U.S.C.A. §§ 325, 703; Bankruptcy Rule 2012]
- § 1:119 Notice—In stockbroker liquidation case—Of hearing on disinterestedness of trustee and

- counsel—Under SIPA [15 U.S.C.A. § 78eee(b)(6)]
- § 1:120 Certificate—Of appointment or election of trustee
- § 1:121 Notice—Of appointment or election of trustee
- § 1:122 Complaint, petition, or declaration—Allegation as to appointment of plaintiff as trustee in bankruptcy [11 U.S.C.A. § 323(b)]
- § 1:123 Allegation as to appointment of defendant as trustee in bankruptcy [11 U.S.C.A. § 323(b)]
- § 1:124 Order—Substituting trustee for debtor as plaintiff in pending action [11 U.S.C.A. § 323]

C. BOND

- § 1:125 Request—To United States trustee—To determine amount of trustee's bond [11 U.S.C.A. § 322(b)(2)]
- § 1:126 Complaint—For determination of damages and enforcement of liability under trustee's bond [11 U.S.C.A. § 322(d); Bankruptcy Rule 2010(b)]
- § 1:127 Judgment and order—Determining damages and providing for enforcement of liability under bond [11 U.S.C.A. § 322(d); Bankruptcy Rule 2010(b)]

D. INVENTORY; INTERIM AND PERIODIC REPORTS

- § 1:128 Inventory of trustee [11 U.S.C.A. § 704(2); Bankruptcy Rule 2015(a)]
- § 1:129 Certificate—By trustee or interim trustee—Averring correctness of inventory and diligent search for assets [Bankruptcy Rule 2015(a)]
- § 1:130 Trustee's interim report [11 U.S.C.A. § 704; Bankruptcy Rule 2015(a)]
- § 1:131 Trustee's report as to operation of business [11 U.S.C.A. § 704(8); Bankruptcy Rule 2015]

E. FINAL REPORT AND ACCOUNT

- § 1:132 Notice—Of filing final account(s) of trustee, of hearing on applications for compensation [and of hearing on abandonment of property by the trustee] (Official Form B 2700) [Bankruptcy Rule 2015]

TABLE OF CONTENTS

- § 1:133 Trustee’s proposed notice of final account and hearing on allowances
- § 1:134 Trustee’s final report and account—Combined with application for compensation [11 U.S.C.A. § 704(9); Bankruptcy Rule 2015]
- § 1:135 —Combined with application for compensation—Alternate form [11 U.S.C.A. § 704(9); Bankruptcy Rule 2015]
- § 1:136 — —Second alternative form [11 U.S.C.A. § 704(9); Bankruptcy Rule 2015]
- § 1:137 Trustee’s summary of claims filed and allowed, and computation of dividends [11 U.S.C.A. § 704(9); Bankruptcy Rule 2015]
- § 1:138 Report of trustee in no-asset case [Bankruptcy Rule 2015]
- § 1:139 Trustee’s itemized account [11 U.S.C.A. § 704(9); Bankruptcy Rule 2015]
- § 1:140 Trustee’s proposed order allowing compensation, commissions, and expenses [11 U.S.C.A. § 704(9); Bankruptcy Rule 2015]

F. REMOVAL

- § 1:141 Motion—For removal of trustee for cause [11 U.S.C.A. § 324]
- § 1:142 Notice to trustee to show cause why he/she should not be removed from office [11 U.S.C.A. § 324]
- § 1:143 Order—Removing trustee from office [11 U.S.C.A. § 324]

V. MEETING OF CREDITORS; EXAMINATIONS

A. CREDITORS’ MEETING

1. In General

- § 1:144 Notice of hearing—As to dismissal of voluntary petition—Debtor’s failure to appear at meeting of creditors [11 U.S.C.A. §§ 343, 707; Bankruptcy Rule 1017(a)]
- § 1:145 Motion—By trustee—To dismiss for debtor’s failure to appear at meeting of creditors [11 U.S.C.A. § 707(a)(1); Bankruptcy Rule 2002(a)(5)]
- § 1:146 Notice—To creditors—Of hearing on trustee’s motion to dismiss [11 U.S.C.A. § 707(a)(1); Bankruptcy Rule 2002(a)(5)]

- § 1:147 Ex parte motion—By trustee—To reopen meeting of creditors
- 2. Voters and Voting
- § 1:148 Affidavit—As to solicitation of proxies [Bankruptcy Rule 2006(e)]
- § 1:149 General power of attorney (Official Form No. 411A) [Bankruptcy Rule 9010]
- § 1:150 Special power of attorney (Official Form No. 411B) [Bankruptcy Rule 9010]
- § 1:151 Order—Approving election of creditors' committee [11 U.S.C.A. § 705; Bankruptcy Rule 2003]

B. EXAMINATIONS

1. In General

- § 1:152 Motion—For examination of debtor—Other than at creditors' meeting [Bankruptcy Rule 2004(a), (d)]
- § 1:153 Order—For examination of debtor—Other than at creditors' meeting [Bankruptcy Rule 2004(a), (d)]
- § 1:154 Motion—For apprehension and removal of debtor—To compel attendance for examination [Bankruptcy Rule 2005]
- § 1:155 Affidavit—By trustee—In support of motion for apprehension of debtor [Bankruptcy Rule 2005]
- § 1:156 Warrant for arrest
- § 1:157 Motion—By committee—For discovery under Bankruptcy Rule 2004
- § 1:158 Order—For examination of person other than debtor [Bankruptcy Rule 2004(a)]
- § 1:159 —Designating corporate officer to appear for examination on behalf of corporate debtor [Bankruptcy Rule 9001(5)]
- § 1:160 First set of interrogatories and request for production of documents
- § 1:161 Interrogatories and request for production of documents (contested matter)

2. Subpoenas

- § 1:162 Subpoena for Rule 2004 examination (Official Form B 2540) [Bankruptcy Rule 2004]
- § 1:163 Subpoena to produce documents, information, or

TABLE OF CONTENTS

- objects or to permit inspection in a bankruptcy case (or adversary proceeding) (Official Form B 2570)
- § 1:164 Subpoena to witness in bankruptcy case (Official Form B 2560) [Bankruptcy Rule 9016]

VI. PROFESSIONALS

A. EMPLOYMENT

1. Applications and Affidavits

- § 1:165 General purpose application to employ—
Combined with order [11 U.S.C.A. § 327(a);
Bankruptcy Rule 2014]
- § 1:166 Bankruptcy fee agreement
- § 1:167 Application—For leave to retain professional
person [11 U.S.C.A. § 327(a); Bankruptcy Rule
2014]
- § 1:168 —For authority to employ general counsel [11
U.S.C.A. § 327(a); Bankruptcy Rule 2014]
- § 1:169 —For authority to employ local counsel [11
U.S.C.A. § 327(a); Bankruptcy Rule 2014]
- § 1:170 —By trustee—For leave to employ special
counsel [11 U.S.C.A. § 327(e); Bankruptcy Rule
2014]
- § 1:171 — —Authority to serve as attorney for trustee
[11 U.S.C.A. § 327(d)]
- § 1:172 Affidavit—Of proposed professional person [11
U.S.C.A. § 327(a); Bankruptcy Rule 2014]
- § 1:173 Application for employment of auctioneer [11
U.S.C.A. § 327(a); Bankruptcy Rule 2014]
- § 1:174 Affidavit of auctioneer [11 U.S.C.A. § 327(a);
Bankruptcy Rule 2014]

2. Orders

- § 1:175 Order—Authorizing employment of professional
person [11 U.S.C.A. § 327(a); Bankruptcy Rule
2014]
- § 1:176 —Approving employment of general counsel for
trustee [11 U.S.C.A. § 327(a); Bankruptcy Rule
2014(a)]
- § 1:177 —Approving employment of attorney nunc pro
tunc [11 U.S.C.A. § 327(a); Bankruptcy Rule
2014]
- § 1:178 —Denying approval of employment of attorney

BANKRUPTCY FORMS GUIDE

- nunc pro tunc [11 U.S.C.A. § 327(a);
Bankruptcy Rule 2014]
- § 1:179 —Authorizing employment of special counsel by
trustee [11 U.S.C.A. § 327(e); Bankruptcy Rule
2014]
- § 1:180 —Trustee—Authority to serve as attorney for
trustee [11 U.S.C.A. § 327(d)]
- § 1:181 Order approving auctioneer employment [11
U.S.C.A. § 327(a); Bankruptcy Rule 2014]

B. WITHDRAWAL

- § 1:182 Application—By attorney for trustee—For leave
to withdraw from representation
- § 1:183 Order—Authorizing attorney for trustee to
withdraw from representation

C. DISCLOSURES

- § 1:184 Attorney's disclosure of compensation (Official
Form B 2030) [11 U.S.C.A. § 329; Bankruptcy
Rule 2016(b)]
- § 1:185 Statement—By debtor's attorney—As to
compensation [11 U.S.C.A. § 329(a);
Bankruptcy Rule 2016(b)]
- § 1:186 — —As to compensation, date of payment,
assignment or pledge of property, remaining
balance of compensation and nonsharing of fees
[11 U.S.C.A. § 329(a); Bankruptcy Rule 2016(b)]
- § 1:187 —By unrepresented debtor—As to compensation
to be paid to others
- § 1:188 Disclosure of compensation of bankruptcy
petition preparer (Official Form B 2800) [11
U.S.C.A. § 110]

D. MISCELLANEOUS

- § 1:189 Notice of appearance—By attorney for creditor—
And request for service of papers [Bankruptcy
Rule 2002]
- § 1:190 Motion to appear pro hac vice
- § 1:191 Waiver form for special employees of the estate

TABLE OF CONTENTS

**VII. EARLY TERMINATION OF CASE BY
ABSTENTION, DISMISSAL, OR
CONVERSION**

A. ABSTENTION

- § 1:192 Motion—For court to abstain from exercising jurisdiction—Pending negotiation of out-of-court arrangement [11 U.S.C.A. § 305]
- § 1:193 Order—Abstention from exercise of jurisdiction—Pending negotiation of out-of-court arrangement [11 U.S.C.A. § 305]

B. DISMISSAL

1. Voluntary Cases

- § 1:194 Motion—By creditor—To dismiss case [11 U.S.C.A. § 109(g); Bankruptcy Rules 1017, 2002(a)(4)]
- § 1:195 Order—Dismissing case [11 U.S.C.A. § 109(g); Bankruptcy Rules 1017, 2002(a)(4)]
- § 1:196 Motion to dismiss for abuse of Chapter 7 [11 U.S.C.A. § 707(b); Bankruptcy Rules 1017, 2002(a)(4)]

2. Involuntary Cases

a. In General

- § 1:197 Motion to dismiss—By petitioner [11 U.S.C.A. § 303(i), (j)(1); Bankruptcy Rule 1017]
- § 1:198 Order—As to preparation and filing of list of creditors—To enable court to give dismissal notice [11 U.S.C.A. § 521(1); Bankruptcy Rule 1017]
- § 1:199 Notice—To creditors—Of motion to dismiss involuntary petition [11 U.S.C.A. § 303(j); Bankruptcy Rule 1017]
- § 1:200 — —Of motion to dismiss and of hearing thereon
- § 1:201 — —Of hearing on dismissal of involuntary petition [11 U.S.C.A. § 303(j); Bankruptcy Rule 1017]

b. By Consent

- § 1:202 Consent to dismissal—By petitioner and debtor [11 U.S.C.A. § 303(j)(2); Bankruptcy Rule 1017(a)]

- § 1:203 Motion for dismissal—By consent of petitioning creditors and debtor [11 U.S.C.A. § 303(i), (j)(2); Bankruptcy Rule 1017(a)]
- § 1:204 Notice—To creditor—Of consent between petitioner and debtor to dismiss [11 U.S.C.A. § 303(j)(2); Bankruptcy Rule 1017]
- § 1:205 Objections—To dismissal on consent—Combined with request for hearing thereon [11 U.S.C.A. § 303(j)(2)]

c. On Particular Grounds

- § 1:206 Motion—To dismiss petition for insufficiency [11 U.S.C.A. § 303(i), (j)(1)]
- § 1:207 —For dismissal of petition—For want of prosecution [11 U.S.C.A. § 303(j)(3); Bankruptcy Rule 1017]
- § 1:208 Affidavit supporting motion for dismissal—For failure to deposit fees [11 U.S.C.A. § 707(2); Bankruptcy Rule 1017]
- § 1:209 Notice of hearing—On objections to petitioner's motion to dismiss [11 U.S.C.A. § 303(j); Bankruptcy Rule 1017]
- § 1:210 Order—For dismissal of involuntary petition and payment of costs, attorney's fees, or damages [11 U.S.C.A. § 303(i)(1); Bankruptcy Rule 1017]
- § 1:211 Order of dismissal—For failure to pay fees [11 U.S.C.A. § 707(a)(2); Bankruptcy Rule 1017(b)]
- § 1:212 —For want of prosecution [11 U.S.C.A. § 303(j)(3); Bankruptcy Rule 1017(a)]

C. CONVERSION

- § 1:213 Motion—To convert proceedings [11 U.S.C.A. §§ 348, 706(b)]
- § 1:214 Order—For notice and opportunity for hearing—On motion to convert proceedings [11 U.S.C.A. §§ 348, 706(b); Bankruptcy Rule 2002(a)]
- § 1:215 Notice of hearing on motion to convert proceedings [11 U.S.C.A. §§ 348, 706(b); Bankruptcy Rule 2002(a)]
- § 1:216 Order—Converting case after hearing of objections thereto [11 U.S.C.A. §§ 348, 706(b)]
- § 1:217 Notice of order—Converting case to Chapter 7 [11 U.S.C.A. §§ 1112, 1307; Bankruptcy Rules 1019, 2002(a)]

TABLE OF CONTENTS

- § 1:218 Notice—Of conversion of Chapter 13 case to Chapter 7 [11 U.S.C.A. § 1307; Bankruptcy Rules 1019, 2002(a)]

VIII. AUTOMATIC STAY AND OTHER PROTECTIONS OF STATUS QUO

A. AUTOMATIC STAY

1. In General

- § 1:219 Notice of stay [11 U.S.C.A. § 362]
§ 1:220 Ex parte motion—For order enforcing automatic stay [11 U.S.C.A. §§ 105, 362]
§ 1:221 Consent order to maintain stay in effect [11 U.S.C.A. § 362(a)]

2. Motion to Extend Stay

- § 1:222 Motion to extend automatic stay, notwithstanding prior bankruptcy case [11 U.S.C.A. 362(c); Bankruptcy Rule 4001(a)]

3. Relief from Stay

a. Motions

- § 1:223 Motion—Requesting relief from automatic stay of suit against debtor [11 U.S.C.A. § 362(d); Bankruptcy Rule 4001(a), (d)]
§ 1:224 Notice of motion—For relief from automatic stay [11 U.S.C.A. § 362; Bankruptcy Rules 4001, 9014]
§ 1:225 Motion—For relief from the automatic stay—To permit continuation of state court action and recovery from debtor’s insurer [11 U.S.C.A. § 362(d); Bankruptcy Rule 4001(a), (d)]
§ 1:226 —For order lifting stay of lien enforcement—Chapter 7 [11 U.S.C.A. § 362; Bankruptcy Rules 4001, 9014]
§ 1:227 —By mortgagee—To vacate stay to permit foreclosure of mortgage on debtor’s real property [11 U.S.C.A. § 362(d); Bankruptcy Rule 4001(a), (d)]
§ 1:228 —For relief from the automatic stay—By tort claimant [11 U.S.C.A. § 362(d); Bankruptcy Rule 4001(a), (d)]
§ 1:229 —For relief from automatic stay—To repossess

- inventory—Joined with requests for segregation of cash collateral and adequate protection [11 U.S.C.A. §§ 361, 362(d), 363; Bankruptcy Rule 4001(a), (b), (d)]
- § 1:230 —For relief from automatic stay or, in the alternative, adequate protection [11 U.S.C.A. §§ 361, 362(d); Bankruptcy Rule 4001(a), (d)]
- § 1:231 Response—To motion to vacate stay—Trustee has tendered adequate protection [11 U.S.C.A. §§ 361, 362(d); Bankruptcy Rule 4001(a), (d)]
- § 1:232 Motion—To allow state court to liquidate unliquidated claim in pending state proceeding [11 U.S.C.A. §§ 362(d)(1), 502(c)(1); 28 U.S.C.A. § 1334(c)]
- § 1:233 Notice of stipulation terminating automatic stay [11 U.S.C.A. § 362]

b. Complaint

- § 1:234 Complaint for relief from automatic stay, to reclaim property, and to bar debtor's right of redemption [11 U.S.C.A. §§ 362(d), 544(b), 722]

c. Orders

- § 1:235 Order—For hearing and notice—On motion for relief from stay [11 U.S.C.A. § 362(d); Bankruptcy Rule 4001(a), (d)]
- § 1:236 —For relief from stay of suit against debtor [11 U.S.C.A. § 362(d); Bankruptcy Rule 4001(a), (d)]
- § 1:237 Conditional order continuing stay [11 U.S.C.A. § 362]
- § 1:238 Order—Authorizing liquidation in state court proceeding [11 U.S.C.A. §§ 362(d)(1), 502(c)(1); 28 U.S.C.A. § 1334(c)]

B. UTILITY SERVICE

- § 1:239 Motion—To modify amount of utility security deposit [11 U.S.C.A. § 366; Bankruptcy Rule 9014]
- § 1:240 Order—Modifying amount of utility security deposit [11 U.S.C.A. § 366]
- § 1:241 Motion—Expedited hearing to fix utility security deposit [11 U.S.C.A. § 366; Bankruptcy Rule 9014]
- § 1:242 Order—Utility—For hearing on debtor's motion

TABLE OF CONTENTS

- to fix adequate assurance of payment—
Combined with order to refrain from
discontinuing service pending hearing—Fixing
method of service of order [11 U.S.C.A. § 366]
- § 1:243 Complaint—To enjoin discontinuance of utility
service—To modify amount of deposit [11
U.S.C.A. § 366; Bankruptcy Rule 7003]

C. DISCRIMINATION

- § 1:244 Complaint—For injunctive and declaratory
relief—Discrimination in connection with
promotion of debtor by federal agency [11
U.S.C.A. § 525; 28 U.S.C.A. §§ 2201, 2202]
- § 1:245 —For declaratory and injunctive relief—
Discrimination by state agency in revoking
debtor's driver's license [11 U.S.C.A. § 525(a)]
- § 1:246 Jury instruction—Discrimination on the basis of
bankruptcy [11 U.S.C.A. § 525]

IX. PROPERTY OF ESTATE

A. ABANDONMENT

- § 1:247 Notice—To creditors—Of trustee's intent to
abandon property [11 U.S.C.A. § 554(a);
Bankruptcy Rule 6007(a), (c)]
- § 1:248 Notice of proposed abandonment [11 U.S.C.A.
§ 554(a); Bankruptcy Rule 6007(a), (c)]
- § 1:249 Trustee's report of abandoned property—
Combined with notice thereof and application
for approval of abandonment [11 U.S.C.A.
§ 554(a); Bankruptcy Rule 6007]
- § 1:250 Motion—By debtor—For order of abandonment
of debtor's homestead [11 U.S.C.A. § 554(b);
Bankruptcy Rule 6007(b)]
- § 1:251 Motion and notice—By creditor—To abandon
property [11 U.S.C.A. § 554(b); Bankruptcy
Rule 6007(b)]
- § 1:252 Order—Authorizing abandonment of property—
On uncontested motion of creditor [11 U.S.C.A.
§ 554(b); Bankruptcy Rule 6007]
- § 1:253 Order of abandonment of homestead—On
motion of debtor [11 U.S.C.A. § 554(b);
Bankruptcy Rule 6007]
- § 1:254 Order—After hearing upon objections to

trustee's notice of intent to abandon property
[11 U.S.C.A. § 554(a); Bankruptcy Rule 6007]

B. APPRAISAL

- § 1:255 Application for employment of appraiser [11 U.S.C.A. § 327(a); Bankruptcy Rules 2014(a), 6005]
- § 1:256 Allegation—Of purpose and necessity for appointment [11 U.S.C.A. § 327(a); Bankruptcy Rules 2014(a), 6005]
- § 1:257 Order—Dispensing with appraisal [Bankruptcy Rule 2014(a)]
- § 1:258 —Authorizing trustee to employ appraiser and fixing appraiser's compensation [11 U.S.C.A. §§ 327(a), 328(a); Bankruptcy Rule 6005]
- § 1:259 Oath of appraiser [11 U.S.C.A. § 327(a); Bankruptcy Rule 6005]
- § 1:260 Appraisal—Of industrial real estate

C. REDEMPTION

- § 1:261 Debtor's request to redeem property—To lienholder [11 U.S.C.A. § 722; Bankruptcy Rule 6008]
- § 1:262 Denial of debtor's request to redeem—By lienholder [11 U.S.C.A. § 722; Bankruptcy Rule 6008]
- § 1:263 Motion—For order authorizing redemption of personal property subject to lien [11 U.S.C.A. § 722; Bankruptcy Rule 6008]
- § 1:264 Notice of motion and hearing—On motion to redeem [11 U.S.C.A. § 722; Bankruptcy Rule 6008]
- § 1:265 Order—Authorizing redemption of personal property from lien [11 U.S.C.A. § 722; Bankruptcy Rule 6008]

D. UNCLAIMED PROPERTY

- § 1:266 Trustee's application to pay unclaimed moneys into the court [28 U.S.C.A. §§ 2041, 2042]
- § 1:267 Order authorizing payment of unclaimed moneys into the court [28 U.S.C.A. §§ 2041, 2042]
- § 1:268 Motion by claimant to obtain unclaimed funds [11 U.S.C.A. § 347; 28 U.S.C.A. § 2041]

TABLE OF CONTENTS

E. TURNOVER ACTIONS

- § 1:269 Complaint—For turnover order [11 U.S.C.A. §§ 323(b), 542(a); Bankruptcy Rules 7001, 7003]
- § 1:270 —To require custodian in prior proceedings to account and turn over property [11 U.S.C.A. §§ 323(b), 543(b); Bankruptcy Rules 7001, 7003]
- § 1:271 Answer—To complaint for turnover order [11 U.S.C.A. § 542(a); Bankruptcy Rule 7007]
- § 1:272 Order for surrender of property to trustee [11 U.S.C.A. § 542(a); Bankruptcy Rules 7001, 7054]
- § 1:273 Order requiring custodian to file report, account, and petition for compensation, and deliver assets to trustee [11 U.S.C.A. § 543(b), (d); Bankruptcy Rules 7001, 7054]
- § 1:274 Order dismissing turnover proceedings [11 U.S.C.A. § 542(a); Bankruptcy Rules 7001, 7041]

F. RECLAMATION

- § 1:275 Demand for reclamation—By seller of goods to debtor [11 U.S.C.A. § 546(c)]
- § 1:276 Request—To trustee in stockbroker liquidation case—For reclamation of customer name security after payment of debtor's claim [11 U.S.C.A. § 751]
- § 1:277 Complaint—To reclaim property from trustee—Sale of goods procured by debtor by fraud [11 U.S.C.A. § 546(c); Bankruptcy Rules 7001, 7003]
- § 1:278 Trustee's answer to reclamation complaint [11 U.S.C.A. § 546(c); Bankruptcy Rule 7007]
- § 1:279 Order—Granting complaint for reclamation of property from trustee [11 U.S.C.A. § 546(c); Bankruptcy Rules 7001, 7054]
- § 1:280 —Determining claims in reclamation proceedings [11 U.S.C.A. § 546(c); Bankruptcy Rules 7001, 7054]

X. EXEMPTIONS

A. CLAIMING EXEMPTIONS

- § 1:281 Schedule C: The property you claim as exempt (individuals) (Official Form No. 106C) [11 U.S.C.A. § 522(l)]

- § 1:282 List of exempt property—By dependent of debtor
[11 U.S.C.A. § 522(l); Bankruptcy Rule 4003(a)]

B. OBJECTIONS TO EXEMPTIONS

- § 1:283 Objections—To debtor’s list of exempt property—
General form [11 U.S.C.A. § 522(l); Bankruptcy
Rule 4003(b)]
- § 1:284 Objections to debtor’s list of exempt property—
On ground of fraudulent transfer and
concealment of assets [11 U.S.C.A. § 552(l);
Bankruptcy Rule 4003(b)]
- § 1:285 Trustee’s objections to debtor’s list of exempt
property—On ground of lack of statutory
authority [11 U.S.C.A. § 552(l); Bankruptcy
Rule 4003(b)]
- § 1:286 Notice of motion or objection (Official Form No.
420A) [Bankruptcy Rule 4003(b)]
- § 1:287 Motion to extend time to file objection to
exemption claim [Bankruptcy Rule 4003(b)]
- § 1:288 Order—Denying objections to debtor’s list of
exempt property—Absence of fraudulent
concealment [11 U.S.C.A. § 552(l); Bankruptcy
Rule 4003(b)]

C. AVOIDANCE OF LIENS IMPAIRING EXEMPTIONS

- § 1:289 Motion—To avoid lien impairing exemption—
Judicial lien [11 U.S.C.A. § 522(f); Bankruptcy
Rules 4003(d), 9014]
- § 1:290 —To avoid lien on interest of debtor in exempt
automobile [11 U.S.C.A. § 522(f); Bankruptcy
Rules 4003(d), 9014]
- § 1:291 —To avoid nonpossessory, nonpurchase-money
security interest in household or personal goods
[11 U.S.C.A. § 522(f)(1)(B); Bankruptcy Rules
4003(d), 9014]
- § 1:292 Motion to avoid nonpossessory, nonpurchase-
money lien filed in clerk’s office [11 U.S.C.A.
§ 522(f)(1)(B); Bankruptcy Rules 4003(d), 9014]
- § 1:293 Order—Granting motion to avoid nonpossessory,
nonpurchase-money lien [11 U.S.C.A.
§ 522(f)(2)]
- § 1:294 —To avoid nonpossessory, nonpurchase-money
lien [11 U.S.C.A. § 522(f)(1)(B)]

TABLE OF CONTENTS

**XI. CLAIMS AND INTERESTS;
ADMINISTRATIVE EXPENSES**

A. PROOF OF CLAIM

1. In General

- § 1:295 Proof of claim (Official Form No. 410) [11 U.S.C.A. § 501; Bankruptcy Rule 3001]
- § 1:296 Proof of claim, Attachment A (Official Form No. 410A)
- § 1:297 Proof of claim, Supplement 1 (Official Form No. 410S-1)
- § 1:298 Proof of claim, Supplement 2 (Official Form No. 410S-2)
- § 1:299 Proof of claim—By entity liable to creditor with debtor [11 U.S.C.A. § 501(b); Bankruptcy Rule 3005]
- § 1:300 —By debtor or trustee [11 U.S.C.A. § 501(c); Bankruptcy Rule 3004]
- § 1:301 Class proof of claim [11 U.S.C.A. § 501; Bankruptcy Rules 3001, 7023]
- § 1:302 —Motion—To apply class action rules and procedures to class proof of claim [11 U.S.C.A. § 105; Bankruptcy Rules 7023, 9014]
- § 1:303 Allegation in proof of claim—Lessor’s claim for damages for breach of unexpired lease [11 U.S.C.A. §§ 365, 501(a); Bankruptcy Rule 3001]
- § 1:304 —In stockbroker liquidation case—Claimant a “customer” of stockbroker despite transaction postdating petition [11 U.S.C.A. §§ 501(a), 741(2), 746(a); Bankruptcy Rule 3001]

2. Notice of Filing by Debtor, Trustee, or Codebtor

- § 1:305 Notice—By court—Of filing of proof of claim by debtor, trustee, or codebtor
- § 1:306 — —Of debtor’s filing of tax or wage claim [11 U.S.C.A. § 501(c); Bankruptcy Rule 3004]

3. Extension of Time for Filing

- § 1:307 Motion—To extend time for filing proof of claim [Bankruptcy Rule 3002(c)(1), (2)]
- § 1:308 Order—Extending time for filing proofs of claim [Bankruptcy Rule 3002(c)]

4. Withdrawal of Claim

- § 1:309 Notice of withdrawal of claim [Bankruptcy Rule 3006]
- § 1:310 Motion—For withdrawal of claim [Bankruptcy Rule 3006]
- § 1:311 Order—Granting permission to withdraw claim [Bankruptcy Rule 3006]

5. Newly Discovered Assets

- § 1:312 Notice—By trustee—Of recovery of newly discovered assets [Bankruptcy Rules 2002(e), 3002(c)(5)]
- § 1:313 Order—Combined with notice thereof—Fixing time for filing claims in order to participate in newly discovered assets [Bankruptcy Rules 2002(e), 3002(c)(5)]
- § 1:314 Notice of need to file proof of claim due to recovery of assets (Official Form B 2040) [Bankruptcy Rule 2002(e); 3002(c)(5)]

6. Amendment

- § 1:315 Motion—For amendment of proof of claim
- § 1:316 Order—Granting permission for amendment of proof of claim

7. Transfer of Claims

- § 1:317 Transfer of claim other than for security (Official Form B 2100A) [Bankruptcy Rule 3001(e)]
- § 1:318 Notice of transfer of claim other than for security (Official Form B 2100B) [Bankruptcy Rule 3001(e)]

8. Miscellaneous

- § 1:319 Order—That all future notices be sent only to creditors filing claims [Bankruptcy Rules 2002(h), 3002(c)]
- § 1:320 Application to withdraw unclaimed funds [11 U.S.C.A. § 347; 28 U.S.C.A. § 2041]
- § 1:321 Appearance of child support creditor or representative (Official Form B 2810) [11 U.S.C.A. § 501]

TABLE OF CONTENTS

B. OBJECTIONS TO CLAIMS

1. In General

- § 1:322 Objection to claim—General form [11 U.S.C.A. §§ 502(a), 704(4); Bankruptcy Rule 3007]
- § 1:323 Objection to claim, with check list of grounds [11 U.S.C.A. § 502(a); Bankruptcy Rule 3007]
- § 1:324 Objection to claim—By creditor of partner in debtor partnership [11 U.S.C.A. § 502(a); Bankruptcy Rule 3007]

2. Specific Objections

- § 1:325 Claim not timely filed [11 U.S.C.A. § 502(b); Bankruptcy Rule 3002(c)]
- § 1:326 Claim barred by limitations [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]
- § 1:327 Claim paid [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]
- § 1:328 Claim not to be allowed unless claimant surrenders preference [11 U.S.C.A. § 502(b), (d); Bankruptcy Rule 3007]
- § 1:329 Fictitious consideration for claim [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]
- § 1:330 Claim of customer of stockbroker—Claim part of capital of debtor [11 U.S.C.A. §§ 502(b), 746(b)(1); Bankruptcy Rule 3007]
- § 1:331 —Claim subordinate to other claims—Customer an “insider” [11 U.S.C.A. §§ 101(31), 502(b), 746(b)(2), 747(1); Bankruptcy Rule 3007]
- § 1:332 — —Customer a 5% beneficial owner [11 U.S.C.A. §§ 502(b), 746(b)(2), 747(3); Bankruptcy Rule 3007]
- § 1:333 — —Customer a 5% participatory limited partner [11 U.S.C.A. §§ 502(b), 746(b)(2), 747(3); Bankruptcy Rule 3007]
- § 1:334 — —Customer controlled management and policies of debtor [11 U.S.C.A. §§ 502(b), 746(b)(2), 747(4); Bankruptcy Rule 3007]

3. Notices, Miscellaneous Matters Relating to Objections

- § 1:335 Notice of objection to claim (Official Form 420B)
- § 1:336 Notice of objections, and of hearing thereon [11 U.S.C.A. § 502(b); Bankruptcy Rules 3007, 9014]

- § 1:337 Motion—By trustee—To allow claim as late-filed, and as entitled to distribution only after payment of timely-filed claims [11 U.S.C.A. § 726(a)]
- § 1:338 Ex parte application—By trustee in stockbroker liquidation case—For order establishing procedures for distribution and for resolution of customer claims under SIPA [11 U.S.C.A. § 704(5); 15 U.S.C.A. §§ 78fff-2, 78lll; 17 C.F.R. Part 300]

C. ALLOWANCE OR DISALLOWANCE OF CLAIMS

1. Orders

- § 1:339 Order—Overruling objection and allowing claim [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]
- § 1:340 —Sustaining objections and disallowing claim [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]
- § 1:341 —Disallowing claim as unenforceable [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]
- § 1:342 —Disallowing tax claim [11 U.S.C.A. §§ 502(b), 505; Bankruptcy Rule 3007]
- § 1:343 —Allowing claim contingent on surrender of void or voidable preference, transfer, or lien [11 U.S.C.A. § 502(b), (d); Bankruptcy Rule 3007]
- § 1:344 —Allowing tax claim after determination of amount and validity of claim [11 U.S.C.A. §§ 502(b), 505(a); Bankruptcy Rule 3007]

2. Bifurcation of Secured Claims

- § 1:345 Motion—For determining value of lien and allowing deficiency as unsecured claim [11 U.S.C.A. §§ 502(b), 506(a); Bankruptcy Rule 3012]
- § 1:346 Order—Determining value of lien and allowing deficiency as unsecured claim [11 U.S.C.A. §§ 502(b), 506(a); Bankruptcy Rule 3012]

3. Estimation of Claims

- § 1:347 Motion—For estimation of claim [11 U.S.C.A. § 502(c)]
- § 1:348 Order—Estimating claim [11 U.S.C.A. § 502(c)]

TABLE OF CONTENTS

4. Reconsideration of Claim

- § 1:349 Motion to reconsider disallowed claim [11 U.S.C.A. § 502j; Bankruptcy Rule 3008]

D. SETOFF

- § 1:350 Trustee's assertion of setoff [11 U.S.C.A. § 558]
§ 1:351 Jury Instruction—Improvement of position test [11 U.S.C.A. § 553(b)]

E. SUBORDINATION

- § 1:352 Motion to subordinate claim pursuant to agreement [11 U.S.C.A. § 510(a)]
§ 1:353 Subordination clause in order directing subordination of claim [11 U.S.C.A. § 510]

F. ADMINISTRATIVE EXPENSE APPLICATIONS

1. In General

a. Applications

- § 1:354 Application—For payment of administrative expenses—General form [11 U.S.C.A. § 503(a); Bankruptcy Rule 2016(a)]
§ 1:355 —For compensation and reimbursement for expenses—By trustee [11 U.S.C.A. §§ 330(a), 503(a), (b)(2), 726(a)(1); Bankruptcy Rule 2016(a)]

b. Notices and Orders

- § 1:356 Notice—Of application for payment of administrative expenses [11 U.S.C.A. § 503(b)]
§ 1:357 — —Alternate form [11 U.S.C.A. § 503(b)]
§ 1:358 Notice of hearing on allowances [11 U.S.C.A. §§ 330, 331; Bankruptcy Rule 2002(a)(7)]
§ 1:359 Order—Allowing administrative expenses [11 U.S.C.A. § 503(b)]
§ 1:360 Order to pay administrative expense [11 U.S.C.A. § 503]
§ 1:361 Report of administrative expenses [11 U.S.C.A. § 503]

2. Professional Compensation

a. Applications and Motions

- § 1:362 Guidelines—By executive office of United States trustees—For reviewing applications for compensation and reimbursement of expenses [11 U.S.C.A. § 330; Bankruptcy Rule 2016]
- § 1:363 — —For reviewing applications for compensation and reimbursement of expenses—Project categories [11 U.S.C.A. § 330; Bankruptcy Rule 2016]
- § 1:364 — — —Sample summary sheet [11 U.S.C.A. § 330; Bankruptcy Rule 2016]
- § 1:365 Application—For payment of administrative expense—Professional person’s compensation and reimbursement for expenses [11 U.S.C.A. §§ 328(a), 330(a), 503(a), (b)(2), 726(a)(1); Bankruptcy Rule 2016(a)]
- § 1:366 —For compensation and reimbursement of expenses—By attorney for debtor [11 U.S.C.A. §§ 330(a), 503(a), (b)(2), 726(a)(1); Bankruptcy Rule 2016(a)]
- § 1:367 —For payment of compensation and expenses—By attorney for petitioning creditor [11 U.S.C.A. §§ 503(a), (b)(4), 726(a)(1); Bankruptcy Rule 2016(a)]
- § 1:368 Motion—For order requiring attorney to disclose facts concerning services performed and to repay excessive compensation [11 U.S.C.A. § 329(b)(1); Bankruptcy Rule 2016(b)]
- § 1:369 Debtor’s motion to examine attorney’s fees [11 U.S.C.A. § 329; Bankruptcy Rule 2017]

b. Notices and Orders

- § 1:370 Notice of hearing—On application for payment of administrative expenses—Disbursements for professional services [11 U.S.C.A. § 503(b)(4); Bankruptcy Rule 2002(a)(7)]
- § 1:371 Order—Determining reasonable compensation of attorney and requiring repayment of excessive amounts [11 U.S.C.A. § 329(b)(1); Bankruptcy Rule 2016]

TABLE OF CONTENTS

XII. ADMINISTRATIVE POWERS

A. AUTHORIZATION TO OPERATE BUSINESS

- § 1:372 Trustee's motion—For authority to operate debtor's business [11 U.S.C.A. § 721]
- § 1:373 Order—Authorizing trustee to operate debtor's business [11 U.S.C.A. § 721]
- § 1:374 Allegation—That operation for limited purpose will benefit estate more than immediate liquidation [11 U.S.C.A. § 721]

B. USE, SALE, OR LEASE OF PROPERTY

- § 1:375 Trustee's notice of motion to sell property [11 U.S.C.A. § 363; Bankruptcy Rule 2002]
- § 1:376 Motion by trustee to sell real estate [11 U.S.C.A. § 363(f); Bankruptcy Rules 4001(a), 6004]
- § 1:377 Motion for use, sale, or lease of cash collateral [11 U.S.C.A. § 363(c)(2); Bankruptcy Rules 4001(a), 6004]
- § 1:378 Notice—To interested parties of proposed use, sale, or lease of cash collateral—And of hearing on motion for use, sale, or lease [11 U.S.C.A. § 363(c)(2); Bankruptcy Rules 2002, 4001(b), 6004(a)]
- § 1:379 Certificate—As to notice of sale by trustee [11 U.S.C.A. § 363; Bankruptcy Rule 6004]
- § 1:380 Order—For use, sale, or lease of cash collateral [11 U.S.C.A. § 363(c)(2); Bankruptcy Rules 4001(a), 6004]
- § 1:381 —After hearing upon objections to trustee's notice of intent to use, sell, or lease real estate other than in ordinary course of business [11 U.S.C.A. § 363(b); Bankruptcy Rule 6004]
- § 1:382 Trustee's bill of sale [11 U.S.C.A. § 363; Bankruptcy Rule 6004]
- § 1:383 Trustee's deed—General form [11 U.S.C.A. § 363; Bankruptcy Rule 6004]
- § 1:384 Memorandum of sale [11 U.S.C.A. § 363; Bankruptcy Rule 6004]
- § 1:385 Offer to purchase debtor's assets—To trustee—In form of letter [11 U.S.C.A. § 363; Bankruptcy Rule 6004]
- § 1:386 Agreement not to disclose information obtained from bankrupt debtor—By company

- considering purchase of assets—In form of letter [11 U.S.C.A. § 363; Bankruptcy Rule 6004]
- § 1:387 Trustee’s acceptance of offer to buy—Subject to obtaining statutory or court authorization, as appropriate [11 U.S.C.A. § 363; Bankruptcy Rule 6004]
- § 1:388 Application for employment of auctioneer [11 U.S.C.A. § 327(a); Bankruptcy Rules 2014(a), 6005]
- § 1:389 Order—Authorizing trustee to employ auctioneer and fixing auctioneer’s compensation [11 U.S.C.A. §§ 327(a), 328(a); Bankruptcy Rule 6005]
- § 1:390 Notice of auction of remaining corporate assets—By liquidating trustees—By publication
- § 1:391 — —By letter accompanying distribution of proceeds
- § 1:392 Application for employment of realtor [11 U.S.C.A. § 327(a); Bankruptcy Rules 2014(a), 6004]
- § 1:393 Affidavit of realtor [11 U.S.C.A. § 327(a); Bankruptcy Rules 2014(a), 6004]
- § 1:394 Order—Authorizing trustee to employ realtor and fixing realtor’s compensation [11 U.S.C.A. §§ 327(a), 328(a); Bankruptcy Rule 6005]

C. OBTAINING CREDIT

- § 1:395 Motion—For leave to incur secured credit [11 U.S.C.A. § 364(c), (d); Bankruptcy Rule 4001(c)]
- § 1:396 Order—Authorizing trustee to obtain secured credit [11 U.S.C.A. § 364(c), (d); Bankruptcy Rule 4001(c)]

D. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

- § 1:397 Motion—To extend time for assuming or rejecting executory contract or unexpired lease [11 U.S.C.A. § 365(d)(1); Bankruptcy Rule 6006]
- § 1:398 —For extension of time to perform obligations under unexpired leases [11 U.S.C.A. § 365(d)(3); Bankruptcy Rule 6006]
- § 1:399 —For extension of time to assume or reject unexpired lease of nonresidential real property

TABLE OF CONTENTS

- where debtor is lessee [11 U.S.C.A. § 365(d)(4); Bankruptcy Rule 6006]
- § 1:400 Order—Granting extension of time to assume or reject executory contract or unexpired lease [11 U.S.C.A. § 365(d)(1); Bankruptcy Rule 6006]
- § 1:401 Motion—To assume executory contract [11 U.S.C.A. § 365(a); Bankruptcy Rule 6006]
- § 1:402 —To reject executory contract or unexpired lease [11 U.S.C.A. § 365(a); Bankruptcy Rule 6006]
- § 1:403 —To assign executory contract or unexpired lease [11 U.S.C.A. § 365(c), (f); Bankruptcy Rule 6006]
- § 1:404 Order—For rejection of unexpired lease [11 U.S.C.A. § 365(a); Bankruptcy Rule 6006]
- § 1:405 —Approving assignment of executory contract or unexpired lease [11 U.S.C.A. § 365(c), (f); Bankruptcy Rule 6006]

XIII. AVOIDING POWERS OF TRUSTEE

- § 1:406 Complaint—To avoid preference—Transfer of lien [11 U.S.C.A. § 547(b); Bankruptcy Rules 7001, 7003]
- § 1:407 Answer—To complaint to set aside preferential transfer [11 U.S.C.A. § 547; Bankruptcy Rules 7001, 7007]
- § 1:408 Jury instruction—Exceptions to preferential transfers [11 U.S.C.A. § 547]
- § 1:409 —Preference actions and exceptions thereto [11 U.S.C.A. § 547(b) and (c)]
- § 1:410 Complaint—To set aside sale for fraud and conspiracy by bidders [11 U.S.C.A. § 363(n); Bankruptcy Rules 7001, 7003]
- § 1:411 —To set aside fraudulent transfer and to recover property or its value [11 U.S.C.A. §§ 544, 548(a)(1), 550(a); Bankruptcy Rules 7001, 7003]
- § 1:412 —To avoid fraudulent transfer—To debtor's spouse [11 U.S.C.A. §§ 548(a), 550(a); Bankruptcy Rules 7001, 7003]
- § 1:413 Allegation—In complaint to set aside fraudulent transfer—That if transfer was made without actual fraudulent intent, it was constructively fraudulent [11 U.S.C.A. § 548(a)(2)]
- § 1:414 Complaint—In stockbroker or commodity broker liquidation case—To set aside fraudulent

- transfer of customer property [11 U.S.C.A. §§ 548(a), 550, 749, 764(a); Bankruptcy Rules 7001, 7003]
- § 1:415 Averment—In answer to complaint to set aside transfer of customer’s property—Futures commission merchant’s transfer approved by CFTC [11 U.S.C.A. § 764(b)]
- § 1:416 Jury Instruction—Fraudulent transfers and obligations [11 U.S.C.A. § 548(a)]

XIV. ADVERSARY PROCEEDINGS IN GENERAL

A. SUMMONS AND SUBPOENAS

- § 1:417 Summons in an adversary proceeding (Official Form B 2500A) [Bankruptcy Rule 7004]
- § 1:418 Adversary proceeding cover sheet (Official Form B 1040) [Bankruptcy Rule 7004]
- § 1:419 Summons and notice of pretrial conference in an adversary proceeding (Official Form B 2500B) [Bankruptcy Rule 7004]
- § 1:420 Summons and notice of trial in an adversary proceeding (Official Form B 2500C) [Bankruptcy Rule 7004]
- § 1:421 Subpoena to witness in an adversary proceeding (Official Form B 2550) [Bankruptcy Rule 9016]
- § 1:422 Third-party summons (Official Form B 2500D) [Bankruptcy Rule 7014]
- § 1:423 Summons in a Chapter 15 case seeking recognition of a foreign nonmain proceeding (Official Form B 2500F) [Abrogated] [Bankruptcy Rules 1010, 1519]
- § 1:424 Affidavit of service—On attorney—Mailing of pleading or paper [Bankruptcy Rule 7005]
- § 1:425 —On party—Personal delivery of pleading or paper [Bankruptcy Rule 7005]
- § 1:426 —On attorney or party—Pleading or paper left with court clerk [Bankruptcy Rule 7005]

B. CORE OR NON-CORE STATUS

- § 1:427 Allegation—In complaint, counterclaim, cross-claim, or third-party complaint—That adversary proceeding is core or noncore and, if noncore, whether pleader consents to entry of

TABLE OF CONTENTS

- final orders or judgment by bankruptcy judge
[28 U.S.C.A. § 157; Bankruptcy Rule 7008]
- § 1:428 Response—In responsive pleading—Admitting or
denying allegation that adversary proceeding is
core or noncore and, if noncore, whether
pleader consents to entry of final orders or
judgment by bankruptcy judge [28 U.S.C.A.
§ 157; Bankruptcy Rule 7012]
- C. VENUE OF ADVERSARY PROCEEDING
- § 1:429 Motion—For transfer of proceeding on grounds
of improper venue [28 U.S.C.A. § 1412;
Bankruptcy Rule 1014(a)]
- § 1:430 Order—Transferring proceedings to another
court [28 U.S.C.A. § 1412; Bankruptcy Rule
1014(a)]
- D. JURY TRIAL
- § 1:431 Consent to jury trial in bankruptcy court [28
U.S.C.A. § 157(e)]
- E. DEFAULT JUDGMENT
- § 1:432 Clerk’s notice to plaintiff of default judgment
procedure
- § 1:433 Application for entry of default
- § 1:434 Clerk’s certificate of default
- § 1:435 Entry of default (Official Form B 2600)
[Bankruptcy Rule 7055]
- § 1:436 Request for judgment by default and affidavit of
amount due
- § 1:437 Affidavit of nonmilitary service
- § 1:438 Findings, conclusions, recommendations for
default judgment which must be granted by
U.S. district court
- § 1:439 Affidavit of amount due
- § 1:440 Default judgment ordered by U.S. bankruptcy or
district judge
- § 1:441 Judgment by default—By judge (Official Form B
2610B) [Bankruptcy Rule 7055]
- § 1:442 —By clerk (Official Form B 2610A) [Bankruptcy
Rule 7055]

F. PRETRIAL MATTERS

1. Motions in Adversary Proceedings

- § 1:443 Notice of motion or objection (Official Form No. 420A)

2. Protective Orders

- § 1:444 Motion—For order protecting person from scandalous or defamatory matter contained in pleading or other paper [11 U.S.C.A. § 107(b)(2); Bankruptcy Rule 9018]
- § 1:445 Order—Protecting person from scandalous or defamatory matter contained in pleading or other paper [11 U.S.C.A. § 107(b)(2); Bankruptcy Rule 9018]
- § 1:446 —On stipulation of parties—Protecting trade secrets to be contained in discovery materials to be filed with court [11 U.S.C.A. § 107(b)(2); Bankruptcy Rule 9018]

3. Discovery Matters

- § 1:447 Ex parte motion to reduce time for response to discovery, adversary proceeding [Bankruptcy Rule 9006(c)]
- § 1:448 Order reducing time for response to discovery, adversary proceeding [Bankruptcy Rule 9006(c)]
- § 1:449 Interrogatories and request for production of documents, in adversary proceeding [Bankruptcy Rule 7026]

4. Pretrial Orders

- § 1:450 Pretrial order—Generally [Bankruptcy Rule 7016]
- § 1:451 Pretrial and scheduling order [Bankruptcy Rule 7016]

G. REMOVAL OF STATE COURT ACTION

- § 1:452 Notice—By trustee—Of removal of civil action to bankruptcy or district court [28 U.S.C.A. § 1452(a); Bankruptcy Rule 9027]
- § 1:453 —To adverse party—Of filing of notice of removal [28 U.S.C.A. § 1452(a); Bankruptcy Rule 9027]

TABLE OF CONTENTS

- § 1:454 Motion—For remand to state court [28 U.S.C.A. § 1452(b); Bankruptcy Rule 9027(d)]

H. SETTLEMENT, ARBITRATION AND MEDIATION

- § 1:455 Motion—For leave to compromise controversy [Bankruptcy Rule 9019(a)]
§ 1:456 Notice—To creditors of proposed compromise [Bankruptcy Rules 2002(a), 9019(a)]
§ 1:457 Order authorizing compromise [Bankruptcy Rule 9019(a)]
§ 1:458 Stipulation—For submission of controversy to arbitration [Bankruptcy Rule 9019(c)]
§ 1:459 Order authorizing arbitration [Bankruptcy Rule 9019(c)]
§ 1:460 Order of referral to mediation [Bankruptcy Rule 9019]
§ 1:461 Report of mediator [Bankruptcy Rule 9019]
§ 1:462 Judge’s instructions for settlement conference
§ 1:463 Order for settlement conference

I. NEW TRIAL

- § 1:464 Motion and notice—For new trial [Bankruptcy Rule 9023]
§ 1:465 Order—Granting new trial [Bankruptcy Rule 9023]
§ 1:466 Judgment in an adversary proceeding (Official Form B 2610C)

J. EXECUTION ON JUDGMENT

- § 1:467 Notice of entry of judgment (Official Form B 2620)
§ 1:468 Bill of costs (Official Form B 2630) [Bankruptcy Rule 7054]
§ 1:469 Writ of execution to the United States Marshal (Official Form B 2640)
§ 1:470 Certification of judgment for registration in another district (Official Form B 2650)

XV. DISCHARGE

A. PREPARATION FOR DISCHARGE

- § 1:471 *[Reserved]*

- § 1:472 Debtor's certificate regarding § 522(q)(1) [11 U.S.C.A. § 727(a)(12)]

B. DETERMINATION OF DISCHARGEABILITY OF DEBT

- § 1:473 Complaint—By debtor—For determination that debt dischargeable [11 U.S.C.A. § 523; Bankruptcy Rule 4007]
- § 1:474 — —To determine dischargeability of domestic support debt [11 U.S.C.A. § 523(a)(5); Bankruptcy Rule 4007]
- § 1:475 — —To determine dischargeability of educational loan [11 U.S.C.A. § 523(a)(8); Bankruptcy Rule 4007]
- § 1:476 —By creditor—To determine dischargeability of credit card debt [11 U.S.C.A. § 523(a)(2)(A), (C); Bankruptcy Rule 4007]
- § 1:477 — —For determination excepting debt from dischargeability—Transaction induced by fraud respecting debtor's financial condition [11 U.S.C.A. § 523(a)(2)(B); Bankruptcy Rule 4007]
- § 1:478 — — —Debt for willful and malicious injury [11 U.S.C.A. §§ 523(a)(6), (c); Bankruptcy Rule 4007]

C. OBJECTIONS TO DISCHARGE

1. In General

- § 1:479 Complaint objecting to discharge of debtor [11 U.S.C.A. § 727; Bankruptcy Rule 4004]
- § 1:480 Allegation—In complaint objecting to discharge—Failure to keep or preserve books or records, to explain loss or deficiency in assets, and transfer or concealment of property [11 U.S.C.A. § 727(a)(2), (3), (5), (c)(1)]
- § 1:481 — —Transfer, removal, destruction, or concealment of property within one year preceding filing of bankruptcy petition [11 U.S.C.A. § 727(a)(2)(A), (c)(1)]
- § 1:482 — —Concealment by omitting fraudulently transferred property from schedules [11 U.S.C.A. § 727(a)(2)(B), (c)(1)]
- § 1:483 — —Failure to keep books and records [11 U.S.C.A. § 727(a)(3), (c)(1)]

TABLE OF CONTENTS

- § 1:484 — —Destruction of books from which financial condition might have been ascertained [11 U.S.C.A. § 727(a)(3), (c)(1)]
- § 1:485 — —False oath or account [11 U.S.C.A. § 727(a)(4)(A), (c)(1)]
- § 1:486 — —Refusal to obey lawful order of court [11 U.S.C.A. § 727(a)(6)(A), (c)(1)]
- § 1:487 — —Refusal to answer material question [11 U.S.C.A. § 727(a)(6)(C), (c)(1)]

2. Extension of Time

- § 1:488 Motion—For extension of time to object to discharge (or to determine dischargeability) [11 U.S.C.A. §§ 523(c), 727(a); Bankruptcy Rules 4004(b), 4007(d)]
- § 1:489 Order—Extending time to object to discharge [11 U.S.C.A. § 727; Bankruptcy Rule 4004(b)]

3. Miscellaneous

- § 1:490 Motion to strike specifications in complaint objecting to discharge [Bankruptcy Rule 7012(b)]
- § 1:491 Order—Striking specification in complaint objecting to discharge [Bankruptcy Rule 7012(b)]
- § 1:492 Request—By party in interest—For order requiring trustee to examine debtor's acts and conduct [11 U.S.C.A. § 727(c)(2)]

D. HEARING ON DISCHARGE

- § 1:493 Ex parte motion—By debtor—For order relieving debtor of obligation to appear at discharge hearing [11 U.S.C.A. § 524; Bankruptcy Rule 4008]

E. ORDER GRANTING OR DENYING DISCHARGE

- § 1:494 Discharge of debtor in a Chapter 7 case (Official Form No. 318) [11 U.S.C.A. §§ 523, 524, 727; Bankruptcy Rule 4004]
- § 1:495 Discharge of individual debtor in Chapter 11 case (Official Form B 3180RI)

- § 1:496 Order denying discharge [11 U.S.C.A. §§ 524, 727; Bankruptcy Rule 4004(d)]

F. REVOCATION OF DISCHARGE

- § 1:497 Complaint for revocation of discharge [11 U.S.C.A. § 727(d)(1); Bankruptcy Rule 9024]
 § 1:498 Order revoking discharge [11 U.S.C.A. § 727(d)(1), (e)(1); Bankruptcy Rule 9024]

G. REAFFIRMATION OF DEBT

- § 1:499 Motion—By debtor who has no attorney—For authority to enter, and approval of, reaffirmation agreement [11 U.S.C.A. § 524(c), (d); Bankruptcy Rule 4008]
 § 1:500 Order and notice—To debtor and trustee—For appearance of debtor at hearing on discharge and reaffirmation of debts [11 U.S.C.A. §§ 524(d), 727, 1121, 1328; Bankruptcy Rule 4008]
 § 1:501 Cover sheet for reaffirmation agreement (Official Form No. 427)
 § 1:502 Reaffirmation documents (Official Form B 2400A)
 § 1:503 Motion for approval of reaffirmation agreement (Official Form B 2400B)
 § 1:504 Order on reaffirmation agreement (Official Form B 2400C)
 § 1:505 Reaffirmation agreement (Official Form B 2400A/B ALT)
 § 1:506 Order on reaffirmation agreement (Official Form B 2400C ALT)
 § 1:507 Motion—By debtor—To reopen discharge hearing and obtain approval of reaffirmation agreement
 § 1:508 Complaint in action to collect reaffirmed debt [11 U.S.C.A. § 524(c)]

H. EFFECT OF DISCHARGE

- § 1:509 Debtor's answer—In suit to collect predischarge debt—Discharge as affirmative defense [11 U.S.C.A. §§ 524(a)(2), 727; FRCP 8(c)]
 § 1:510 Defense in answer—In suit by debtor to collect predischarge claim—Debtor not real party in

TABLE OF CONTENTS

- interest [11 U.S.C.A. § 524; Fed. R. Civ. P. 9(a), 17]
- § 1:511 Motion—For summary judgment—In suit by debtor to collect predischarge claim—Lack of capacity to sue [11 U.S.C.A. § 524; Fed. R. Civ. P. 9(a), 17, 56(b)]
- § 1:512 Notice of motion—In state court—For order canceling discharged judgment [11 U.S.C.A. § 524(a)(1); Bankruptcy Rule 4004(f)]
- § 1:513 Order—By state court—For cancellation of discharged judgment [11 U.S.C.A. § 524(a)(1); Bankruptcy Rule 4004(f)]

XVI. CLOSING AND REOPENING OF CASE

- § 1:514 Final decree (Official Form B 2710) [11 U.S.C.A. § 350; Bankruptcy Rule 3022]
- § 1:515 Order—Approving trustee’s report of no assets and abandonment of property, discharging trustee, and closing case [11 U.S.C.A. §§ 350(a), 554(a), 704(9); Bankruptcy Rules 2015, 5009, 6007]
- § 1:516 Motion—For reopening of closed case [11 U.S.C.A. § 350(b); Bankruptcy Rule 5010]
- § 1:517 Order reopening closed case [11 U.S.C.A. § 350(b); Bankruptcy Rule 5010]

XVII. BANKRUPTCY JUDGES; CONTEMPT

A. BANKRUPTCY JUDGES

- § 1:518 Motion—Disqualification of bankruptcy judge due to bias or prejudice [28 U.S.C.A. § 455(b)(1)]
- § 1:519 Affidavit—In support of motion to disqualify bankruptcy judge for bias or prejudice [28 U.S.C.A. §§ 144, 455(b)(1)]
- § 1:520 Complaint—To Court of Appeals—That bankruptcy judge is unable to discharge duties [28 U.S.C.A. § 372(c)]
- § 1:521 Exemplification certificate (Official Form B 1310) [Bankruptcy Rule 5006]

B. CONTEMPT

- § 1:522 Motion—By debtor—To hold creditor in civil contempt and liable for damages—For violation

- of automatic stay [11 U.S.C.A. § 362(a), (h); Bankruptcy Rule 9020]
- § 1:523 Notice—Of charge of civil contempt [11 U.S.C.A. § 362(a), (h); Bankruptcy Rule 9020]
- § 1:524 Order—Holding creditor in civil contempt and awarding damages [11 U.S.C.A. § 362(a), (h)]
- § 1:525 Motion—To hold creditor in contempt and for injunction against suit on discharged debt [11 U.S.C.A. § 524(a)(2)]
- § 1:526 Order—Awarding judgment in contempt and enjoining creditor from prosecuting suit on discharged debt [11 U.S.C.A. § 524(a)(2)]

CHAPTER 2. FORMS FOR REHABILITATION CASES

I. ADJUSTMENT OF DEBTS OF A MUNICIPALITY

A. COMMENCEMENT OF CASE

- § 2:1 Resolution—Authorizing proceedings under Chapter 9 [11 U.S.C.A. § 921(a)]
- § 2:2 List—For individual Chapter 11 cases: List of creditors who have the 20 largest unsecured claims against you and are not insiders (Official Form No. 104) [11 U.S.C.A. § 924; Bankruptcy Rule 1007(d)]
- § 2:3 —For Chapter 11 cases: The list of creditors who have the 20 largest unsecured claims against you who are not insiders (non-individuals) (Official Form No. 204)
- § 2:4 List of creditors [11 U.S.C.A. § 924; Bankruptcy Rule 1007]

B. TRUSTEES

- § 2:5 Creditor's motion—For appointment of trustee—To exercise avoiding authority [11 U.S.C.A. § 926]
- § 2:6 Order—Appointing trustee—To exercise avoiding authority [11 U.S.C.A. § 926]

C. EARLY TERMINATION OF CASE BY DISMISSAL

- § 2:7 Motion—To dismiss petition [11 U.S.C.A. § 921(c); Bankruptcy Rule 1017(d)]

TABLE OF CONTENTS

- § 2:8 Notice—Of hearing on motion to dismiss petition [11 U.S.C.A. § 921(c); Bankruptcy Rule 1017(d)]
- § 2:9 Order—Dismissing petition [11 U.S.C.A. § 921(c); Bankruptcy Rule 1017(d)]
- § 2:10 Notice—Of dismissal of petition [11 U.S.C.A. § 923; Bankruptcy Rule 1017(a)]
- § 2:11 Motion—For dismissal of case for want of prosecution [11 U.S.C.A. § 930(a)(1); Bankruptcy Rule 1017]
- § 2:12 Order—Dismissal of case for want of prosecution [11 U.S.C.A. § 930(a)(1); Bankruptcy Rule 1017]

D. CREDITORS AND CLAIMS

- § 2:13 Motion for Appointment of Committee [11 U.S.C.A. §§ 901, 1102]

E. PLAN

1. In General

- § 2:14 Order and notice—For hearing on disclosure statement (Official Form No. 312) [11 U.S.C.A. §§ 901, 1125; Bankruptcy Rule 3017]
- § 2:15 Provision of plan—Treatment of claims for administrative expenses [11 U.S.C.A. §§ 941, 943(b)(5); Bankruptcy Rule 3016]
- § 2:16 Order—Permitting filing modification of plan prior to confirmation, fixing hearing and time for rejection, combined with notice thereof [11 U.S.C.A. § 942]
- § 2:17 —Confirming plan [11 U.S.C.A. § 943(b)]

2. Disbursing Agent

- § 2:18 Order—Appointing disbursing agent and fixing amount of bond [11 U.S.C.A. § 944(b)(2)]
- § 2:19 Notice—To disbursing agent—Of appointment [11 U.S.C.A. § 944(b)(2)]
- § 2:20 Bond—Of disbursing agent
- § 2:21 Order—Approving disbursing agent's bond

F. CLOSING CASE

- § 2:22 Order—Approving deposit and discharging petitioner [11 U.S.C.A. § 944(b)(2)]

II. REORGANIZATION UNDER CHAPTER 11

A. COMMENCEMENT OF VOLUNTARY CASE

1. Statement of Income

§ 2:23 Chapter 11 statement of your current monthly income (Official Form No. 122B)

2. Voluntary Petition for Corporation or Partnership

§ 2:24 Directors' resolution—Authorization for filing voluntary petition for reorganization

B. COMMENCEMENT OF INVOLUNTARY PETITION

1. Resolutions in Response to Involuntary Petition

§ 2:25 Resolution—Authorizing debtor's officer to file answer admitting allegations of petition

§ 2:26 Directors' resolution—Admission of inability to pay debts as they become due—Combined with consent to entry of order for relief

§ 2:27 Stockholders' resolution—Ratification of directors' admission of inability to pay debts as they become due and consent to entry of order for relief

2. Responsive Pleadings to Involuntary Petition

§ 2:28 Answer—Of debtor consenting to creditors' petition [11 U.S.C.A. § 303(d)]

§ 2:29 —Controverting petition [11 U.S.C.A. § 303(d)]

3. Petitioner's Bond in Involuntary Case

§ 2:30 Bond—Of petitioner in involuntary case [11 U.S.C.A. § 303(e)]

C. NOTICE OF COMMENCEMENT OF CHAPTER 11 CASE, MEETING OF CREDITORS, AND FIXING OF DATES

§ 2:31 Notice of Chapter 11 bankruptcy case (For individuals or joint debtors) (Official Form No. 309E1) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]

TABLE OF CONTENTS

- § 2:31.50 Notice of Chapter 11 bankruptcy case (For individuals or joint debtors under Subchapter V) (Official Form No. 309E2) [11 U.S.C.A. §§ 1181 et seq.]
- § 2:32 Notice of Chapter 11 bankruptcy case (For corporations or partnerships) (Official Form No. 309F1) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]
- § 2:32.50 Notice of Chapter 11 bankruptcy case (For corporation or partnerships under Subchapter V) (Official Form No. 309F2) [11 U.S.C.A. §§ 1181 et seq.]

D. CONTINUANCE OF DEBTOR IN POSSESSION

- § 2:33 Certificate—Of retention of debtor in possession (Official Form B 2070) [11 U.S.C.A. § 1107; Bankruptcy Rule 2011]
- § 2:34 Motion—By creditor—To limit extent of operating authority of debtor in possession [11 U.S.C.A. § 1108]
- § 2:35 Ex parte motion—By United States—For order directing debtor in possession as to withholding taxes [11 U.S.C.A. § 1108]
- § 2:36 Order—Authorizing debtor to remain in possession and to operate business—And specifying powers and obligations of debtor in possession [11 U.S.C.A. §§ 1107(a), 1108]
- § 2:37 —Limiting operating authority of debtor in possession [11 U.S.C.A. § 1108]
- § 2:38 —Tax withholding [11 U.S.C.A. § 1108]
- § 2:39 United States Trustee Operating and Reporting Guidelines (Bankruptcy Rule 2015)
- § 2:40 Monthly operating report—United States Trustee (Bankruptcy Rule 2015)

E. TRUSTEES AND EXAMINERS

1. Appointment

- § 2:41 Motion—For appointment of trustee [11 U.S.C.A. § 1104(a); Bankruptcy Rule 2007.1]
- § 2:42 —Objecting to continued operation of business by debtor in possession—Requesting appointment of trustee [11 U.S.C.A. §§ 1107(a), 1108; Bankruptcy Rule 2007.1]
- § 2:43 —For appointment of examiner [11 U.S.C.A. § 1104(c); Bankruptcy Rule 2007.1]

- § 2:44 Order appointing an examiner [11 U.S.C.A. § 1104(c)]
- § 2:45 Notice of hearing—Appointment of trustee [11 U.S.C.A. § 1104(a); Bankruptcy Rule 2007.1]
- § 2:46 Order—Directing appointment of trustee and placement of assets and business in trustee’s control [11 U.S.C.A. § 1104(a)]
- § 2:47 Notice—Of appointment of trustee [11 U.S.C.A. § 1104(a)]
- § 2:48 Order—Directing appointment of examiner to investigate [11 U.S.C.A. §§ 1104(c), 1106]
- § 2:49 Statement of result of investigation—By trustee or examiner [11 U.S.C.A. § 1106(a)(4), (b)]

2. Termination of Appointment

- § 2:50 Motion—For termination of trustee’s appointment [11 U.S.C.A. § 1105]
- § 2:51 Notice—To trustee—To show cause why appointment should not be terminated [11 U.S.C.A. § 1105]
- § 2:52 Order—Terminating trustee’s appointment and restoring debtor to possession [11 U.S.C.A. § 1105]

F. PROFESSIONALS

1. Employment

- § 2:53 Application—By debtor in possession—For order approving employment of counsel [11 U.S.C.A. § 327(a); Bankruptcy Rule 2014]
- § 2:54 Affidavit—By professional person to be employed by debtor in possession [11 U.S.C.A. § 327(a); Bankruptcy Rule 2014]
- § 2:55 Application—By creditors’ committee—For approval of employment of counsel [11 U.S.C.A. § 1103(a); Bankruptcy Rule 2014]
- § 2:56 Order—Approving employment of counsel by creditors’ committee [11 U.S.C.A. § 1103(a)]
- § 2:57 Order authorizing retention of financial advisors
- § 2:58 Letter agreement retaining financial advisors

2. Withdrawal

- § 2:59 Application—By attorney for debtor in possession—For leave to withdraw from representation

TABLE OF CONTENTS

- § 2:60 Order—Authorizing attorney for debtor in possession to withdraw from representation
- 3. Prepetition Compensation
- § 2:61 Motion—By debtor—For authority to pay prepetition fees and disbursements of ordinary course professionals [11 U.S.C.A. §§ 327(a), 330; Bankruptcy Rule 2014]
- § 2:62 Order—Authorizing debtor to pay prepetition fees and disbursements of ordinary course professionals [11 U.S.C.A. §§ 327(a), 330; Bankruptcy Rule 2014]
- 4. Postpetition Compensation
- § 2:63 Order establishing an interim fee and expense reimbursement procedure for professionals; Reimbursement prior to court approval [11 U.S.C.A. § 331; Bankruptcy Rule 2016]
- § 2:64 Uniform guidelines for interim compensation and expense reimbursement [11 U.S.C.A. § 331; Bankruptcy Rule 2016]
- § 2:65 Orders establishing interim fee and expense reimbursement procedures for professionals (reimbursement after court approves fee applications) [11 U.S.C.A. § 331; Bankruptcy Rule 2016]
- § 2:66 Supplemental order establishing interim fee and expense reimbursement procedures [11 U.S.C.A. § 331; Bankruptcy Rule 2016]
- § 2:67 Cover sheet for fee application for professionals [11 U.S.C.A. § 330; Bankruptcy Rule 2016]
- § 2:68 Order requiring creditor committee review of professionals' fee applications and creditor committee reports [11 U.S.C.A. § 330; Bankruptcy Rule 2016]

G. CREDITORS' COMMITTEES

- § 2:69 Motion—By creditor—To be added to committee [11 U.S.C.A. § 1102(c)]
- § 2:70 Request—By party in interest—For order requiring United States trustee to appoint additional committee [11 U.S.C.A. § 1102(a)]
- § 2:71 Order—Requiring United States trustee to appoint additional committee [11 U.S.C.A. § 1102(a)]

- § 2:72 Motion—By debtor—For order providing for interim payment and allowance of committee member expenses [11 U.S.C.A. § 503(b)(3)(D)]

H. EARLY TERMINATION OF CASE BY DISMISSAL OR CONVERSION

1. Dismissal of Involuntary Case

- § 2:73 Motion—To dismiss involuntary petition—Insufficient number of eligible creditors petitioning [11 U.S.C.A. § 303(i)]
- § 2:74 Judgment and order—For dismissal, damages, and punitive damages—Petition defective and not filed in good faith [11 U.S.C.A. § 303(i)(2)]

2. Dismissal of Voluntary Case

- § 2:75 Motion—By creditor—To dismiss or convert case to Chapter 7 [11 U.S.C.A. §§ 348, 1112; Bankruptcy Rules 1019, 2002(a)(5)]
- § 2:76 Order—To appear for status conference—And to show cause [11 U.S.C.A. §§ 348, 1112; Bankruptcy Rules 1019, 2002(a)(5)]
- § 2:77 —To show cause why case should not be dismissed or converted [11 U.S.C.A. § 1112]

3. Conversion of Involuntary Case

- § 2:78 Motion—To convert involuntary case—To Chapter 7 [11 U.S.C.A. §§ 348, 1112(b); Bankruptcy Rules 1019, 2002(a)(5)]
- § 2:79 Order—For hearing and notice of hearing—On motion to convert involuntary case [11 U.S.C.A. §§ 348, 1112(b); Bankruptcy Rules 1019, 2002(a)(5)]

4. Conversion of Voluntary Case

- § 2:80 Motion by debtor—To convert case—To Chapter 12 or 13 [11 U.S.C.A. §§ 348, 1112(d); Bankruptcy Rules 1017(d), 1019, 2002(a)(5)]
- § 2:81 Ex parte motion—By debtor—To convert case to Chapter 7 [11 U.S.C.A. §§ 348, 1112(a); Bankruptcy Rule 1019]
- § 2:82 Order—Directing conversion of case [11 U.S.C.A. §§ 348, 1112(b); Bankruptcy Rules 1019, 2002(a)(5)]
- § 2:83 —Converting Chapter 11 case to Chapter 13 [11 U.S.C.A. §§ 348, 1112]

TABLE OF CONTENTS

- § 2:84 —Appointing trustee and directing debtor to file further schedules, upon conversion of Chapter 11 case to Chapter 7 [11 U.S.C.A. §§ 701, 1112; Bankruptcy Rule 1019(5)]

I. AUTOMATIC STAY AND OTHER PROTECTIONS OF STATUS QUO

1. Automatic Stay

- § 2:85 Affidavit—In support of motion—To lift automatic stay—For default in terms of payment of pre- and post-petition secured debt [11 U.S.C.A. § 362(d)]
- § 2:86 Motion—For issuance of stipulated order to provide adequate protection in settlement of contested matter requesting relief from automatic stay [11 U.S.C.A. §§ 361, 362; Bankruptcy Rules 4001, 9019]
- § 2:87 Notice—Of proposed stipulated order to provide adequate protection in settlement of contested matter requesting relief from automatic stay [11 U.S.C.A. §§ 361, 362; Bankruptcy Rules 2002, 4001, 9019]
- § 2:88 Stipulated order—To provide adequate protection in settlement of contested matter requesting relief from automatic stay [11 U.S.C.A. §§ 361, 362; Bankruptcy Rules 4001, 9019]

2. Utility Service

- § 2:89 Motion—For payment of utility services [11 U.S.C.A. § 366]
- § 2:90 Order—Authorizing payment for utility services [11 U.S.C.A. § 366]
- § 2:91 Motion—By debtor—For order determining adequate assurance of payment for future utility services exists without further deposits [11 U.S.C.A. § 366(c)]
- § 2:92 Order—Determining adequate assurance of payment for future utility services exists without further deposits [11 U.S.C.A. § 366]

J. CLAIMS AND INTERESTS

1. In General

- § 2:93 Objection to claim [11 U.S.C.A. § 502; Bankruptcy Rule 3007]

- § 2:94 Order establishing a procedure for resolution of contested claims [Bankruptcy Rule 3007]
- § 2:95 Motion for order appointing an outside firm as claims agent for clerk of court
- § 2:96 Order appointing an outside firm as claims agent for clerk of court
- § 2:97 Motion by debtor—For order establishing bar date for filing proofs of claim [11 U.S.C.A. §§ 501, 1111(a); Bankruptcy Rule 3003(c)(3)]
- § 2:98 Notice of bar date for filing proofs of claim [11 U.S.C.A. §§ 501, 1111(a); Bankruptcy Rule 3003(c)(3)]

2. Priority Claims and Administrative Expenses

- § 2:99 Motion by creditor—For allowance and payment of priority claim for postpetition extension of credit [11 U.S.C.A. § 364(c)(1)]
- § 2:100 Motion by reclamation creditor—For payment of administrative expense and priority claim [11 U.S.C.A. §§ 503(b)(9), 546(c)(2)]
- § 2:101 Motion by lessor—For payment of administrative claim for postpetition rent incurred prior to rejection of lease [11 U.S.C.A. § 503(b)(1)(A)]

3. Compromise and Settlement of Claims

- § 2:102 Motion—For order approving settlement—And authorizing actions necessary to effectuate settlement [Bankruptcy Rule 9019(a)]
- § 2:103 —By debtor—For order authorizing payment of settlement amount [Bankruptcy Rule 9019(a)]
- § 2:104 Order—Authorizing debtor to compromise and settle prepetition claims [Bankruptcy Rule 9019(a)]
- § 2:105 Motion—By debtor—For order authorizing payments to contractors in satisfaction of liens [Bankruptcy Rule 9019(a)]
- § 2:106 Order—Authorizing payments in satisfaction of liens [Bankruptcy Rule 9019(a)]

K. ADMINISTRATIVE POWERS

1. Sale of Property

- § 2:107 Notice—Of motion by debtor in possession to sell property [11 U.S.C.A. §§ 363(b), 1107(a)]

TABLE OF CONTENTS

- § 2:108 —To parties in interest—Proposed sale of assets—Opportunity to object [11 U.S.C.A. §§ 102(1)(B), 363(b)(1); Bankruptcy Rules 2002(a)(2), 6004]
- § 2:109 Objection—By creditor—To intent to sell [11 U.S.C.A. §§ 102(1)(B), 363(b); Bankruptcy Rule 6004(b)]
- § 2:110 Notice—Of hearing on objection to sale [11 U.S.C.A. §§ 102(1)(B), 363(b); Bankruptcy Rule 6004(b)]
- § 2:111 Motion—By debtor—For order approving sale of property free and clear of liens and encumbrances [11 U.S.C.A. § 363(f)-(i); Bankruptcy Rule 6004(c)]
- § 2:112 Order—Marshaling and determining extent of liens and authorizing sale free of encumbrances [11 U.S.C.A. § 363(f), (g), (i); Bankruptcy Rule 7001(2)]
- § 2:113 Trustee’s deed—Sale free and clear of liens [11 U.S.C.A. § 363; Bankruptcy Rules 6004(c), 7001]

2. Use of Cash Collateral

a. In General

- § 2:114 Notice of motion—By attorney for debtor—To approve cash collateral agreement [11 U.S.C.A. § 363; Bankruptcy Rules 4001(b), (d), 9014]
- § 2:115 Notice—To all parties—Of hearing on approval of cash collateral agreement [11 U.S.C.A. § 363; Bankruptcy Rules 4001(b), (d), 9014]
- § 2:116 Objection by creditor—To debtor’s motion for use of cash collateral—And request for order prohibiting use of cash collateral [11 U.S.C.A. §§ 363(c), 506(a), 552, 1107(a); Bankruptcy Rules 4001(a), 9014]
- § 2:117 Order—Approving cash collateral agreement [11 U.S.C.A. § 363(a), (c)(2); Bankruptcy Rules 4001(b), (d), 9014]
- § 2:118 Sample order authorizing debtors to continue consolidated cash management system
- § 2:119 Sample order approving investment guidelines

b. Stipulations

- § 2:120 Motion—By debtor—For stipulation and order providing adequate protection to lender [11 U.S.C.A. §§ 361, 363; Bankruptcy Rule 4001(d)]

- § 2:121 Stipulation—For use of cash collateral [11 U.S.C.A. § 363(a), (c)(2); Bankruptcy Rules 4001(b), (d), 9014]

c. Periodic Cash Payments or Replacement Liens as Adequate Protection

- § 2:122 Provisions for adequate protection—In order authorizing debtor’s use of cash collateral—Debtor to make periodic cash payments to creditors claiming interest in cash collateral [11 U.S.C.A. §§ 361(1), 363(c); Bankruptcy Rules 4001(b), (d), 9014]

- § 2:123 Motion—To use cash collateral consisting of proceeds of encumbered accounts receivable—With adequate protection offered by replacement lien on real property [11 U.S.C.A. §§ 361, 363; Bankruptcy Rules 4001(b), (d), 9014]

- § 2:124 Order—Granting use of cash collateral and granting replacement lien as adequate protection [11 U.S.C.A. §§ 361, 363; Bankruptcy Rules 4001(b), (d), 9014]

d. Equipment Leasing or Rental

- § 2:125 Motion by debtor in possession—For use of cash collateral contained in depository accounts funded by equipment lease payments—And for determination that equipment maintenance revenues are not cash collateral nor subject to security interests [11 U.S.C.A. §§ 363(c), 506(a), 552, 1107(a); Bankruptcy Rules 4001(a), 9014]

- § 2:126 Order—Authorizing, for specified period, debtor’s use of cash collateral in equipment rental depository accounts—With provisions for accounting to assure adequate protection of creditors claiming interest in cash collateral [11 U.S.C.A. §§ 361(3), 363(c), 1107(a); Bankruptcy Rules 4001(a), 9014]

- § 2:127 Provisions for adequate protection—In order authorizing debtor’s use of cash collateral in equipment rental depository accounts—Debtor’s obligation to creditors claiming cash collateral to be secured by note [11 U.S.C.A. §§ 361(3), 363(c); Bankruptcy Rules 4001(b), (d), 9014]

TABLE OF CONTENTS

e. Protecting Use of Cash Collateral

- § 2:128 Motion—For sequestration and accounting of rents—And prohibition against disposition and use thereof [11 U.S.C.A. §§ 363(c), 546(b)]
- § 2:129 Promissory note—Executed by debtor authorized to use cash collateral—Evidencing debtor's obligation to creditors claiming cash collateral [11 U.S.C.A. §§ 361(3), 363(c); Bankruptcy Rules 4001(b), (d), 9014]
- § 2:130 Mortgage, pledge and security agreement—Executed by debtor authorized to use cash collateral—Securing note evidencing debtor's obligation to creditors claiming cash collateral [11 U.S.C.A. §§ 361(3), 363(c); Bankruptcy Rules 4001(b), (d), 9014]

3. Obtaining Credit

- § 2:131 Motion—For order authorizing debtor to incur new unsecured debt [11 U.S.C.A. § 364; Bankruptcy Rules 4001(c), (d), 9014]
- § 2:132 —By debtor—For order authorizing secured postpetition financing [11 U.S.C.A. § 364(c); Bankruptcy Rules 4001(c), (d), 9014]
- § 2:133 Order—Authorizing debtor to incur unsecured debt [11 U.S.C.A. § 364; Bankruptcy Rules 4001(c), (d), 9014]
- § 2:134 —Authorizing debtor to obtain secured postpetition financing [11 U.S.C.A. § 364(c); Bankruptcy Rules 4001(c), (d), 9014]

4. Executory Contracts and Unexpired Leases

- § 2:135 Motion—By equipment lessor—To fix time by which debtor or trustee must assume or reject lease [11 U.S.C.A. § 365(d)(2); Bankruptcy Rules 6006(b), 9014]
- § 2:136 —By debtor in possession—To extend time to assume or reject unexpired lease of nonresidential real property [11 U.S.C.A. § 365(d)(4); Bankruptcy Rules 6006, 9006(b), 9014]
- § 2:137 — —To assume lease [11 U.S.C.A. § 365; Bankruptcy Rules 6006, 9014]
- § 2:138 —By shopping center owner—For order requiring rejection of unexpired nonresidential real property lease and for conveyance of

improvements [11 U.S.C.A. § 365; Bankruptcy Rule 6006]

- § 2:139 —By party to executory contract or unexpired lease—For order fixing time within which estate must assume or reject [11 U.S.C.A. § 365(d)(2); Bankruptcy Rules 6006(b), 9014]
- § 2:140 Motion to shorten time within which debtor must assume or reject lease [11 U.S.C.A. § 365; Bankruptcy Rules 6006, 9006(c)]
- § 2:141 Motion—For expedited hearings on motions and applications of debtor

5. Employment Matters

- § 2:142 Motion—To reject collective bargaining agreement [11 U.S.C.A. § 1113; Bankruptcy Rules 6006, 9014]
- § 2:143 —To modify retiree benefits [11 U.S.C.A. § 1114]
- § 2:144 —To pay wages to employees [11 U.S.C.A. § 507(a)(4)]
- § 2:145 Order—Authorizing payment of wages to employees [11 U.S.C.A. § 507(a)(4)]
- § 2:146 Sample order authorizing debtors in possession to pay wages and salaries, and pay pre-petition employee business expenses and benefits
- § 2:147 Sample order authorizing payment of pre-petition wage claims
- § 2:148 Motion—By debtor corporation—To pay salaries to insiders [11 U.S.C.A. § 1129(a)(4)]
- § 2:149 Emergency motion—By debtor in possession—For authority to pay withheld employee contributions to employee benefit plan [11 U.S.C.A. § 507(a)(5)]

6. Purchase of Assets

- § 2:150 Motion—By debtor—For order authorizing purchase of real property pursuant to a lease-purchase option [11 U.S.C.A. § 363]

7. Avoidance Actions by Creditors' Committee

- § 2:151 Motion—By creditors' committee—For authority to pursue avoidance actions [11 U.S.C.A. § 1103]

TABLE OF CONTENTS

L. DISCLOSURE STATEMENT

1. Illustrative Disclosure Statements

- § 2:152 Generally applicable illustrative statement [11 U.S.C.A. § 1125; Bankruptcy Rules 3016, 3017]
- § 2:153 Debtor to be acquired by another entity [11 U.S.C.A. § 1125; Bankruptcy Rules 3016, 3017]
- § 2:154 Plan providing for sale of assets and payment in full in single payment [11 U.S.C.A. § 1125; Bankruptcy Rule 3017]
- § 2:155 Plan providing for 30% to unsecured claims, paid monthly over five years [11 U.S.C.A. § 1125; Bankruptcy Rule 3017]
- § 2:156 Plan providing for promissory notes to unsecured claims—15% of claims retired in five annual installments [11 U.S.C.A. § 1125; Bankruptcy Rule 3017]
- § 2:157 Plan of cash-crop farmers—Joint case [11 U.S.C.A. § 1125; Bankruptcy Rule 3017]

2. Disclosure in Small Business Case

- § 2:158 Disclosure statement in small business case under Chapter 11 (Official Form No. 425B) [11 U.S.C.A. §§ 101(51C), (51D), 1125(f); Bankruptcy Rule 3017.1]

3. Operating Reports Related to Disclosure

- § 2:159 Small business monthly operating report (Official Form No. 425C) [11 U.S.C.A. § 308; Bankruptcy Rule 3017.1]
- § 2:160 Periodic report regarding value, operations and profitability of entities in which the debtor's estate holds a substantial or controlling interest (Official Form No. 426) [Bankruptcy Rule 2015.3]

4. Notice and Orders on Disclosure Statement

- § 2:161 Order—Approving disclosure statement and fixing time for filing acceptances or rejections of plan—Combined with notice thereof (Official Form No. 313) [11 U.S.C.A. § 1125; Bankruptcy Rules 3017, 3018]
- § 2:162 —In small business case—Conditionally approving disclosure statement, fixing time for

- filing acceptances or rejections of plan, and fixing time for filing objections to disclosure statement and to confirmation of plan—Combined with notice thereof and of hearing on final approval of disclosure statement and hearing on confirmation of plan (Official Form B 3130S) [11 U.S.C.A. § 1125; Bankruptcy Rules 3017, 3018]
- § 2:163 —Denying request to approve disclosure statement [11 U.S.C.A. § 1125; Bankruptcy Rule 3017]

M. PLAN

1. Time for Filing and Other General Matters

- § 2:164 Motion—By creditor—To fix time by which debtor must file plan [11 U.S.C.A. § 1121(d); Bankruptcy Rule 3016(a)]
- § 2:165 —By debtor—For extension of exclusive time to file plan [11 U.S.C.A. § 1121; Bankruptcy Rule 9006(b)]
- § 2:166 Order—Extending debtor’s exclusive time to file plan [11 U.S.C.A. § 1121]
- § 2:167 Motion—To approve preconfirmation modification [11 U.S.C.A. § 1127(a); Bankruptcy Rule 3019]

2. Illustrative Plans

- § 2:168 Plan of reorganization—Sale of assets and payment in full in single payment [11 U.S.C.A. §§ 1121 to 1124]
- § 2:169 —Liquidating plan [11 U.S.C.A. §§ 1121 to 1124]
- § 2:170 —30% to unsecured claims, paid monthly over five years [11 U.S.C.A. §§ 1121 to 1124]
- § 2:171 —Unsecured claims to receive debtor’s promissory note for 15% of claims, retired in 5 annual installments [11 U.S.C.A. §§ 1121 to 1124]
- § 2:172 —Cash-crop farmers—Joint case [11 U.S.C.A. §§ 1121 to 1124]

3. Small Business Plan

- § 2:173 Plan of Reorganization in Small Business Case under Chapter 11 (Official Form No. 425A) [11 U.S.C.A. §§ 101(51C), (51D), 1121(e), 1129(e)]

TABLE OF CONTENTS

4. Ballots

- § 2:174 Ballot—For accepting or rejecting plan (Official Form No. 314) [Bankruptcy Rule 3018]
- § 2:175 —With small claim election and instructions for completing ballot [11 U.S.C.A. §§ 1125, 1126; Bankruptcy Rule 3017(d)]

N. CONFIRMATION AND DISCHARGE

1. Objection to Confirmation

- § 2:176 Plan not in conformity with Chapter 11 [11 U.S.C.A. § 1128(b); Bankruptcy Rule 3020(b)(1)]
- § 2:177 Plan not feasible [11 U.S.C.A. §§ 1128(b), 1129(a)(11); Bankruptcy Rule 3020(b)]

2. Motions and Orders Concerning Confirmation

- § 2:178 Postconfirmation motion—To confirm modified plan [11 U.S.C.A. § 1127(b); Bankruptcy Rule 3020(b)(1)]
- § 2:179 Order confirming plan (Official Form No. 315) [11 U.S.C.A. § 1129; Bankruptcy Rule 3020]
- § 2:180 Order finally approving disclosure statement and confirming plan (Official Form B 3150S) [11 U.S.C.A. § 1129; Bankruptcy Rule 3020]
- § 2:181 Order—Confirming modified plan [11 U.S.C.A. §§ 1127(b), 1129; Bankruptcy Rule 3020]

3. Notice of Confirmation

- § 2:182 Entry of order confirming plan [Bankruptcy Rule 2002(f)(6)]
- § 2:183 Entry of order confirming plan—Where copy of order is being mailed with notice [Bankruptcy Rule 2002(f)(6)]

4. Revocation of Confirmation

- § 2:184 Complaint for revocation of confirmation [11 U.S.C.A. § 1144; Bankruptcy Rule 7001(5)]
- § 2:185 Order revoking confirmation [11 U.S.C.A. § 1144]

5. Discharge

- § 2:186 Waiver of discharge [11 U.S.C.A. § 1141(d)(4)]

6. Consummation

- § 2:187 Order—To file final report [11 U.S.C.A. § 1106(a)(1)]
- § 2:188 Final report—Combined with application for final decree [11 U.S.C.A. §§ 350, 1106(a)(1); Bankruptcy Rule 3022]

O. RAILROAD REORGANIZATION

1. In General

- § 2:189 Order—Appointing trustee [11 U.S.C.A. § 1163]
- § 2:190 Motion—For leave to abandon railroad line [11 U.S.C.A. § 1170(a)]
- § 2:191 Application—To surface transportation board—For abandonment of railroad line [11 U.S.C.A. § 1170(b)]
- § 2:192 Order—Granting leave to abandon railroad line [11 U.S.C.A. § 1170(a), (c); 49 U.S.C.A. § 1136(a)]

2. Plan—Illustrative Provisions

- § 2:193 Class of claims or interests not impaired [11 U.S.C.A. §§ 1123(a)(2), 1172(a)]
- § 2:194 Treatment of class of claims or interests impaired by plan [11 U.S.C.A. §§ 1123(a)(3), 1172(a)]
- § 2:195 Means of execution—Merger of debtor [11 U.S.C.A. §§ 1123(a)(5)(C), 1172(a)]
- § 2:196 Continuation or termination of debtor's rail service [11 U.S.C.A. § 1172(a)(1)]
- § 2:197 Transfer of railroad line [11 U.S.C.A. § 1172(a)(2)(A)]
- § 2:198 Abandonment of railroad line [11 U.S.C.A. §§ 1170, 1172(a)(2)(B)]

III. ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME

A. COMMENCEMENT OF CASE

1. Resolutions

- § 2:199 Directors' resolution—Corporation's authorization for filing petition

TABLE OF CONTENTS

2. Notice of Filing and Related Matters; Examination of Debtor

- § 2:200 Notice of Chapter 12 bankruptcy case (For individuals or joint debtors) (Official Form No. 309G) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]
- § 2:201 Notice of Chapter 12 bankruptcy case (For corporations or partnerships) (Official Form No. 309H) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]
- § 2:202 Order—For examination of debtor [11 U.S.C.A. §§ 343, 521(4); Bankruptcy Rule 2004]

B. CONTINUANCE OF DEBTOR IN POSSESSION

1. In General

- § 2:203 Order—Authorizing debtor to remain in possession—And limiting operating authority of debtor in possession [11 U.S.C.A. §§ 1203, 1204(a)]

2. Removal

- § 2:204 Motion—By creditor—For removal of debtor as debtor in possession [11 U.S.C.A. § 1204(a)]
- § 2:205 Order—Removing debtor as debtor in possession [11 U.S.C.A. § 1204(a)]

3. Reinstatement

- § 2:206 Motion—By debtor—For reinstatement as debtor in possession [11 U.S.C.A. § 1204(b)]
- § 2:207 Order—Reinstating debtor in possession [11 U.S.C.A. § 1204(b)]

C. EARLY TERMINATION OF CASE BY DISMISSAL OR CONVERSION

1. Dismissal

- § 2:208 Motion for dismissal and discontinuance—By debtor [11 U.S.C.A. § 1208(b); Bankruptcy Rule 1017]
- § 2:209 Order dismissing Chapter 12 case—On motion of debtor [11 U.S.C.A. § 1208(b); Bankruptcy Rule 1017]

- § 2:210 —For debtor’s material default with respect to
plan term [11 U.S.C.A. § 1208(c)(6); Bankruptcy
Rule 1017]
- § 2:211 Notice—By court—Of dismissal of case
[Bankruptcy Rule 1017]

2. Conversion

- § 2:212 Notice—By debtor—To convert case to Chapter 7
[11 U.S.C.A. §§ 348, 1208(a); Bankruptcy Rules
1017(f), 1019]

D. AUTOMATIC STAYS

1. Notices

- § 2:213 Notice—Of automatic stay [11 U.S.C.A. § 362;
Bankruptcy Rule 4001]
- § 2:214 Notice of motion—For relief from automatic stay
[11 U.S.C.A. § 362; Bankruptcy Rules 4001,
9014]

2. Relief from Stay

- § 2:215 Motion—By mortgagee—To vacate stay to
permit foreclosure of mortgage on debtor’s real
property [11 U.S.C.A. § 362(d); Bankruptcy
Rule 4001(a), (d)]
- § 2:216 Response—To motion to vacate stay—Adequate
protection has been tendered [11 U.S.C.A.
§§ 362(d), 1205; Bankruptcy Rule 4001(a), (d)]
- § 2:217 Motion to vacate stay of suit against codebtor
[11 U.S.C.A. § 1201; Bankruptcy Rule 4001]
- § 2:218 Order vacating stay of suit against codebtor [11
U.S.C.A. § 1201; Bankruptcy Rule 4001]

E. CLAIMS

1. Objections

- § 2:219 Objection to claim [11 U.S.C.A. § 502(b);
Bankruptcy Rule 3007]
- § 2:220 Objection—By trustee—To allowance of claim
[11 U.S.C.A. §§ 502(a), 704(4), 1202(b);
Bankruptcy Rule 3007]
- § 2:221 —By debtor—To allowance of claim [11 U.S.C.A.
§ 502(a); Bankruptcy Rule 3007]

TABLE OF CONTENTS

- § 2:222 Notice of hearing—On objection to allowance of claim [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]

2. Orders

- § 2:223 Order—Reducing and allowing claim [11 U.S.C.A. § 502; Bankruptcy Rule 3007]
§ 2:224 —Authorizing withdrawal of claim [Bankruptcy Rule 3006]

F. ADMINISTRATIVE POWERS

1. Sale of Property

- § 2:225 Motion—By debtor—To sell property [11 U.S.C.A. §§ 363, 1206; Bankruptcy Rule 6004]
§ 2:226 Notice—To parties in interest—Proposed sale of property—Opportunity to object [11 U.S.C.A. §§ 102(1)(B), 363, 1206; Bankruptcy Rules 2002, 6004]
§ 2:227 Order—Authorizing sale of property [11 U.S.C.A. §§ 363, 1206; Bankruptcy Rule 6004]

2. Use of Cash Collateral

- § 2:228 Motion—To use cash collateral [11 U.S.C.A. §§ 363, 1205; Bankruptcy Rules 4001(b), (d), 6004]
§ 2:229 Order—Authorizing use of cash collateral and granting adequate protection [11 U.S.C.A. §§ 363, 1205; Bankruptcy Rules 4001(b), (d), 6004]

G. PLAN

1. In General

- § 2:230 Motion—By debtor—For extension of time to file plan [11 U.S.C.A. § 1221]
§ 2:231 Chapter 12 plan [11 U.S.C.A. §§ 1221, 1222; Bankruptcy Rule 3015]
§ 2:232 Chapter 12 plan—Simplified form [11 U.S.C.A. §§ 1221, 1222; Bankruptcy Rule 3015]

2. Particular Plan Provisions

- § 2:233 Equal treatment for claims within a particular class [11 U.S.C.A. § 1222(a)(3)]
§ 2:234 Payment period [11 U.S.C.A. § 1222(c)]

§ 2:235 Mortgage or other secured debt to be paid
outside plan [11 U.S.C.A. § 1222]

§ 2:236 Mortgage arrears [11 U.S.C.A. § 1222(b)(5)]

3. Operation Reports

§ 2:237 Chapter 12 case summary of operations—Family
farmer

§ 2:238 Chapter 12 monthly report of operations

4. Confirmation

a. Objections

§ 2:239 Order fixing time to object to proposed
modification of confirmed Chapter 12 plan
(Official Form B 2310A)

§ 2:240 Objection to plan—By party in interest [11
U.S.C.A. § 1224]

§ 2:241 —By secured creditor [11 U.S.C.A. §§ 1224,
1225]

b. Hearing; Confirmation Order

§ 2:242 Notice of hearing on confirmation of plan [11
U.S.C.A. § 1223; Bankruptcy Rule 3020]

§ 2:243 Order confirming Chapter 12 plan (Official Form
B 2300A)

§ 2:244 Order denying confirmation of plan [11 U.S.C.A.
§ 1225; Bankruptcy Rule 3020]

c. Postconfirmation Modification

§ 2:245 Notice—By debtor—Of intent to modify plan
after confirmation [11 U.S.C.A. § 1229(a)]

§ 2:246 Objection to debtor's notice of intent to modify
plan—With request for hearing [11 U.S.C.A.
§ 1229(b)(2)]

§ 2:247 Notice of hearing—On debtor's notice of intent
to modify plan and objections thereto [11
U.S.C.A. § 1229(b)(2)]

§ 2:248 Order—Authorizing modification of plan—After
hearing on debtor's notice of intent to modify
and objection thereto [11 U.S.C.A. § 1229(b)(2)]

5. Payments

§ 2:249 Motion by debtor—For suspension of payments
under plan [11 U.S.C.A. § 1229(a)]

TABLE OF CONTENTS

- § 2:250 Order—Suspending debtor’s payments under plan [11 U.S.C.A. § 1229(a)]

H. DISCHARGE

- § 2:251 Motion for discharge—By debtor who has not completed payments under plan [11 U.S.C.A. § 1228(b); Bankruptcy Rule 4004]
- § 2:252 Order discharging debtor after completion of Chapter 12 plan (Official Form B 3180F)
- § 2:253 Order discharging debtor before completion of Chapter 12 plan (Official Form B 3180FH)

I. CLOSING AND REOPENING OF CASE

- § 2:254 Notice of hearing—On debtor’s motion to reopen case [11 U.S.C.A. § 350(b); Bankruptcy Rule 5010]

IV. ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

A. COMMENCEMENT OF CASE

1. Schedules, Statements, and Lists

- § 2:255 Chapter 13 statement of your current monthly income and calculation of commitment period (Official Form No. 122C-1)
- § 2:256 Chapter 13 calculation of your disposable income (Official Form No. 122C-2)
- § 2:257 Notice—By debtor—Amendment of list of creditors [Bankruptcy Rule 1009]

2. Notice of Filing and Related Matters; Examination of Debtor

- § 2:258 Notice of Chapter 13 bankruptcy case (Official Form No. 309I) [11 U.S.C.A. § 341; Bankruptcy Rule 2003]
- § 2:259 Order—For examination of debtor [11 U.S.C.A. §§ 343, 521(4); Bankruptcy Rule 2004]

B. EARLY TERMINATION OF CASE BY DISMISSAL OR CONVERSION

1. Dismissal

- § 2:260 Motion for dismissal—By debtor [11 U.S.C.A. § 1307(b); Bankruptcy Rule 1017]

- § 2:261 Order of dismissal—For debtor’s material default with respect to plan term [11 U.S.C.A. § 1307(c)(6); Bankruptcy Rule 1017]
- § 2:262 Notice—By court—Of dismissal of case [Bankruptcy Rule 1017]

2. Conversion

- § 2:263 Notice—By Debtor—To convert proceedings to Chapter 7 case [11 U.S.C.A. §§ 348, 1307(a); Bankruptcy Rules 1017(f), 1019]

C. AUTOMATIC STAYS

1. Notices and Enforcement of Stay

- § 2:264 Notice—Of automatic stay [11 U.S.C.A. § 362; Bankruptcy Rule 4001]
- § 2:265 Motion—For release of prepetition garnishment [11 U.S.C.A. § 105(a)]
- § 2:266 Order—For release of prepetition garnishment [11 U.S.C.A. § 105(a)]
- § 2:267 Motion—By debtor—To hold garnishing creditor in contempt [11 U.S.C.A. § 362]
- § 2:268 Order—Restraining creditor from placing postpetition garnishment [11 U.S.C.A. §§ 105(a), 1306(a)(2)]
- § 2:269 —Requiring debtor’s employer to cease deductions from debtor’s paycheck for benefit of creditor [11 U.S.C.A. §§ 105(a), 1306(a)(2)]

2. Relief from Stay

- § 2:270 Notice of motion—For relief from automatic stay [11 U.S.C.A. § 362; Bankruptcy Rules 4001, 9014]
- § 2:271 Motion—For order lifting stay of lien enforcement—Obligation to be paid outside the plan [11 U.S.C.A. § 362; Bankruptcy Rules 4001, 9014]
- § 2:272 —To modify stay—To allow repossession of motor vehicle [11 U.S.C.A. § 362; Bankruptcy Rule 4001]
- § 2:273 Order—Modifying stay—To allow repossession of motor vehicle [11 U.S.C.A. § 362; Bankruptcy Rule 4001]
- § 2:274 Motion to vacate stay of suit against codebtor [11 U.S.C.A. § 1301(c); Bankruptcy Rule 4001]

TABLE OF CONTENTS

- § 2:275 Order vacating stay of suit against codebtor [11 U.S.C.A. § 1301(c); Bankruptcy Rule 4001]

3. Imposing and Extending the Stay

- § 2:276 Motion to impose or extend the stay [11 U.S.C.A. § 362(c)]

D. CLAIMS

1. Proof of Claim; Power of Attorney

- § 2:277 Power of attorney—Authorizing debtor’s employer to pay future earnings to trustee [11 U.S.C.A. § 1322(a)(1); Bankruptcy Rule 9010(c)]

2. Objections to Claim

- § 2:278 Objection—By trustee—To allowance of claim [11 U.S.C.A. §§ 502(a), 704(4), 1302(b); Bankruptcy Rule 3007]
- § 2:279 —By debtor—To allowance of claim [11 U.S.C.A. § 502(a); Bankruptcy Rule 3007]
- § 2:280 Notice of hearing—On objection to allowance of claim [11 U.S.C.A. § 502(b); Bankruptcy Rule 3007]

3. Orders

- § 2:281 Order—Reducing and allowing claim [11 U.S.C.A. §§ 502, 1305(b); Bankruptcy Rule 3007]
- § 2:282 —Authorizing withdrawal of claim [Bankruptcy Rule 3006]

4. Final Cure Payment

- § 2:283 Notice of final cure payment (Official Form B 4100N) [Bankruptcy Rule 3002.1(f)]
- § 2:284 Response to notice of final cure payment (Official Form B 4100R) [Bankruptcy Rule 3002.1(g)]

E. PLAN

1. In General

- § 2:284.50 Chapter 13 plan (Official Form No. 13)
- § 2:285 Chapter 13 plan [11 U.S.C.A. §§ 1321, 1322; Bankruptcy Rule 3015]
- § 2:286 Chapter 13 plan of debtor engaged in

business [11 U.S.C.A. §§ 1321, 1322;
Bankruptcy Rule 3015]

2. Particular Plan Provisions

- § 2:287 Submission of debtor's income to trustee [11 U.S.C.A. § 1322(a)(1)]
- § 2:288 Full payment of priority claims [11 U.S.C.A. § 1322(a)(2)]
- § 2:289 Equal treatment for claims within a particular class [11 U.S.C.A. § 1322(a)(3)]
- § 2:290 Assumption of unexpired leases [11 U.S.C.A. § 1322(b)(7)]
- § 2:291 Payment period [11 U.S.C.A. § 1322(d)]
- § 2:292 Mortgage or other secured debt to be paid outside plan [11 U.S.C.A. § 1322]
- § 2:293 Mortgage arrearages [11 U.S.C.A. § 1322(b)(5)]
- § 2:294 Domestic support obligations [11 U.S.C.A. § 1322(a)(2)]

3. Motions Related to Plan Confirmation

- § 2:295 Motion to value collateral in plan [11 U.S.C.A. § 1322(b)(2)]
- § 2:296 Motion to strip off unsecured lien [11 U.S.C.A. §§ 506, 1322(b)(2)]
- § 2:297 Order stripping off unsecured lien [11 U.S.C.A. §§ 506, 1322(b)(2)]

4. Confirmation

a. Objections

- § 2:298 Order fixing time to object to confirmation of modified Chapter 13 plan (Official Form B 2310B) [11 U.S.C.A. § 1323; Bankruptcy Rule 3019]
- § 2:299 Objection to plan by party in interest [11 U.S.C.A. § 1324; Bankruptcy Rules 3020, 9014]
- § 2:300 Objection to plan—By secured creditor [11 U.S.C.A. §§ 1324, 1325; Bankruptcy Rules 3020, 9014]

b. Hearing; Confirmation Order

- § 2:301 Notice of hearing on confirmation of plan [11 U.S.C.A. § 1324; Bankruptcy Rule 3020]

TABLE OF CONTENTS

- § 2:302 Order confirming Chapter 13 plan (Official Form B 2300B) [11 U.S.C.A. § 1325; Bankruptcy Rule 3020]

c. Postconfirmation Modification

- § 2:303 Notice—By debtor—Of intent to modify plan after confirmation [11 U.S.C.A. § 1329(a)]
- § 2:304 Objection to debtor's notice of intent to modify plan—With request for hearing [11 U.S.C.A. § 1329(b)(2)]
- § 2:305 Notice of hearing—On debtor's notice of intent to modify plan and objections thereto [11 U.S.C.A. § 1329(b)(2)]
- § 2:306 Order—Authorizing modification of plan—After hearing on debtor's notice of intent to modify and objection thereto [11 U.S.C.A. § 1329(b)(2)]

d. Postconfirmation Debt

- § 2:307 Motion to incur postconfirmation credit [11 U.S.C.A. § 1305]

5. Payments

a. Payroll Deduction Orders

- § 2:308 Order—Requiring debtor's employer to pay debtor's income to trustee [11 U.S.C.A. § 1325(c); Bankruptcy Rule 3020]
- § 2:309 —Directing employer to deduct and remit to trustee [11 U.S.C.A. § 1325(c)]
- § 2:310 —Requiring debtor's employer to remit deductions from debtor's paycheck to trustee [11 U.S.C.A. § 1325(c); Bankruptcy Rule 3020]
- § 2:311 Power of attorney—Authorizing employer to pay wages to Chapter 13 trustee [11 U.S.C.A. § 1325(c)]

b. Suspension of Payments

- § 2:312 Application by debtor—For suspension of payments under plan [11 U.S.C.A. § 1329(a)]
- § 2:313 Order—Suspending debtor's payments under plan [11 U.S.C.A. § 1329(a)]

c. Termination of Payroll Deduction Orders

- § 2:314 Application—By trustee—For dissolution of

- order to debtor's employer [11 U.S.C.A. §§ 105(a), 704(2), 1302(b)(1), 1325(c)]
- § 2:315 Order—Revoking order to debtor's employer for payment of income to trustee—Upon termination of employment [11 U.S.C.A. §§ 105(a), 1325(c)]
- § 2:316 — —Upon completion of plan [11 U.S.C.A. §§ 105(a), 1325(c)]
- § 2:317 —Releasing employer from making further payments [11 U.S.C.A. § 1325(c)]

F. DISCHARGE

1. Preparation for Discharge

- § 2:318 Certificate of compliance with discharge requirements [11 U.S.C.A. § 1328(a)]
- § 2:319 Chapter 13 debtor's certifications regarding domestic support obligations and Section 522(q) (Official Form B 2830) [11 U.S.C.A. § 1328(a)]
- § 2:320 Motion to deem mortgage current [11 U.S.C.A. § 1327]

2. Order of Discharge

- § 2:321 Order discharging debtor after completion of Chapter 13 Plan (Official Form B 3180W) [11 U.S.C.A. § 1328(a)]
- § 2:322 Application for discharge—By debtor who has not completed payments under plan [11 U.S.C.A. § 1328(b); Bankruptcy Rule 4004]
- § 2:323 Order discharging debtor before completion of Chapter 13 plan (Official Form B3180WH) [11 U.S.C.A. § 1328(b)]

3. Revocation

- § 2:324 Complaint to revoke discharge [11 U.S.C.A. § 1328(e)]
- § 2:325 Order revoking discharge [11 U.S.C.A. § 1328(e)]

G. CLOSING AND REOPENING OF CASE

- § 2:326 Order—Approving trustee's report and discharging trustee—Combined with order closing case [11 U.S.C.A. § 350(a); Bankruptcy Rule 5009]
- § 2:327 Notice of hearing—On debtor's motion to reopen

TABLE OF CONTENTS

case [11 U.S.C.A. § 350(b); Bankruptcy Rule
5010]

**CHAPTER 3. APPEAL AND REVIEW
FORMS**

**I. APPEAL TO DISTRICT COURT OR
BANKRUPTCY APPELLATE PANEL**

A. APPEAL FROM FINAL DECISION

- § 3:1 Notice of appeal and statement of election (Official Form No. 417A)
- § 3:2 Certificate of compliance with Rules 8015(a)(7)(b) or 8016(d)(2) (Official Form No. 417C)
- § 3:3 Motion to dismiss appeal—In district court or before bankruptcy appellate panel—Appellant’s failure to file timely notice of appeal
- § 3:4 Motion—For extension of time for filing notice of appeal—On ground of excusable neglect
- § 3:5 Order—Extending time for filing notice of appeal
- § 3:6 Appeal docketing statement
- § 3:7 Optional appellee statement of election to proceed in district court (Official Form 417B)
- § 3:8 Entry of appearance of attorneys and certification of interested parties

B. APPEAL FROM INTERLOCUTORY ORDER

- § 3:9 Motion—For leave to appeal to district court [28 U.S.C.A. § 158(a)]
- § 3:10 —For leave to appeal to bankruptcy appellate panel [28 U.S.C.A. § 158(b)]
- § 3:11 Answer—In opposition to motion for permission to appeal [28 U.S.C.A. § 158]
- § 3:12 Order—Granting leave to appeal [28 U.S.C.A. § 158(a), (b)]

**C. VOLUNTARY DISMISSAL; DISMISSAL FOR
FAILURE TO PERFECT APPEAL**

- § 3:13 Stipulation—For voluntary dismissal of appeal—In bankruptcy court
- § 3:14 Motion—For voluntary dismissal of appeal—In bankruptcy court

- § 3:15 Order by bankruptcy judge—Dismissing appeal—
On stipulation by parties
- § 3:16 — —On motion
- § 3:17 Stipulation—For dismissal of appeal—In district
court or before bankruptcy appellate panel
- § 3:18 Motion—For voluntary dismissal of appeal—In
district court or before bankruptcy appellate
panel
- § 3:19 Clerk’s notice of unperfected appeal

D. STAY PENDING APPEAL

- § 3:20 Motion—To bankruptcy judge—For stay of
judgment or order pending appeal
- § 3:21 — —For approval of supersedeas bond—In
bankruptcy court
- § 3:22 — —To bankruptcy judge—For issuance of
injunction pending appeal
- § 3:23 Affidavit—In support of motion for injunction
pending appeal
- § 3:24 Order—By bankruptcy judge—Staying judgment
or order pending appeal
- § 3:25 — —Granting injunction pending appeal
- § 3:26 Motion in district court or before bankruptcy
appellate panel—For stay of judgment or order
pending appeal—Prior application to bankruptcy
court
- § 3:27 Order—By district court or bankruptcy appellate
panel—Staying judgment or order pending
appeal
- § 3:28 Supersedeas bond

E. RECORD ON APPEAL; BRIEFS; ARGUMENT

- § 3:29 Designation of contents for inclusion in record;
Statement of issues to be presented on
appeal—By appellant
- § 3:30 Notice to reporter—Transcript order form
- § 3:31 Designation of additional papers to be included in
record on appeal—By appellee
- § 3:32 Motion—For order extending time for filing and
serving brief
- § 3:33 Affidavit—In support of motion for extension of
time for filing and serving brief

TABLE OF CONTENTS

- § 3:34 Order—Extending time for filing and serving brief
- § 3:35 Motion—For suspension of rule requiring oral argument and for disposition on briefs

F. DISPOSITION OF APPEAL

- § 3:36 Findings of fact, conclusions of law, and order—Affirming bankruptcy judge’s order
- § 3:37 Order—Affirming bankruptcy judge’s judgment dismissing petition for involuntary bankruptcy
- § 3:38 —Affirming bankruptcy judge’s order of discharge
- § 3:39 —Reversing bankruptcy judge’s order providing that claim was not dischargeable
- § 3:40 Motion—For extension of time to file motion for rehearing
- § 3:41 —For rehearing on appeal

II. PROCEEDINGS IN NATURE OF REVIEW OR ABSTENTION (RATHER THAN APPEAL) UNDER 1984 JURISDICTIONAL AMENDMENTS

- § 3:42 Motion—To withdraw reference of case or proceeding within case [28 U.S.C.A. § 157(d); Bankruptcy Rule 5011]
- § 3:43 Order—Withdrawing reference of case or proceeding [28 U.S.C.A. § 157(d); Bankruptcy Rule 5011]
- § 3:44 Motion—To determine whether proceeding is a “core” proceeding [28 U.S.C.A. § 157(b)(3)]
- § 3:45 Objection—By party—To bankruptcy judge’s findings and conclusions—With request for de novo review [28 U.S.C.A. § 157(c)(1); Bankruptcy Rule 9033]
- § 3:46 Motion—To district or bankruptcy court—For mandatory abstention [28 U.S.C.A. § 1334(c)(2); Bankruptcy Rule 5011]
- § 3:47 — —To exercise discretion to abstain [28 U.S.C.A. § 1334(c)(1); Bankruptcy Rule 5011]
- § 3:48 —By defendants in adversary proceeding—To dismiss or, in the alternative, abstain [28 U.S.C.A. § 1334(c)(1); Bankruptcy Rule 5011]
- § 3:49 —By creditor—For abstention and remand as to adversary proceeding [28 U.S.C.A. § 1334(c)(1); Bankruptcy Rule 5011]

- § 3:50 Order—Abstention [28 U.S.C.A. § 1334]
- § 3:51 Report and recommendation—By bankruptcy court—For abstention [28 U.S.C.A. § 1334; Bankruptcy Rule 5011]

III. FURTHER APPEAL OR REVIEW

- § 3:52 Notice of appeal taken to Court of Appeals—General form [28 U.S.C.A. § 1291; FRAP 3, 4(a)]
- § 3:53 Certification to Court of Appeals (Official Form No. 424)
- § 3:54 Petition—For writ of certiorari—Outline form [28 U.S.C.A. § 1254(1); S Ct Rules 10 to 16, 29, 33, 34]

Table of Contents

PART 1. INTRODUCTION

CHAPTER 1. FUNDAMENTALS OF BANKRUPTCY PRACTICE

I. INTRODUCTION TO BANKRUPTCY

A. ROLE OF BANKRUPTCY

- § 1:1 Wide reach
- § 1:2 Collective nature
- § 1:3 Societal role
- § 1:4 First principles
- § 1:5 Goals
- § 1:6 Distribution
- § 1:7 Fresh start; exemptions, discharge, and payment plans

B. GOVERNING LAW

1. Constitution

- § 1:8 Constitutional basis for bankruptcy legislation
- § 1:9 Uniformity required by Bankruptcy Clause
- § 1:10 Scope of congressional bankruptcy power
- § 1:11 Relationship to other Constitutional provisions

2. Bankruptcy Code

- § 1:12 Title 11 and its construction
- § 1:13 Organization of the Bankruptcy Code
- § 1:14 Relationship between chapters of the Bankruptcy Code
- § 1:15 Major amendments to the Bankruptcy Code

3. Bankruptcy Act of 1898

- § 1:16 Generally

4. Title 28

§ 1:17 Generally

5. Other U.S.C.A. Provisions

§ 1:18 Generally

6. Rules

a. Bankruptcy Rules

§ 1:19 Authority

§ 1:20 Adoption

§ 1:21 —Chapter 12 cases

§ 1:22 Adversary proceedings

§ 1:23 Contested matters

b. Federal Rules of Civil Procedure

§ 1:24 Adversary proceedings

§ 1:25 Contested matters

c. Federal Rules of Evidence

§ 1:26 Generally

d. Federal Rules of Appellate Procedure

§ 1:27 Generally

e. Local Rules

§ 1:28 Generally

§ 1:29 Appellate practice

f. Courts of Appeals Rules

§ 1:30 Generally

7. Official Forms

§ 1:31 Generally

8. Federal Regulations

§ 1:32 Generally

II. EVALUATING DEBTOR'S CASE

A. NONBANKRUPTCY ALTERNATIVES

§ 1:33 Introduction

§ 1:34 Federal Debt Collection Procedures Act

TABLE OF CONTENTS

- § 1:35 Workouts
- § 1:36 Assignment for the benefit of creditors

B. ELIGIBILITY TO FILE BANKRUPTCY

1. In General

- § 1:37 Generally
- § 1:38 Eligibility of particular persons to be debtor
- § 1:39 Prior dismissal
- § 1:40 Prepetition credit counseling

2. Under particular chapter

a. Introduction

- § 1:41 Generally

b. Chapter 7

- § 1:42 Generally
- § 1:43 Banking institutions excluded
- § 1:44 Insurance companies excluded

c. Chapter 9

- § 1:45 Generally

d. Chapter 11

- § 1:46 Generally
- § 1:47 Small business Chapter 11 cases
- § 1:48 Business trusts
- § 1:49 Nonbusiness debtors

e. Chapter 12

- § 1:50 Generally
- § 1:51 Federal income tax return as measure of gross income
- § 1:52 What constitutes “farming operation”
- § 1:53 —Risk test
- § 1:54 —Totality of circumstances test

f. Chapter 13

- § 1:55 Generally
- § 1:56 Contingent and liquidated debts
- § 1:57 Undersecured debts
- § 1:58 Income requirement

- § 1:59 —Present and future income
- § 1:60 —Speculative income
- § 1:61 —Debtor need not be wage earner
- § 1:62 —Various sources of income
- § 1:63 — —Government benefits
- § 1:64 — — —Social security benefits
- § 1:65 Sole proprietors, partners, and partnerships

g. Chapter 15

- § 1:66 Generally

C. CHOICE OF CHAPTER

- § 1:67 Generally
- § 1:68 Considerations favoring Chapter 7
- § 1:69 Chapter 9
- § 1:70 Considerations favoring Chapter 11
- § 1:71 Considerations favoring Chapter 12
- § 1:72 Considerations favoring Chapter 13

**III. OVERVIEW OF SELECTED ASPECTS OF
BANKRUPTCY PROCEDURE**

A. IN GENERAL

- § 1:73 Signature and verification
- § 1:74 Where to file
- § 1:75 —Copies of papers
- § 1:76 Captions
- § 1:77 Petitions
- § 1:78 Privacy considerations
- § 1:79 Motions
- § 1:80 Applications
- § 1:81 Complaints
- § 1:82 Notice
- § 1:83 —By mail, electronic transmission, or publication
- § 1:84 —Not less than 21 days' notice
- § 1:85 —Not less than 28 days' notice
- § 1:86 —Notice to equity security holders
- § 1:87 “After notice and a hearing”
- § 1:88 Adversary proceedings
- § 1:89 Contested matters
- § 1:90 Time—Computation
- § 1:91 —Enlargement

TABLE OF CONTENTS

- § 1:92 —Reduction
- § 1:93 Appointment of trustee or examiner; Election of trustee
- § 1:94 Appointment of creditors' and equity security holders' committees
- § 1:95 Intervention
- § 1:96 Protective orders

B. SPECIFIC MATTERS AND PROCEEDINGS

1. Jurisdiction; Judgments and Orders; Change of Venue

a. Jurisdictional Matters

- § 1:97 Abstention from exercise of jurisdiction over case
- § 1:98 Abstention from hearing a particular proceeding
- § 1:99 Determining whether proceeding is core proceeding
- § 1:100 De novo review in noncore proceedings

b. Judgments and Orders

- § 1:101 Judgments and orders and relief therefrom
- § 1:102 Declaratory judgments
- § 1:103 Injunctions and other equitable relief

c. Change of Venue

- § 1:104 Generally

2. Attorneys and Other Professional Persons

- § 1:105 Approval of employment
- § 1:106 Compensation for services and reimbursement for expenses
- § 1:107 —Interim compensation
- § 1:108 Examination of debtor's transactions with attorneys
- § 1:109 Representation of more than one creditor or equity security holder

3. Initial Stages of Case

- § 1:110 Installment payment of filing fees
- § 1:111 Waiver of filing fees
- § 1:112 Contesting involuntary petition
- § 1:113 Petitioner's indemnity bond in involuntary case
- § 1:114 Order for relief

- § 1:115 Consolidation and joint administration
- § 1:116 First meeting of creditors
- § 1:117 Examination—Of debtor
- § 1:118 —Of any entity

4. Early Termination of Case

a. Conversion

- § 1:119 From Chapter 7
- § 1:120 From Chapter 11 to Chapter 7
- § 1:121 —Railroads
- § 1:122 From Chapter 11 to Chapter 12 or 13
- § 1:123 Notice of conversion of Chapter 11 cases
- § 1:124 From Chapter 12 or 13 to Chapter 7
- § 1:125 From Chapter 13 to Chapter 11 or 12

b. Dismissal

- § 1:126 Chapter 7 cases
- § 1:127 —Granting of relief as abuse of Chapter 7
- § 1:128 Chapter 9 cases
- § 1:129 Chapter 11 cases
- § 1:130 Chapter 12 and 13 cases
- § 1:131 Based on failure to pay filing fee

5. The Estate

a. Turnover or Abandonment

- § 1:132 Turnover of property to trustee
- § 1:133 Abandonment of property of estate
- § 1:134 —Railroad line

b. Exemptions

- § 1:135 Claiming exemptions
- § 1:136 Objections to claim of exemptions

c. Redemption

- § 1:137 Certain tangible personalty

6. Administrative Powers; Avoidance Powers

a. Obtaining Credit

- § 1:138 In or not in ordinary course of business

b. Using, Selling, or Leasing Property

- § 1:139 Not in ordinary course of business

TABLE OF CONTENTS

§ 1:140	In ordinary course of business
§ 1:141	—Cash collateral
§ 1:142	Sale free and clear of liens and other interests
§ 1:143	Sale of property valued at less than \$2,500
§ 1:144	Adequate protection
	c. Obtaining Relief from Stay
§ 1:145	Automatic and codebtor stays
	d. Avoidance Powers
§ 1:146	Debtor's and trustee's powers
	e. Maintaining Utility Service
§ 1:147	Providing adequate assurance of payment
	f. Assumption, Rejection, and Assignment of Contracts
§ 1:148	Executory contracts, unexpired leases, and time share interests
§ 1:149	Collective bargaining agreements
§ 1:150	Retiree insurance benefits
	g. Providing Adequate Protection
§ 1:151	Approval of and objections to agreement to provide
	7. Claims and Interests
§ 1:152	Objections to allowance of proof of claim or interest
§ 1:153	Reconsideration of claims
§ 1:154	Withdrawal of claims
§ 1:155	Determining amount of secured and priority claims
§ 1:156	Compromise or settlement
	8. Chapter 9 and 11 plans
§ 1:157	Disclosure statements
§ 1:158	—Notice to unimpaired classes
§ 1:159	Election of fully secured status
	9. Final Stages of Case
	a. Distribution
§ 1:160	Subordination

- § 1:161 Chapter 7 trustee's disposal of certain property
- § 1:162 Stockbroker liquidation
- § 1:163 Commodity broker liquidation

b. Discharge

- § 1:164 Discharge of debtor
- § 1:165 —Objection to discharge
- § 1:166 —Revocation of discharge
- § 1:167 Dischargeability of particular debts
- § 1:168 Reaffirmation

c. Reopening of Case

- § 1:169 Generally

d. Appeal

- § 1:170 Notice of appeal—From final orders
- § 1:171 —From interlocutory orders
- § 1:172 Motions on appeal
- § 1:173 Railroad line abandonment

10. Restrictions on Debt Relief Agencies

- § 1:174 Generally
- § 1:175 Restrictions imposed
- § 1:176 Disclosures
- § 1:177 Requirements for debt relief agencies

CHAPTER 2. EMPLOYMENT AND COMPENSATION OF PROFESSIONALS

I. INTRODUCTION

- § 2:1 Status of claims for compensation and reimbursement
- § 2:2 Relationship between employment and compensation provisions
- § 2:3 Rationale for court supervision of employment and compensation

II. EMPLOYMENT OF PROFESSIONAL PERSONS

A. IN GENERAL

- § 2:4 General conditions

TABLE OF CONTENTS

- § 2:5 Salaried professional employees
- § 2:6 Employment of debtor's attorney for specified special purpose
- § 2:7 Withdrawal or removal from employment

B. EMPLOYMENT BY PARTICULAR PARTIES

- § 2:8 Trustee
- § 2:9 —Self-employment
- § 2:10 Debtor in possession
- § 2:11 Debtor not in possession
- § 2:12 Official committees
- § 2:13 Creditors and equity security holders
- § 2:14 —Required disclosures in Chapter 9 and Chapter 11 cases
- § 2:15 Examiner

C. WHO ARE PROFESSIONAL PERSONS

- § 2:16 Generally
- § 2:17 Attorneys
- § 2:18 Accountants
- § 2:19 Appraisers and auctioneers
- § 2:20 Corporate officers and directors
- § 2:21 Other persons rendering specialized services in administration of estate

D. COURT APPROVAL

- § 2:22 Generally
- § 2:23 Application for order of employment; Disclosure
- § 2:24 Notice and hearing
- § 2:25 Court's determination as to employment or choice of professional
- § 2:26 Services by members and associates
- § 2:27 Nunc pro tunc orders
- § 2:28 —Factors considered

E. LIMITATIONS ON WHO MAY BE EMPLOYED

1. Requirement of Disinterestedness

a. In General

- § 2:29 Generally

- § 2:30 Persons who are not disinterested
- § 2:31 —Creditor
- § 2:32 —Lienholder
- § 2:33 —Equity security holder
- § 2:34 —Insider
- § 2:35 Holder or representative of adverse interest
- b. **Prior or Current Representation of
Particular Interests As Precluding
Employment**
- § 2:36 Creditor or equity security holder
- § 2:37 —Dual representation of individual creditor and
creditors' committee
- § 2:38 Prior representation of creditors' committee
- § 2:39 Debtor
- § 2:40 Shareholder, partner, or principal of debtor
- § 2:41 Other interests which may be adverse
- 2. **Additional Grounds Precluding
Employment**
- § 2:42 Person who has served as examiner
- § 2:43 Relatives of judge or U.S. Trustee
- § 2:44 Person with close connections with judge or U.S.
Trustee

F. ADDITIONAL CONSIDERATIONS

1. In General

- § 2:45 Attorney representation and appearances
- § 2:46 Attorney solicitation of clients
- § 2:47 Unauthorized practice of law
- § 2:48 Bankruptcy petition preparers
- § 2:49 —Prohibition from offering legal advice
- § 2:50 —Remedies for violations
- § 2:51 Indemnification of professionals
- § 2:52 Prohibition of ex parte contacts
- § 2:53 Crimes

2. Debt Relief Agencies

- § 2:54 Generally
- § 2:55 Restrictions on consumer debtors' attorneys as
"debt relief agencies"
- § 2:56 Disclosures required by consumer debtors'
attorneys as "debt relief agencies"

TABLE OF CONTENTS

- § 2:57 Requirements imposed on consumer debtors’
attorneys as “debt relief agencies”

**III. PROFESSIONAL FEES; REIMBURSEMENT
OF EXPENSES**

**A. AGREEMENTS FOR COMPENSATION AND
PREPETITION PAYMENTS**

1. In General

- § 2:58 Agreements for compensation
§ 2:59 Sharing of compensation
§ 2:60 Criminal penalty for fixing of compensation
§ 2:61 Payments to bankruptcy petition preparers

2. Attorney for Debtor

- § 2:62 Disclosure of compensation paid or promised
§ 2:63 —When to file disclosure statement;
Supplemental statement
§ 2:64 Cancellation by court of fee agreement
§ 2:65 Retainers
§ 2:66 Payment of debtor’s attorney by third party
§ 2:67 Examination of debtor’s transactions with
attorney

**B. REASONABLE COMPENSATION FOR
ACTUAL AND NECESSARY SERVICES**

1. In General

- § 2:68 Introduction
§ 2:69 Customary compensation charged by comparable
nonbankruptcy practitioners
§ 2:70 Hourly rate
§ 2:71 —Local or national rates
§ 2:72 Contingent fees

**2. Criteria for Determining Amount of Fee
Award**

- § 2:73 Generally
§ 2:74 *Johnson* 12-factor test
§ 2:75 Other multifactor tests
§ 2:76 Lodestar approach
§ 2:77 Premium or bonus fee awards

3. Particular Services as Compensable

- § 2:78 Travel time
- § 2:79 Meetings and conferences
- § 2:80 Legal research
- § 2:81 Time spent on fee application
- § 2:82 Paraprofessional services

C. REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES

- § 2:83 Generally
- § 2:84 Particular expenses—Photocopying, mail and delivery service, and telephone charges
- § 2:85 —Travel, meals, and lodging
- § 2:86 —Secretarial overtime and word processing charges
- § 2:87 —Computerized legal research
- § 2:88 —Interest

D. GROUNDS FOR DENIAL, REDUCTION, OR RETURN OF COMPENSATION AND REIMBURSEMENT

1. In General

- § 2:89 Generally
- § 2:90 Failure to obtain prior employment order
- § 2:91 Failure to satisfy disinterestedness requirement
- § 2:92 —Failure to disclose conflict of interest or connections with parties
- § 2:93 Nonprofessional services
- § 2:94 —Trustee's duties
- § 2:95 Duplication of services
- § 2:96 Deficient fee application or supporting documentation

2. Attorney for Debtor

- § 2:97 Failure to disclose compensation paid or promised
- § 2:98 Return of excessive compensation
- § 2:99 Services personal to debtor
- § 2:100 —Dischargeability proceedings

TABLE OF CONTENTS

E. INTERIM COMPENSATION AND REIMBURSEMENT

- § 2:101 Generally
- § 2:102 Purpose
- § 2:103 “Holdback” of portion of compensation
- § 2:104 Monthly compensation
- § 2:105 Effect of superpriority and other administrative claims

F. APPLICATION FOR COMPENSATION AND REIMBURSEMENT

- § 2:106 Generally
- § 2:107 Detail and documentation required
- § 2:108 Notice and hearing
- § 2:109 Evidence
- § 2:110 Burden of proof
- § 2:111 Sua sponte determination
- § 2:112 Disqualification of judge from allowing compensation

G. LIABILITY OF THIRD PARTIES AND THEIR COUNSEL

- § 2:113 Excess costs
- § 2:114 Compensation of debtor’s attorney by creditor
- § 2:115 —Dischargeability proceedings
- § 2:116 —Violation of automatic stay
- § 2:117 —Dismissal of involuntary bankruptcy petition
- § 2:118 Compensation of professionals employed by trustee

H. ADDITIONAL PROCEDURAL MATTERS

- § 2:119 Request for attorney’s fees in adversary proceeding
- § 2:120 Public record of fees; summary of record
- § 2:121 Priority for payment of petition filing fee
- § 2:122 Where to file applications and other papers

CHAPTER 3. TAX CONSEQUENCES OF BANKRUPTCY

I. DEVELOPMENT OF TAX LAWS FOR BANKRUPTCY

- § 3:1 Impact of Bankruptcy Reform Act
- § 3:2 Special tax provisions in Bankruptcy Code
- § 3:3 Additional Bankruptcy Code tax provisions
- § 3:4 —Priority under the 2005 Amendments
- § 3:5 —Tax returns under the 2005 Amendments
- § 3:6 —Other changes under the 2005 Amendments

II. EFFECT OF DISCHARGE OF INDEBTEDNESS

A. AMOUNTS NOT INCLUDED IN GROSS INCOME

1. In General

- § 3:7 Basic rules
- § 3:8 Income from partnership indebtedness discharge
- § 3:9 Income from S corporation indebtedness
discharge
- § 3:10 State and local taxes

2. Noninclusion in Particular Instances

- § 3:11 Income as not realized to extent of last deduction
- § 3:12 Unamortized premium or discount on canceled
debt
- § 3:13 Debt acquired by related person
- § 3:14 Discharge of indebtedness as a capital
contribution
- § 3:15 —S corporations
- § 3:16 —Cash basis stockholder contributing to accrual
basis corporation
- § 3:17 Indebtedness satisfied by corporation's stock
- § 3:18 Real estate investment trusts
- § 3:19 Student loan indebtedness discharge

B. REDUCTION OF TAX ATTRIBUTES; BASIS ADJUSTMENT

- § 3:20 Order of reduction of tax attributes

TABLE OF CONTENTS

- § 3:21 Manner of reduction of carryovers
- § 3:22 Basis adjustments
- § 3:23 —How to make election
- § 3:24 —Effective date and amount of depreciable
property basis adjustment

C. RECAPTURE

- § 3:25 Recapture of ordinary income upon disposition of
reduced-basis assets
- § 3:26 Recapture of gain on subsequent sale of stock

III. SEPARATE TAXABLE BANKRUPTCY ESTATE

- § 3:27 When separate estate created—For purpose of
federal taxation
- § 3:28 —For purpose of state and local taxation
- § 3:29 Effect of dismissal of bankruptcy case
- § 3:30 Tax attribute reduction required by debt
discharge rules
- § 3:31 Transfer of estate assets to individual debtor on
termination of estate
- § 3:32 Taxable year of estate
- § 3:33 —Bifurcation of tax year
- § 3:34 —Annualization of income
- § 3:35 Computation and payment of tax
- § 3:36 Deductions and exemptions
- § 3:37 Business and administrative expenses
- § 3:38 Distributable net income concept inapplicable
- § 3:39 Carrybacks and carryovers by estate
- § 3:40 Individual debtor's tax liability
- § 3:41 Treatment of individual's deductions and credits
- § 3:42 Carryback by debtor of net operating loss
- § 3:43 Transfers not treated as disposition—From
individual debtor to estate
- § 3:44 —From estate surplus to individual debtor

IV. TAX-FREE CORPORATE REORGANIZATIONS

- § 3:45 Generally
- § 3:46 Type G reorganizations
- § 3:47 —Requirements to qualify as Type G
reorganization

- § 3:48 — —Acquisition of “substantially all” assets and
“continuity of interest” requirements
- § 3:49 “Boot” received in a Type G reorganization

V. CARRYOVERS, AND LOSS CORPORATIONS

A. FEDERAL INCOME TAX CONSEQUENCES

1. General Tax Provisions

- § 3:50 Successor’s inheritance of tax items from predecessor
- § 3:51 Trafficking in carryovers; § 382 limitation
- § 3:52 Ownership change for § 382 limitation purposes
- 2. Applicability of § 382 Limitation to Ownership Changes in Bankruptcy Cases**
- § 3:53 General rules
- § 3:54 Percentage requirement test
- § 3:55 Reduction of carryforwards
- § 3:56 Effect of second change in ownership within two-year period
- § 3:57 Election not to have bankruptcy exception apply

B. STATE AND LOCAL TAXES

- § 3:58 Generally

VI. PAYROLL WITHHOLDING TAXES

A. FEDERAL TAXES

- § 3:59 Personal liability for trust fund taxes; 100% penalty
- § 3:60 —Who is a “responsible person”
- § 3:61 —What is “willful”
- § 3:62 —Staying collection of penalty
- § 3:63 Allocation of payment doctrine

B. STATE AND LOCAL TAXES

- § 3:64 Duty to withhold and pay over taxes

VII. TRUSTEE’S RIGHTS AND DUTIES

A. IN GENERAL

- § 3:65 Notices required to be given by trustee

TABLE OF CONTENTS

- § 3:66 Request for prompt tax determination by IRS
- § 3:67 Intervention in tax court
- § 3:68 Operating reports
- § 3:69 Transferee liability
- § 3:70 State and local taxes

B. INCOME TAX RETURNS AND REFUNDS

- § 3:71 Filing returns
- § 3:72 Confidentiality of tax returns
- § 3:73 Refunds as property of the estate

VIII. JUDICIAL DETERMINATION OF TAX LIABILITY

- § 3:74 Generally
- § 3:75 Questions involving nondebtor taxpayers
- § 3:76 What constitutes a contested prepetition determination by a competent tribunal

IX. ASSESSMENT AND COLLECTION OF TAX; AUTOMATIC STAY

- § 3:77 Immediate assessment of tax deficiencies
- § 3:78 Impact of automatic stay
- § 3:79 Limitations period suspended on assessment and collection
- § 3:80 Effect of anti-injunction statute

X. OTHER CONSIDERATIONS

- § 3:81 Personal holding company taxation
- § 3:82 Federal unemployment tax credits
- § 3:83 Corporate earnings and profits
- § 3:84 Extensions of time
- § 3:85 Certain transfers to controlled corporations
- § 3:86 State taxation of bankruptcy sales

PART 2. PARTICIPANTS IN BANKRUPTCY PROCESS; JURISDICTION AND VENUE

CHAPTER 4. BANKRUPTCY JUDGES AND COURT PERSONNEL; U.S. TRUSTEES

I. BANKRUPTCY JUDGES

A. IN GENERAL

1. Overview of Court Structure

- § 4:1 Definitions and distinctions
- § 4:2 Establishment of current court structure
- § 4:3 Dependence on district court
- § 4:4 Numbers of bankruptcy judges
- § 4:5 Official duty stations and places of holding court
- § 4:6 Bankruptcy Appellate Panels

2. Judicial and Rulemaking Powers

- § 4:7 Judicial power
- § 4:8 Rulemaking power

3. Court Sessions

- § 4:9 Generally
- § 4:10 Trials and hearings; orders in chambers
- § 4:11 Court always open

B. APPOINTMENT

- § 4:12 Generally
- § 4:13 Role of Judicial Councils and Judicial Conference
- § 4:14 Qualifications for appointment
- § 4:15 Consideration of incumbent judge

C. SERVICE

1. In General

- § 4:16 Generally
- § 4:17 District judges for U.S. territories
- § 4:18 Service in other districts

TABLE OF CONTENTS

§ 4:19	Recall of retired judge to serve
§ 4:20	Designation of judge to conduct municipal case
§ 4:21	Chief judge; division of business
§ 4:22	Use of facilities and services
	2. Privileges and Immunities
§ 4:23	Judicial Conference of circuits
§ 4:24	Judicial immunity
	3. Restrictions and Limitations
§ 4:25	Generally
§ 4:26	Prohibitions on ex parte communications
§ 4:27	Restrictions on making appointments
	D. TERMINATION OR INTERRUPTION OF SERVICE
	1. In General
§ 4:28	Substitution of judge
§ 4:29	Removal
	2. Disqualification to Act in Particular Case
§ 4:30	Generally
§ 4:31	Bias or knowledge
§ 4:32	—Bias against attorney
§ 4:33	—Ex parte communications
§ 4:34	Personal or family involvement
§ 4:35	Involvement of former law associate
§ 4:36	Financial or other interest
§ 4:37	Waiver
	II. ADDITIONAL COURT PERSONNEL
	A. IN GENERAL
§ 4:38	Authorized personnel
§ 4:39	Personnel excluded
	B. BANKRUPTCY CLERKS
	1. In General
§ 4:40	Definitions
§ 4:41	Appointment

- § 4:42 Deputy clerks
- § 4:43 Office hours
- § 4:44 Merger with district court clerk's office
- § 4:45 Judicial immunity

2. Duties of Bankruptcy Clerk

a. In General

- § 4:46 Filing of papers
- § 4:47 Collection of fees and costs
- § 4:48 Issuance of notices
- § 4:49 Issuance of summons
- § 4:50 Issuance of copies
- § 4:51 Duty to search indices and papers

b. Record-Keeping Duties

- § 4:52 Generally
- § 4:53 Role of the Director of Administrative Office
- § 4:54 Fee awards record
- § 4:55 Transcripts and records of proceedings

III. U.S. TRUSTEES

A. INTRODUCTION

- § 4:56 Pilot project
- § 4:57 —Purpose
- § 4:58 —Estate administrators
- § 4:59 Establishment of nationwide system; phase-in
- § 4:60 Opt-in for North Carolina and Alabama
- § 4:61 Role of Department of Justice
- § 4:62 Governing provisions

B. U.S. TRUSTEE SYSTEM FUND

- § 4:63 Generally
- § 4:64 Uses
- § 4:65 Conversion and filing fees
- § 4:66 Quarterly fee in Chapter 11 case
- § 4:67 —Postconfirmation
- § 4:68 Excess amounts received by Chapters 12 and 13
standing trustees
- § 4:69 Excess fund amounts; fund reports

C. INCIDENTS OF OFFICE

- § 4:70 Appointment, oath, and term

TABLE OF CONTENTS

- § 4:71 Duty stations
- § 4:72 Compensation, staff, and expenses
- § 4:73 Effect of vacancy in office
- § 4:74 Prohibition against ex parte contacts
- § 4:75 Removal

D. POWERS AND DUTIES

1. In General

- § 4:76 Generally
- § 4:77 Authority to appear and be heard
- § 4:78 Supervision of cases and trustees
- § 4:79 —Applications for employment and compensation
- § 4:80 Meeting of creditors or equity security holders
- § 4:81 Service as trustee
- § 4:82 Notification of trustee; trustee's bond
- § 4:83 Approval of bonding of estate monies

2. Powers and Duties in Chapter 7 Proceedings

- § 4:84 Panel of trustees
- § 4:85 Appointment of interim trustee
- § 4:86 Appointment of successor trustee
- § 4:87 Service as trustee
- § 4:88 Discharge and dismissal

3. Powers and Duties in Chapters 12 and 13 Proceedings

- § 4:89 Standing trustees
- § 4:90 —Compensation, expenses
- § 4:91 Monitoring plans
- § 4:92 Appointment of, or service as, trustee
- § 4:93 Dismissal and conversion

4. Powers and Duties in Chapter 11 Proceedings

- § 4:94 Generally
- § 4:95 Appointment of trustee or examiner; termination of appointment
- § 4:96 Appointment of creditors' committee
- § 4:97 Conversion and dismissal

**E. INFORMATION TO BE FURNISHED TO
U.S. TRUSTEE**

1. In General

- § 4:98 Generally
- § 4:99 Petition and supporting documents
- § 4:100 Inventory; operations reports; final account

2. Notices and Pleadings

- § 4:101 Generally
- § 4:102 Manner of transmittal of notice or copy of pleadings
- § 4:103 Matters concerning employment and compensation
- § 4:104 Plans and disclosure statements
- § 4:105 Discharge
- § 4:106 Conversion and dismissal
- § 4:107 Miscellaneous matters as to which notice or copy of pleadings is given

**CHAPTER 5. TRUSTEES AND
EXAMINERS; DEBTORS-IN-POSSESSION**

I. TRUSTEES AND EXAMINERS

A. IN GENERAL

- § 5:1 Generally
- § 5:2 Trustee as representative of estate

B. ELIGIBILITY AND QUALIFICATION

- § 5:3 Eligibility to serve as trustee or examiner
- § 5:4 —Disinterestedness requirement
- § 5:5 — —Chapter 11 trustees and examiners
- § 5:6 Notice to trustee of selection
- § 5:7 Qualification of trustee—Bond requirements
- § 5:8 — —Notice of rejection or acceptance of office of trustee
- § 5:9 — —Checklist for qualifying as trustee
- § 5:10 Eligibility and qualification for panels of trustees in Chapter 7 cases
- § 5:11 Eligibility and qualification for standing trustees in Chapters 12 and 13 cases

TABLE OF CONTENTS

C. APPOINTMENT OR ELECTION

1. Chapter 7 Cases

- § 5:12 Appointment to panels of trustees
- § 5:13 Appointment of interim trustee
- § 5:14 Election of trustee
- § 5:15 —Eligibility of creditors to vote—Allowable claim
and filing proof of claim requirements
- § 5:16 — — —Requirement of lack of materially adverse
interest
- § 5:17 — — —Requirement of lack of insider status
- § 5:18 —Solicitation and voting of proxies
- § 5:19 —Report to court; Disputed election
- § 5:20 Election or appointment of successor trustee;
Appointment of trustee in reopened case

2. Chapter 9 Cases

- § 5:21 Debtor as trustee
- § 5:22 Appointment of trustee

3. Chapter 11 Cases

a. Appointment of Trustee

- § 5:23 Bases for appointment
- § 5:24 Appointment required in railroad reorganization
cases
- § 5:25 Who may request appointment
- § 5:26 Notice and hearing requirements
- § 5:27 Presumption that debtor will continue in
possession; Burden of proof as to appointment
- § 5:28 General factors considered in appointment
- § 5:29 Appointment for cause
- § 5:30 —Illustrative cases—Appointment warranted
- § 5:31 — — —Appointment not warranted
- § 5:32 Appointment in interests of creditors, equity
security holders, or estate

b. Election of Trustee

- § 5:33 Request for election
- § 5:34 Manner of election and notice
- § 5:35 Report of undisputed election
- § 5:36 Resolution of election disputes

c. Appointment of Examiner

- § 5:37 Bases for appointment

- § 5:38 Who may request appointment
- § 5:39 Appointment in interests of creditors, equity security holders, or estate
- § 5:40 Appointment where debts exceed \$5 million
- 4. Chapter 12 Cases
- § 5:41 Appointment of standing trustee
- § 5:42 Appointment of trustee
- 5. Chapter 13 Cases
- § 5:43 Appointment of standing trustee
- § 5:44 Appointment of trustee
- 6. Trustees for Estates Ordered Jointly Administered
- § 5:45 Election or appointment of trustees
- 7. Effect of Vacancy in Office of Trustee
- § 5:46 Substitution of successor trustee

D. RIGHTS, POWERS, DUTIES, AND LIABILITIES

1. Common Rights, Powers, Duties, and Liabilities

- § 5:47 Chapter 3 provisions
- § 5:48 —Capacity and standing to sue
- § 5:49 —Capacity to be sued
- § 5:50 — —Proceeding on trustee's bond
- § 5:51 —Personal liability of trustee; immunity from liability
- § 5:52 —Personal liability of trustee; Immunity from liability—Particular circumstances rendering trustee liable
- § 5:53 —Personal liability of trustee; immunity from liability—Particular circumstances rendering trustee not liable
- § 5:54 —Right to deposit or invest money of estate
- § 5:55 —Right to employ professional persons; trustee as attorney or accountant in case
- § 5:56 —Right to assert or waive attorney-client privilege
- § 5:57 Chapter 5 provisions

TABLE OF CONTENTS

- § 5:58 Chapter 15 provisions
- § 5:59 Bankruptcy Rule provisions
- § 5:60 —Duty to keep or file various records and reports,
and give notice of case
- § 5:61 Title 28 provisions
- § 5:62 Title 18 provisions

2. Specific Powers and Duties under Particular Chapters

- § 5:63 Chapter 7 cases
- § 5:64 —Duty to collect and reduce to money property of
estate
- § 5:65 —Duties to domestic support creditors
- § 5:66 —Duty to investigate debtor
- § 5:67 —Duty to examine proofs of claims
- § 5:68 —Standing of trustee to oppose motion to dismiss
- § 5:69 —Powers and duties in stockholder or commodity
broker liquidation cases
- § 5:70 —Powers and duties of interim trustee
- § 5:71 Chapter 9 cases
- § 5:72 Chapter 11 cases—Trustees
- § 5:73 — —Subchapter V
- § 5:74 — —Examiners
- § 5:75 Chapter 12 cases
- § 5:76 —Duties if debtor ceases to be
debtor-in-possession
- § 5:77 Chapter 13 cases
- § 5:78 —Duties if debtor is engaged in business

E. REMOVAL; TERMINATION OF SERVICES

- § 5:79 Removal of trustee or examiner for cause
- § 5:80 —Grounds for removal
- § 5:81 — —Particular acts or behavior as cause for
removal
- § 5:82 — —Particular acts or behavior as not cause for
removal
- § 5:83 Conversion of case as terminating service of
trustee or examiner
- § 5:84 Termination of interim trustee's services in
Chapter 7 cases
- § 5:85 Request to terminate trustee's appointment in
Chapter 11 cases

- § 5:86 Termination of trustee's services in Chapter 12 cases

F. COMPENSATION

- § 5:87 General rule and limitation
 § 5:88 Application for compensation or reimbursement
 § 5:89 Interim compensation
 § 5:90 Specific minimum compensation of trustees in Chapters 7, 12, and 13 cases
 § 5:91 Specific limitations on compensation in Chapters 7 and 11 cases
 § 5:92 —What constitutes disbursement of moneys to parties in interest, excluding debtor
 § 5:93 — —Abandonment of property to secured creditor
 § 5:94 —Effect of dismissal of case
 § 5:95 —Effect of conversion of Chapter 7 or 11 case
 § 5:96 Specific limitations on compensation in Chapters 12 and 13 cases
 § 5:97 Compensation of standing trustees in Chapters 12 and 13 cases
 § 5:98 —Basis for computing percentage fee—Direct payments by debtors to secured creditors not included
 § 5:99 — — —All payments upon impaired claims under plan included
 § 5:100 —Court review of standing trustee fee
 § 5:101 Limitation on compensation where more than one trustee serves in case; effect of case conversion
 § 5:102 Compensation of trustee also serving as attorney or accountant for estate
 § 5:103 Prohibition against compensation sharing
 § 5:104 Denial of compensation—If trustee employs nondisinterested professional persons
 § 5:105 — —In circumstances of breach of fiduciary duty by, or disqualification of, trustee

II. DEBTORS-IN-POSSESSION

A. OVERVIEW

- § 5:106 Generally

TABLE OF CONTENTS

- § 5:107 Debtor-in-possession as same entity as, or
separate entity from, debtor

B. CHAPTER 11 CASES

- § 5:108 Debtor as debtor-in-possession
- § 5:109 Rights, powers, and duties of
debtor-in-possession
- § 5:110 —Debtor-in-possession as fiduciary
- § 5:111 —Specific rights, powers, and duties
- § 5:112 Replacement of debtor-in-possession by trustee;
restoration of debtor to possession
- § 5:113 Debtor-in-possession in subchapter V cases

C. CHAPTER 12 CASES

- § 5:114 Rights, powers, and duties of
debtor-in-possession
- § 5:115 Removal or reinstatement of debtor as
debtor-in-possession

CHAPTER 6. DEBTORS, CREDITORS, AND OTHER PARTIES IN INTEREST

I. INTRODUCTION

- § 6:1 Generally
- § 6:2 Protective orders regarding confidential or
defamatory matter
- § 6:3 Immunity from criminal prosecution

II. PARTICULAR PARTIES

A. DEBTORS

1. Generally

- § 6:4 Generally
- § 6:5 Written notice to certain debtors
- § 6:6 Notices given by debtor to creditors
- § 6:7 —Creditor addresses and account numbers
- § 6:8 —Effect of notices
- § 6:9 Availability of debtor defenses
- § 6:10 Death or incompetency of debtor

2. Rights and powers

- § 6:11 Generally

- § 6:12 Right to redeem property
- § 6:13 Chapter 11 and 12 debtors
- § 6:14 Chapter 13 debtors

3. Duties

- § 6:15 Schedules and statements
- § 6:16 Certificate of attorney, bankruptcy petition preparer or debtor
- § 6:17 Evidence of employer payments and income statements
- § 6:18 Statement of intention regarding retention or surrender of property
- § 6:19 Credit counseling certificate
- § 6:20 Record of interest in educational IRA or tuition program
- § 6:21 Federal tax returns
- § 6:22 Debtor identification
- § 6:23 Cooperation with trustee
- § 6:24 Perform administrator obligations of employee benefit plan
- § 6:25 Duties and reporting requirements specific to Chapter 11 small business debtors
- § 6:26 Other duties
- § 6:27 Effect of failure to file certain documents
- § 6:28 Prohibition against discrimination against debtors—By governmental units
- § 6:29 — —Impairment of debtor's ability to work precluded
- § 6:30 — —Motor vehicle responsibility statutes
- § 6:31 — —Student debtors; access to transcripts and ability to procure future loans
- § 6:32 — —Other particular applications
- § 6:33 —By private employers
- § 6:34 —By utilities

B. CREDITORS

- § 6:35 Generally
- § 6:36 Appearance by state attorney general on behalf of consumer creditors
- § 6:37 Rights and powers
- § 6:38 —Notices
- § 6:39 —Copies of documents
- § 6:40 —Extension of time to commence actions

TABLE OF CONTENTS

- § 6:41 —Right to bring action on behalf of debtor
- § 6:42 —Administrative expense status for certain creditor expenses
- § 6:43 Meeting of creditors

C. CREDITORS' COMMITTEES

- § 6:44 Generally
- § 6:45 Notice
- § 6:46 Obligation to file verified statement
- § 6:47 Responsibilities to creditors
- § 6:48 Intervention in adversary proceedings
- § 6:49 Right to bring action on behalf of debtor
- § 6:50 Checklist of powers and duties of Chapter 9 or 11 committees
- § 6:51 Administrative expenses
- § 6:52 —Compensation and reimbursement of expenses
- § 6:53 Chapter 7 committees
- § 6:54 Appointment and composition of Chapter 9 and 11 committees
- § 6:55 —Eligibility for appointment
- § 6:56 —Prepetition committee
- § 6:57 —Postconfirmation committee
- § 6:58 —Additional committees
- § 6:59 —Change in membership or size

D. EQUITY SECURITY HOLDERS

- § 6:60 Generally
- § 6:61 Notices
- § 6:62 Administrative expenses
- § 6:63 Meeting

E. EQUITY SECURITY HOLDERS' COMMITTEES

- § 6:64 Generally
- § 6:65 Obligation to file verified statement
- § 6:66 Notices
- § 6:67 Administrative expenses
- § 6:68 Appointment
- § 6:69 —Additional committees
- § 6:70 —Change in membership or size

F. INDENTURE TRUSTEES

- § 6:71 Generally

- § 6:72 Obligation to file verified statement upon court order in Chapter 9 and Chapter 11 cases
- § 6:73 Administrative expenses

G. CUSTOMERS OF STOCKBROKERS AND COMMODITY BROKERS IN LIQUIDATION PROCEEDINGS

- § 6:74 Generally

H. CUSTODIANS

- § 6:75 Generally
- § 6:76 Duties and rights
- § 6:77 Administrative expenses

III. GOVERNMENTAL UNITS AND AGENCIES

- § 6:78 Waiver of sovereign immunity of governmental units
- § 6:79 —States
- § 6:80 —Filing proofs of claim and compulsory counterclaims
- § 6:81 —Other methods of waiver
- § 6:82 —Offset of claims
- § 6:83 Rights of governmental units—In Chapter 9 cases
- § 6:84 —In Chapter 11 cases
- § 6:85 Government agencies
- § 6:86 —SEC, SIPC, and CFTC

IV. OTHER PARTICULAR PARTIES

- § 6:87 Parties in interest
- § 6:88 —Those entitled to party in interest status
- § 6:89 —Potential mass tort claimants
- § 6:90 Employees, retirees, and their representatives
- § 6:91 Masters
- § 6:92 Consumer privacy ombudsman
- § 6:93 Patient care ombudsman
- § 6:94 —Duties

TABLE OF CONTENTS

CHAPTER 7. JURISDICTION AND VENUE

I. JURISDICTION

A. OVERVIEW OF THE DISTRICT COURT-BANKRUPTCY COURT RELATIONSHIP

- § 7:1 BAFJA as governing
- § 7:2 District court jurisdiction
- § 7:3 Abstention
- § 7:4 Reference of cases and proceedings to the bankruptcy judges
- § 7:5 —The bankruptcy judges’ role in referred cases and proceedings

B. GRANT TO DISTRICT COURTS

- § 7:6 Generally
- § 7:7 Original and exclusive jurisdiction of cases under Title 11
- § 7:8 Minimum state contacts and amount in controversy provisions inapplicable
- § 7:9 Original but not exclusive jurisdiction of civil proceedings
- § 7:10 What are proceedings “arising under” Title 11
- § 7:11 What are proceedings “arising in” cases under Title 11
- § 7:12 What are proceedings “related” to cases under Title 11
- § 7:13 —Related proceedings as inherently noncore
- § 7:14 —Effect on estate as test of relatedness
- § 7:15 —Nexus between case and proceeding as test of relatedness
- § 7:16 Nonrelated proceedings
- § 7:17 Exclusive jurisdiction of property of debtor and estate
- § 7:18 Exclusive jurisdiction over matters involving employment of professionals

C. ABSTENTION

1. In General

- § 7:19 Generally

- § 7:20 Distinctions between various types of abstention
- § 7:21 Hearing and determining motion for abstention
- § 7:22 Stays when abstention sought

2. Mandatory Abstention

- § 7:23 Generally
- § 7:24 Showing necessary to obtain mandatory abstention
- § 7:25 Pendency of action in state court
- § 7:26 Timely adjudication in state court
- § 7:27 Nonbankruptcy federal court actions
- § 7:28 Appealability of ruling on motion
- § 7:29 Exclusion of personal injury tort and wrongful death claims

3. Discretionary Abstention

- § 7:30 Generally
- § 7:31 Effect of existence of state law claims
- § 7:32 Judicial economy
- § 7:33 Impact on estate

D. REFERENCE OF CASES AND PROCEEDINGS TO BANKRUPTCY JUDGES

1. In General

- § 7:34 Generally

2. Withdrawal of Reference

- § 7:35 Generally
- § 7:36 Hearing and determining motion for withdrawal
- § 7:37 Timeliness of motion for withdrawal
- § 7:38 Timeliness of court's withdrawal sua sponte
- § 7:39 Stays when withdrawal of reference sought
- § 7:40 Impact on withdrawal of core or noncore nature of proceeding
- § 7:41 Discretionary withdrawal
- § 7:42 Mandatory withdrawal
- § 7:43 —What are other federal laws regulating organizations or activities affecting interstate commerce

E. HEARING AND DETERMINING REFERRED CASES AND PROCEEDINGS

- § 7:44 Bankruptcy judges as unit of district court

TABLE OF CONTENTS

- § 7:45 Power of bankruptcy judges to hear cases and proceedings
- § 7:46 Cases under Title 11
- § 7:47 Core proceedings
- § 7:48 Noncore, related proceedings
- § 7:49 —District court’s de novo review
- § 7:50 —Consent to final determination by bankruptcy judge
- § 7:51 — —What constitutes consent
- § 7:52 —Examples
- § 7:53 Personal injury tort and wrongful death claims
- § 7:54 Limitations in Chapter 9 cases
- § 7:55 Appearance by foreign representative

F. WHAT CONSTITUTES CORE PROCEEDINGS

1. In General

- § 7:56 Generally
- § 7:57 Relationship to Bankruptcy Code
- § 7:58 Relationship to state law
- § 7:59 —Collection of accounts receivable

2. Illustrative Enumeration by Statute

- § 7:60 Generally
- § 7:61 Broad or narrow construction
- § 7:62 Proceeding falling within more than one category
- § 7:63 “Catchall” provisions
- § 7:64 —Tempered construction
- § 7:65 Matters not enumerated by statute as core
- § 7:66 Proceeding falling within enumerated category may be noncore

3. Judicial Determination Whether Proceeding Is Core

- § 7:67 Bankruptcy judge’s determination
- § 7:68 District court determination
- § 7:69 Proceedings which are part core and part noncore
- § 7:70 Timeliness of determination
- § 7:71 Appellate review

4. Types of Proceedings Enumerated as Core by Statute

a. Matters Concerning Administration of Estate

- § 7:72 Generally
- § 7:73 Matters involving the automatic stay
- § 7:74 Injunctive relief
- § 7:75 Motions to abstain or remand
- § 7:76 Equitable subordination and reclamation
- § 7:77 Contracts
- § 7:78 Leases
- § 7:79 Governmental regulations
- § 7:80 Employment and compensation of professional persons
- § 7:81 Additional applications

b. Allowance or Disallowance of Claims; Estimation of Claims or Interests

- § 7:82 Generally
- § 7:83 Breach of warranty
- § 7:84 Tax liability
- § 7:85 Additional applications

c. Counterclaims by Estate against Persons Filing Claims against Estate

- § 7:86 Generally
- § 7:87 State-law basis for counterclaims
- § 7:88 Turnover actions
- § 7:89 Particular applications

d. Orders with Respect to Obtaining Credit

- § 7:90 Generally

e. Orders to Turn Over Property of Estate

- § 7:91 Generally
- § 7:92 Effect of disputed liability or unmatured claim
- § 7:93 Particular applications

f. Proceedings to Determine, Avoid, or Recover Preferences

- § 7:94 Generally

TABLE OF CONTENTS

§ 7:95	Preference actions based on state law
	g. Motions to Terminate, Annul, or Modify Automatic Stay
§ 7:96	Generally
§ 7:97	Enjoining violation of stay
§ 7:98	Sanctions for violating stay
	h. Proceedings to Determine, Avoid, or Recover Fraudulent Conveyances
§ 7:99	Generally
§ 7:100	Actions based on state law
	i. Additional Proceedings and Orders
§ 7:101	Determinations as to dischargeability of particular debts
§ 7:102	Objections to discharge
§ 7:103	Determination of validity, extent, or priority of liens
§ 7:104	Confirmations of plans
§ 7:105	Orders approving use or lease of property, including use of cash collateral
§ 7:106	Orders approving certain sales of property
§ 7:107	Other proceedings affecting liquidation of estate assets or adjustment of debtor-creditor/equity security holder relationship
§ 7:108	—Actions involving state law
§ 7:109	—Equitable subordination and reclamation
§ 7:110	—Miscellaneous applications
	G. REMOVAL AND REMAND OF CLAIMS RELATED TO CASES
	1. Removal
§ 7:111	Authority
§ 7:112	Notice of removal
§ 7:113	—Contents of notice
§ 7:114	Notice to parties; filing in nonbankruptcy court
§ 7:115	Pending actions
§ 7:116	Cases filed after bankruptcy
§ 7:117	Checklist for removal action
§ 7:118	Referral of removed claim to bankruptcy judge
§ 7:119	Process and pleading after removal

- § 7:120 Supplying of record
- § 7:121 Attachment or sequestration
- § 7:122 Continued effect of security and pre-removal injunctions, orders, and other proceedings

2. Remand

- § 7:123 Generally
- § 7:124 Motion
- § 7:125 Remand order
- § 7:126 Grounds for remand
- § 7:127 Review by appeal or otherwise of remand orders

H. CONSTITUTIONAL ISSUES AND RESPONSES TO THEM

1. Bankruptcy Reform Act of 1978

- § 7:128 District court jurisdiction
- § 7:129 Bankruptcy court exercise of jurisdiction
- § 7:130 Bankruptcy judges as Article I judges

2. Northern Pipeline Ruling

- § 7:131 Generally
- § 7:132 Grant of jurisdiction to district courts unaffected
- § 7:133 Divided nature of ruling
- § 7:134 Plurality opinion
- § 7:135 Concurring opinion
- § 7:136 Dissenting opinion
- § 7:137 Chief justice's separate dissenting opinion
- § 7:138 Subsequent Supreme Court comment on *Northern Pipeline*

3. Model Rule

- § 7:139 Generally
- § 7:140 Similarity to present jurisdictional provisions
- § 7:141 Validity

4. Bankruptcy Amendments and Federal Judgeship Act of 1984

- § 7:142 Generally
- § 7:143 Impact on Reform Act transition provisions
- § 7:144 Extension of bankruptcy judges' terms
- § 7:145 Bankruptcy Appellate Panels
- § 7:146 Validity of jurisdictional grant and referral of cases and proceedings

TABLE OF CONTENTS

§ 7:147 Review under clearly erroneous standard

**II. POWERS OF BANKRUPTCY COURTS AND
JUDGES IN EXERCISE OF JURISDICTION**

**A. GENERAL AND EQUITABLE STATUTORY
POWERS**

§ 7:148 General statutory powers

§ 7:149 Inherent power

§ 7:150 Limitations

**B. CONTEMPT AND OTHER SANCTIONING
POWER**

1. Contempt

a. Authority to Exercise Contempt Power

§ 7:151 Generally

§ 7:152 Constitutionality of vesting contempt power in
non-Article III court

§ 7:153 Statutory authority

§ 7:154 Implied power

b. Practice and Procedure

§ 7:155 Determination of contempt

§ 7:156 Order of contempt

2. Other Sanctions

§ 7:157 Sanctions resulting from multiplication of
proceedings

§ 7:158 Sanctions resulting from noncompliance with
signing and verification requirements

§ 7:159 Inherent power of the court

§ 7:160 On appeal

§ 7:161 Miscellaneous sources of sanctioning power

C. INJUNCTIVE POWER

§ 7:162 Source

§ 7:163 Relationship to automatic stay

§ 7:164 Procedure for obtaining injunction

§ 7:165 Enjoining suit or continuance of suit

§ 7:166 Criminal proceedings

§ 7:167 Labor cases

- § 7:168 Preconditions to enjoining the taking of rolling stock equipment of reorganizing railroad

D. SUBPOENA POWER

- § 7:169 Generally
- § 7:170 Examination of any entity
- § 7:171 Examination of debtor

E. ISSUANCE OF WRITS OF HABEAS CORPUS

- § 7:172 Generally

F. JURY TRIALS

- § 7:173 Generally
- § 7:174 Right to jury trial
- § 7:175 —Nature of issue to be tried
- § 7:176 —Character of action
- § 7:177 —Determination of right to jury trial
- § 7:178 Authority of bankruptcy court to conduct a trial by jury

G. POWER TO RENDER DECLARATORY JUDGMENT

- § 7:179 Generally

H. POSTCONFIRMATION POWERS

- § 7:180 Generally

I. APPOINTMENT OF RECEIVER

- § 7:181 Generally

III. VENUE

A. WHERE CASE OR PROCEEDING MAY BE COMMENCED

1. Cases Under Title 11

- § 7:182 Generally
- § 7:183 Location of principal place of business
- § 7:184 Location of principal assets

TABLE OF CONTENTS

§ 7:185	Checklist for determining venue of cases
2. Proceedings	
§ 7:186	Generally
§ 7:187	Proceedings based on postpetition claim arising from operation of debtor's business
§ 7:188	Checklist for determining venue of proceedings
§ 7:189	Contractual forum selection clauses
3. Ancillary and Other Cross-Border Cases	
§ 7:190	Generally
B. CHANGE OF VENUE	
§ 7:191	Generally
§ 7:192	Notice and hearing
§ 7:193	Filing of petitions involving same or related debtors in different courts
§ 7:194	Presumption and burden of proof
§ 7:195	Cases and proceedings in improper venues
§ 7:196	Grounds to transfer case
§ 7:197	Adversary proceedings
§ 7:198	Personal injury tort and wrongful death claims

Table of Contents

PART 3. INITIAL STAGES OF CASE

CHAPTER 8. VOLUNTARY CASES

I. COMMENCEMENT OF A VOLUNTARY CASE

A. FILING THE PETITION

- § 8:1 Commencement of a voluntary case
- § 8:2 Notice of relief available for individuals with primarily consumer debts
- § 8:3 Authorization to file—On behalf of another individual
 - § 8:4 —On behalf of a partnership
 - § 8:5 —On behalf of municipality
 - § 8:6 —On behalf of corporation
 - § 8:7 — —Authority of board of directors
 - § 8:8 — —Authority of corporate officer
 - § 8:9 — —Effect of equity receivership
 - § 8:10 — —Standing to challenge authorization to file
- § 8:11 Bankruptcy petition preparers
 - § 8:12 —Information required of preparer
 - § 8:13 —Written notice to debtor
 - § 8:14 —Duties and prohibitions
 - § 8:15 —Legal advice
 - § 8:16 —Fees
 - § 8:17 —Remedies
- § 8:18 Checklist for filing voluntary petitions

B. FORM OF PETITION

- § 8:19 Use of official forms
- § 8:20 Number of copies
- § 8:21 Caption
- § 8:22 Verification

C. ROLE OF GOOD FAITH

- § 8:23 Voluntary petition to be filed in good faith
- § 8:24 Court's authority to insure good faith in filing
- § 8:25 —Raising issue of good faith sua sponte
- § 8:26 Burden of proof; standard for determining good faith
- § 8:27 —New debtor syndrome
- § 8:28 Factors affecting determination of good faith in filing
- § 8:29 —Filing on the eve of foreclosure
- § 8:30 —Distressed property transferred to debtor in close proximity to filing
- § 8:31 —Repetitive or multiple filings
- § 8:32 —Avoidance of state litigation

II. ORDERS FOR RELIEF; NOTICE

- § 8:33 Entry of order for relief
- § 8:34 Vacation of order for relief
- § 8:35 —Rules applicable to proceedings to vacate
- § 8:36 Notice of order for relief
- § 8:37 Entities entitled to notice
- § 8:38 Notice requirements for Chapter 7 cases
- § 8:39 Notice requirements for Chapter 9 cases
- § 8:40 Notice requirements for Chapter 11 cases
- § 8:41 Timeliness of notice
- § 8:42 Adequacy of notice
- § 8:43 —Effect of party's actual knowledge of proceedings
- § 8:44 Copy of petition to be filed where real property located

III. JOINT CASES BY SPOUSES

- § 8:45 Commencement of a joint case
- § 8:46 Form of petition
- § 8:47 Who may file a joint case
- § 8:48 —Effect of improper joinder of debtors
- § 8:49 Property exemptions available in joint cases

IV. CONSOLIDATION AND JOINT ADMINISTRATION

- § 8:50 Joint administration

TABLE OF CONTENTS

- § 8:51 Distinction between consolidation and joint administration
- § 8:52 Consolidation of petitions pending against the same debtor
- § 8:53 Consolidation of estates of spouses in joint cases
- § 8:54 Consolidation of cases of two or more debtors
- § 8:55 —Pooling of assets and liabilities of nondebtors with estates of debtors
- § 8:56 —Parties that may request consolidation
- § 8:57 —Burden of proof
- § 8:58 —Factors affecting determination
- § 8:59 — —Interrelated corporate entities
- § 8:60 —Notice of consolidation
- § 8:61 —Retroactive application of consolidation order

V. LISTS, SCHEDULES, AND STATEMENTS

- § 8:62 Duty to file
- § 8:63 Optional statement of exempt property
- § 8:64 List of creditors holding the 20 largest unsecured claims
- § 8:65 Filing requirements for Chapter 7 cases
- § 8:66 Filing requirements for Chapter 9 cases
- § 8:67 Filing requirements for Chapter 11 cases
- § 8:68 Filing requirements for Chapter 13 cases
- § 8:69 Filing requirements for Individual cases
- § 8:70 Filing requirements for partnership cases
- § 8:71 Checklist of lists, schedules, and statements
- § 8:72 Number of copies
- § 8:73 Verification
- § 8:74 Standard of compliance
- § 8:75 Effect of constitutional privilege
- § 8:76 Disclosure of list of security holders
- § 8:77 Impoundment of lists
- § 8:78 Timeliness of filing
- § 8:79 Extension of time for filing
- § 8:80 Duty to file supplemental schedules
- § 8:81 Filing when case has been converted
- § 8:82 When debtor defaults in duty to file
- § 8:83 Effect of inaccuracies or omissions
- § 8:84 Trustee's duty to insure compliance when debtor defaults regarding statement of intention

VI. FILING FEES

- § 8:85 Payment of filing fee

- § 8:86 Fees required upon case conversion
- § 8:87 Amount of filing fees
- § 8:88 Additional fees prescribed by Judicial Conference
- § 8:89 —Fee for filing complaint
- § 8:90 — —Validity
- § 8:91 Fees to fund U.S. Trustee system
- § 8:92 Installment payments of filing fee
- § 8:93 Extensions of time for installment payments
- § 8:94 Proceeding in forma pauperis and waiver of filing fee
- § 8:95 Effect of failure to pay filing fee

VII. AMENDMENT TO PETITION, LISTS, SCHEDULES, AND STATEMENTS

- § 8:96 Amendments by debtor
- § 8:97 —To statement of intention
- § 8:98 Amendments by parties other than debtor
- § 8:99 Form and copies of amendment
- § 8:100 Notice of amendment
- § 8:101 Scope of court's discretion to deny amendment
- § 8:102 —Debtor's bad faith
- § 8:103 —Prejudice to creditor
- § 8:104 —Timeliness of amendments
- § 8:105 Effect of amendment on debtor's discharge

CHAPTER 9. INVOLUNTARY CASES

I. DEBTORS IN INVOLUNTARY CASES

- § 9:1 Persons subject to involuntary cases
- § 9:2 —Inactive moneyed, business, or commercial corporations
- § 9:3 Unavailability of involuntary joint cases against spouses
- § 9:4 Corporations exempt from involuntary cases
- § 9:5 —Determination of corporation's status
- § 9:6 Farmers as exempt from involuntary cases
- § 9:7 —80-percent test
- § 9:8 Family farmers as exempt from involuntary cases
- § 9:9 Farming operation income

TABLE OF CONTENTS

II. QUALIFICATIONS TO COMMENCE INVOLUNTARY CASE

A. WHO MAY COMMENCE CASE

- § 9:10 Entities qualified to file petition
- § 9:11 —Foreign representatives
- § 9:12 —Secured creditor
- § 9:13 Entities able to initiate case against partnership
- § 9:14 —Effect of claims against general partner
- § 9:15 —Effect of general partner's bankruptcy case

B. TYPE AND AMOUNT OF CLAIMS THAT MAY SUPPORT INVOLUNTARY PETITION

- § 9:16 Claims against the debtor
- § 9:17 —Effect of postpetition payment of claims
- § 9:18 Claims that are not contingent as to liability
- § 9:19 —Tort claims
- § 9:20 —Factors affecting determination of contingency
- § 9:21 Claims that are not subject to bona fide disputes
- § 9:22 —Effect of pendency of other proceedings regarding claim
- § 9:23 —Effect of debtor's counterclaims
- § 9:24 —Standard for determining existence of dispute
- § 9:25 — —Balancing the interests of debtors and creditors
- § 9:26 —Existence of bona fide dispute in particular cases
- § 9:27 Transferred claims
- § 9:28 Amount of claims as affecting ability to file petition

C. NUMBER OF ENTITIES

- § 9:29 Number of entities required to initiate petition
- § 9:30 Multiple entities treated as one petitioner
- § 9:31 Determining number of debtor's existing creditors
- § 9:32 —Small, recurring claims
- § 9:33 Waiver of challenge to sufficiency of number of petitioners
- § 9:34 Ability to withdraw from petition

III. ROLE OF GOOD FAITH

- § 9:35 Effect of filing petition in bad faith

- § 9:36 Prepetition duty to investigate debtor's financial condition
- § 9:37 Burden and degree of proof; presumption of good-faith filing
- § 9:38 Standard for determining good faith
- § 9:39 Factors affecting determination of good faith
- § 9:40 —Reliance on counsel's advice

IV. FORM AND FILING OF PETITION

- § 9:41 Filing as commencement of case
- § 9:42 Effect of other pending petitions for relief involving same or related debtors
- § 9:43 Official Forms
- § 9:44 Verification of petition
- § 9:45 Amendments to petition
- § 9:46 Filing fees
- § 9:47 Service of process
- § 9:48 —When the debtor is a partnership

V. RESPONSIVE PLEADINGS

- § 9:49 Parties entitled to answer petition
- § 9:50 Pleading defenses
- § 9:51 Pleading counterclaims in answer to petition
- § 9:52 Debtor's duty to file list of creditors with answer
- § 9:53 Failure to timely pursue objections may waive right to defense
- § 9:54 Request for jury trial
- § 9:55 Rules governing contested petitions

VI. INTERVENTION OR JOINDER OF ADDITIONAL CREDITORS

- § 9:56 When permissible
- § 9:57 Qualifications to intervene
- § 9:58 Intervening creditors treated as original petitioners
- § 9:59 Bad-faith filing as affecting right to intervene

VII. ORDER FOR RELIEF

A. INTRODUCTION

- § 9:60 Entry of order for relief

TABLE OF CONTENTS

- § 9:61 Court's discretion to deny order for relief
- § 9:62 Time for entering judgment on petition
- § 9:63 Necessity of a trial
- § 9:64 Vacation of order for relief

B. GROUNDS FOR RELIEF

1. Equity Insolvency Test

- § 9:65 Debtor generally not paying debts when due
- § 9:66 What debts are considered
- § 9:67 —Exclusion of debts subject to bona fide dispute
- § 9:68 Burden of proof
- § 9:69 Time of filing is critical
- § 9:70 Standard for determining general nonpayment of debts
- § 9:71 Factors affecting determination of general nonpayment of debts
- § 9:72 —Debtor's ability to pay
- § 9:73 —Amount and number of unpaid debts
- § 9:74 — —Failure to pay one creditor
- § 9:75 —Debtor's method of operation
- § 9:76 —Age of outstanding debt

2. Appointment of Custodian of Debtor's Assets

- § 9:77 When appointment of custodian supports order for relief
- § 9:78 Parties that qualify as custodians

VIII. LISTS, SCHEDULES, AND STATEMENTS

- § 9:79 Duty to file
- § 9:80 —When partnership is debtor
- § 9:81 Timeliness of filing
- § 9:82 Extension of time for filing

CHAPTER 10. CREDITORS' MEETINGS; EXAMINATIONS

I. CREDITORS' AND EQUITY SECURITY HOLDERS' MEETINGS

A. INTRODUCTION

- § 10:1 Generally

- § 10:2 Meetings of equity security holders
- § 10:3 Notice
- § 10:4 Special meetings
- § 10:5 Final meetings

B. TIME AND PLACE OF MEETINGS

- § 10:6 Time of initial meeting
- § 10:7 —Adjournment and continuance of meeting
- § 10:8 —Rescheduling of meeting
- § 10:9 Place of meeting

C. ATTENDANCE AND PARTICIPATION AT MEETING

1. Debtor

- § 10:10 Generally
- § 10:11 Excusing debtor's nonattendance
- § 10:12 —Particular grounds or excuses

2. Presiding Officer

- § 10:13 Generally
- § 10:14 Role of court

3. Other Entities

- § 10:15 Creditors
- § 10:16 Press and public
- § 10:17 Attorneys and paralegals
- § 10:18 Interpreters

D. EXAMINATION OF DEBTOR AT MEETING

- § 10:19 Generally
- § 10:20 Who may conduct examination; debtor's right to examine
- § 10:21 Scope of inquiry
- § 10:22 Privileges

E. MISCELLANEOUS MATTERS ADDRESSED AT MEETING

- § 10:23 Voting and elections
- § 10:24 Trustee's examination of Chapter 7 debtor concerning effects of bankruptcy

TABLE OF CONTENTS

**II. EXAMINATIONS PURSUANT TO
BANKRUPTCY RULE 2004**

A. INTRODUCTION

- § 10:25 Generally
- § 10:26 Who is entitled to make examination
- § 10:27 Effect of pending litigation
- § 10:28 Postconfirmation examinations under Rule 2004

B. EXAMINATION OF DEBTOR

- § 10:29 Debtor's submission to examination
- § 10:30 —Where debtor attempts to avoid examination
- § 10:31 —Where debtor is corporation or partnership
- § 10:32 Scope of inquiry
- § 10:33 —Exclusions
- § 10:34 Production of documentary evidence

C. EXAMINATION OF THIRD PERSONS

- § 10:35 Generally
- § 10:36 Who may be required to submit to examination
- § 10:37 Examination of corporations
- § 10:38 Securing attendance
- § 10:39 Scope of inquiry
- § 10:40 —Exclusions
- § 10:41 —Judicial balancing of interests
- § 10:42 Production of documentary evidence

**III. STATUS OF PAPERS FILED IN
BANKRUPTCY CASE**

- § 10:43 Papers filed as public records
- § 10:44 Restrictions on public access
- § 10:45 —Discretion of court in imposing restrictions

**CHAPTER 11. EARLY TERMINATION OF
CASE**

I. MEANS OF EARLY TERMINATION

A. IN GENERAL

- § 11:1 Generally

§ 11:2 Procedural matters

B. ABSTENTION

§ 11:3 Generally

§ 11:4 Where foreign proceeding is pending

§ 11:5 Appearance by foreign representative

§ 11:6 Notice and hearing; review or appeal

C. CONVERSION

§ 11:7 Generally

§ 11:8 Chart for conversion of cases

D. DISMISSAL

§ 11:9 Generally

§ 11:10 Involuntary petitions

II. CASES PENDING UNDER PARTICULAR CHAPTERS

A. CHAPTER 7 CASES

1. Conversion

§ 11:11 Debtor's right to conversion

§ 11:12 Motion, notice, and hearing

§ 11:13 Effect of prior conversion

§ 11:14 Conversion by court order

2. Dismissal of Case or Conversion to a Chapter 11 or 13 Case for Abuse; Means-testing

§ 11:15 Generally

§ 11:16 Presumption of abuse

§ 11:17 —Debtor's monthly expenses

§ 11:18 — —Health insurance

§ 11:19 — —Payment of debt

§ 11:20 — —Expenses to maintain safety

§ 11:21 — —Care and support of non-dependent family members

§ 11:22 — —Chapter 13 administrative expenses

§ 11:23 — —Dependent child education expenses

§ 11:24 — —Housing and utility expenses

TABLE OF CONTENTS

§ 11:25	— —Monthly payments for secured debt
§ 11:26	— —Payment of priority debt
§ 11:27	— —Additional allowances
§ 11:28	—Rebuttal of presumption by demonstration of special circumstances
§ 11:29	—Debtor’s statement of income and abuse calculations
§ 11:30	Prohibition of dismissal of case filed by disabled veteran
§ 11:31	Considerations where presumption of abuse does not arise or is rebutted
§ 11:32	Liability of debtor’s attorney
§ 11:33	Award of costs to debtor
§ 11:34	Limitation on actions based on income
	3. Dismissal in Best Interest of Crime Victim
§ 11:35	Generally
	4. Dismissal for Cause
§ 11:36	Dismissal by court order
§ 11:37	Motion, notice, and hearing
§ 11:38	What constitutes cause
§ 11:39	—Lack of good faith
§ 11:40	—Ability to repay creditors
§ 11:41	Debtor’s motion to dismiss
§ 11:42	—Under 11 U.S.C.A. § 707(a)
§ 11:43	—Objection by Chapter 7 trustee
§ 11:44	Securities Investor Protection Corporation proceedings
	B. CHAPTER 9 CASES
§ 11:45	Dismissal
§ 11:46	Effect of nonconfirmation of plan
§ 11:47	Notice and hearing
	C. CHAPTER 11 CASES
§ 11:48	Debtor’s right to conversion to Chapter 7 or dismissal
§ 11:49	Conversion to Chapter 7 or dismissal for cause
§ 11:50	—Grounds for conversion or dismissal
§ 11:51	Factors affecting choice of conversion or dismissal

- § 11:52 —Illustrations
- § 11:53 —Lack of good faith
- § 11:54 —Standing; sua sponte dismissal or conversion
- § 11:55 —Notice and hearing
- § 11:56 —Where debtor is eleemosynary institution
- § 11:57 —Where debtor is farmer
- § 11:58 Conversion to Chapter 12
- § 11:59 Conversion to Chapter 13

D. CHAPTER 12 CASES

1. Conversion

- § 11:60 To Chapter 7
- § 11:61 To Chapter 11
- § 11:62 To Chapter 13

2. Dismissal

- § 11:63 On request of debtor
- § 11:64 For cause
- § 11:65 —Notice
- § 11:66 —With prejudice

E. CHAPTER 13 CASES

- § 11:67 Conversion to Chapter 7 or dismissal as matter of right
- § 11:68 —Voluntary dismissal where motion to convert is pending
- § 11:69 Cause for conversion to Chapter 7 or dismissal
- § 11:70 —Material default; debtor's failure to make payments
- § 11:71 —Trustee's delay in making or failure to make payments
- § 11:72 —Multiple filings
- § 11:73 —Failure to file plan or required information
- § 11:74 —Bad faith; fraudulent conduct
- § 11:75 —Lengthy duration of case
- § 11:76 Conversion to Chapter 11 or Chapter 12
- § 11:77 Conversion where debtor is farmer

TABLE OF CONTENTS

**III. EFFECTS OF CONVERSION AND
DISMISSAL**

A. CONVERSION

1. In general

- § 11:78 Conversion as order for relief; matters unaffected
- § 11:79 Meaning of “order for relief under this chapter”
- § 11:80 Notice requirements
- § 11:81 Executory contracts and unexpired leases
- § 11:82 Preconversion claims
- § 11:83 Termination of trustee’s or examiner’s service
- § 11:84 Claims and other materials filed in superseded case
- § 11:85 New filing periods
- § 11:86 Operation of stays
- § 11:87 Termination of fee obligation
- § 11:88 Mootness of appeal arising from superseded case
- § 11:89 Final report and schedule of postpetition debts from superseded case

2. Turnover of Records and Property

- § 11:90 Property of estate after conversion from Chapter 12 or 13
- § 11:91 Records and property of the estate

B. DISMISSAL

- § 11:92 Notice
- § 11:93 Operation of stays
- § 11:94 Termination of fee obligation; payment of costs
- § 11:95 Subsequent bankruptcy cases
- § 11:96 As reinstating, vacating, or revesting
- § 11:97 Pending related adversary proceeding
- § 11:98 Judgment against petitioner upon dismissal of involuntary petition
- § 11:99 —For costs, attorneys’ fees, and certain damages
- § 11:100 —For compensatory damages
- § 11:101 —For punitive damages
- § 11:102 —Bond requirement

PART 4. THE ESTATE

CHAPTER 12. WHAT CONSTITUTES “PROPERTY OF THE ESTATE”

I. IN GENERAL

- § 12:1 Creation of estate—Section 541
- § 12:2 Scope of estate
- § 12:3 —General time limitation on scope of estate
- § 12:4 Applicability of general definition of estate in specific Chapter proceedings
- § 12:5 Control of estate
- § 12:6 Effect of debtor’s death

II. EFFECT OF LIMITATIONS AND RESTRICTIONS ON DEBTOR’S PROPERTY INTERESTS

- § 12:7 Limitations and restrictions on debtor’s property interests—General rule
- § 12:8 —Exceptions to general rule—Restrictions on transfer of property
- § 12:9 —Exceptions to general rule—Ipso facto and similar clauses
- § 12:10 —Restrictions on debtor’s beneficial interest in trust

III. PARTICULAR TYPES OF PROPERTY INTERESTS

A. LEASEHOLD INTERESTS

- § 12:11 Leasehold interests—Generally
- § 12:12 —Effect of expiration of lease—Nonresidential property
- § 12:13 — —Residential property

B. CO-OWNED PROPERTY

- § 12:14 Co-owned property—Community property
- § 12:15 — —Effect of divorce
- § 12:16 —Joint tenancies
- § 12:17 —Tenancies by the entirety

TABLE OF CONTENTS

C. TRUST PROPERTY

- § 12:18 Trust property—Generally
- § 12:19 —Constructive trusts
- § 12:20 — —Burden of proof
- § 12:21 — —Effect of commingling of trust funds
- § 12:22 —Trust fund taxes
- § 12:23 —Totten trusts
- § 12:24 —Spendthrift trusts

D. CAUSES OF ACTION

- § 12:25 Causes of action—Generally
- § 12:26 —Standing
- § 12:27 —Personal injury actions
- § 12:28 —Actions for emotional distress
- § 12:29 —Corporate—Breach of fiduciary duty
- § 12:30 — —Alter ego actions

E. INSURANCE

- § 12:31 Insurance—Generally
- § 12:32 —Casualty insurance
- § 12:33 — —Effect of exemption of insured property
- § 12:34 —Liability insurance
- § 12:35 —Life insurance
- § 12:36 — —Power to change beneficiary
- § 12:37 —Disability insurance
- § 12:38 —Health insurance

F. PROPERTY SUBJECT TO LIEN

- § 12:39 Property subject to lien—Generally
- § 12:40 —Effect of seizure or levy
- § 12:41 — —Cash or cash equivalents
- § 12:42 —Void liens
- § 12:43 —Liens securing subordinated claim

G. INTANGIBLE PROPERTY INTERESTS

- § 12:44 Intangible property interests—Generally
- § 12:45 —Governmental licenses or permits
- § 12:46 — —Airport landing slots
- § 12:47 —Professional degrees, licenses, and practices

H. PROPERTY ACQUIRED AFTER CASE COMMENCEMENT

1. In General

- § 12:48 Property acquired after case commencement—
Property acquired by estate
- § 12:49 —Proceeds, profits, and similar items derived
from estate property

2. Property Acquired by Debtor

a. In General

- § 12:50 Property acquired by debtor—Generally
- § 12:51 —Bequests, devises, and inheritances
- § 12:52 — —Income from testamentary trusts
- § 12:53 —Life insurance and death benefits
- § 12:54 —Property acquired under marital property
settlement or divorce decree
- § 12:55 —Debtor's duty to file supplemental schedule

b. Debtor's Earnings

i. In General

- § 12:56 Debtor's earnings—Exclusion
- § 12:57 —Who may assert exclusion
- § 12:58 —What earnings are excluded
- § 12:59 — —Burden of proof
- § 12:60 —Inclusion of earnings in Chapters 11, 12, and
13
- § 12:61 —Inclusion of earnings in Chapters 12 and 13—
Effect of conversion

ii. Particular Earnings

- § 12:62 Debtor's earnings—Vacation pay
- § 12:63 —Real estate commissions
- § 12:64 —Bonus payments
- § 12:65 —Insurance commissions
- § 12:66 —Military retirement pay
- § 12:67 —Severance pay
- § 12:68 — —Effect of anticompetition clause

3. Applicability of Liens to Postpetition Property Interests

- § 12:69 Applicability of liens to postpetition property
interests—General rule

TABLE OF CONTENTS

§ 12:70 —Exception to general rule

I. PROPERTY INTERESTS RECOVERABLE BY TRUSTEE

- § 12:71 Property interests recoverable by trustee—
Pursuant to avoiding powers
- § 12:72 — —Collusive sales
- § 12:73 — —Automatic preservation of avoided transfers
- § 12:74 —Excessive compensation paid to debtor's
attorney
- § 12:75 —Property held by custodian
- § 12:76 —Property recovered from partner of
debtor-partnership

J. OTHER PROPERTY INTERESTS

- § 12:77 Contingent interests
- § 12:78 Remainder interests
- § 12:79 Exempt property
- § 12:80 Bailed or pawned property
- § 12:81 Partnership property
- § 12:82 Tax refunds
- § 12:83 —Effect of joint filing of return
- § 12:84 Shares of stock and other securities
- § 12:85 Charges or liens held by debtor
- § 12:86 Letters of credit
- § 12:87 Powers benefiting others
- § 12:88 ERISA-qualified pension plans
- § 12:89 Individual retirement accounts and educational
savings accounts
- § 12:90 Grain assets
- § 12:91 Assets subject to repo agreement
- § 12:92 Mortgages sold in secondary market
- § 12:93 Eligibility to participate in educational
programs; eligibility to accreditation or
licensure as educational institution
- § 12:94 Interests related to liquid and gaseous
hydrocarbons
- § 12:95 Proceeds of money order agreements

IV. REDEMPTION OF PROPERTY IN CHAPTER 7

A. IN GENERAL

- § 12:96 Redemption of property in Chapter 7—Generally

- § 12:97 —Differences between redemption and reaffirmation
- § 12:98 —Who may exercise right of redemption

B. WHAT PROPERTY MAY BE REDEEMED

- § 12:99 What property may be redeemed in Chapter 7—Tangible personal property
- § 12:100 — —Property intended for personal, family, or household use
- § 12:101 — —Property securing a dischargeable consumer debt
- § 12:102 — —Exempted or abandoned property
- § 12:103 — — —Effect of limited, or lack of, equity in property

C. WHAT AMOUNT MUST BE PAID TO REDEEM

- § 12:104 Amount paid to redeem property in Chapter 7—Generally
- § 12:105 —Interest, fees, and costs
- § 12:106 —Fair market value of collateral
- § 12:107 — —Date of valuation
- § 12:108 —Effect of repurchase agreement

D. METHOD AND TIME OF REDEMPTION

- § 12:109 Method of redemption
- § 12:110 Time to redeem
- § 12:111 —Effect of debtor's currency on payments due

E. PRACTICE AND PROCEDURE

- § 12:112 Redemption under Chapter 7 practice and procedure—Filing of motion
- § 12:113 —Notice
- § 12:114 —Statement of intent
- § 12:115 —Waiver

V. ABANDONMENT OF PROPERTY

A. IN GENERAL

- § 12:116 Abandonment—Generally
- § 12:117 —Purpose of abandonment

TABLE OF CONTENTS

- § 12:118 —Burdensome property or property of limited value or benefit
- § 12:119 — —Effect of lack of equity in property
- § 12:120 — —Chapter 11 cases

B. DEEMED ABANDONMENT

- § 12:121 Deemed abandonment—Generally
- § 12:122 —Scheduled property
- § 12:123 —Court-ordered exceptions to deemed abandonment

C. EFFECT OF ABANDONMENT

- § 12:124 Effect of abandonment—Generally
- § 12:125 —Revesting of property in debtor; release of trustee
- § 12:126 —Continuation of automatic stay

D. PRACTICE AND PROCEDURE

- § 12:127 Abandonment—Practice and procedure—
Nature of proceeding
- § 12:128 — —Standing
- § 12:129 — —Notice—Proposed abandonment
- § 12:130 — — —Compelled abandonment
- § 12:131 — —Objections to abandonment
- § 12:132 — —Hearing

E. ABANDONMENT OF PARTICULAR ASSETS

- § 12:133 Abandonment—Particular assets—Grain assets
- § 12:134 — —Railroad lines
- § 12:135 — — —Role of surface transportation board
- § 12:136 — — —Effect of “cashlessness” of railroad carrier
- § 12:137 — — —Effect of appeal of abandonment order
- § 12:138 — — —Protection of employees
- § 12:139 — — —Hazardous or toxic wastes
- § 12:140 — — —The *Midlantic* decision
- § 12:141 — — —Trustee’s duty to take precautionary measures

VI. BANKRUPTCY CRIMES INVOLVING PROPERTY OF THE ESTATE

- § 12:142 Bankruptcy crimes—Fraudulent transfer and concealment of property

- § 12:143 —Improper offers and receipt of property
- § 12:144 —Concealment of information
- § 12:145 —Purchase by trustee or other officer of the court
- § 12:146 —Misappropriation by trustee or other officer of the court
- § 12:147 —Knowing disregard of bankruptcy law or rule
- § 12:148 —Bankruptcy fraud
- § 12:149 —Mismanagement
- § 12:150 —Racketeering

VII. ADDITIONAL ASPECTS OF PRACTICE AND PROCEDURE

A. IN GENERAL

- § 12:151 Jurisdiction
- § 12:152 Nature of proceedings
- § 12:153 Governing law
- § 12:154 Defenses of estate

B. FILING, RECORDKEEPING, AND NOTICE REQUIREMENTS

- § 12:155 Record of receipt and disposition of property
- § 12:156 Notice to entities holding property subject to debtor's order
- § 12:157 Schedule and statements
- § 12:158 Inventory
- § 12:159 Statement of intention
- § 12:160 Additional requirements for Chapter 12 or 13 debtors engaged in business

CHAPTER 13. EXEMPTIONS

I. IN GENERAL

A. RELATIONSHIP OF EXEMPTIONS TO PROPERTY OF ESTATE

- § 13:1 Exemption as removing property from bankruptcy estate
- § 13:2 1898 Act approach to property of estate changed

TABLE OF CONTENTS

B. DEBTOR'S CHOICE OF EXEMPTION SYSTEM

- § 13:3 Ability of debtor to choose between federal and state-law exemptions
- § 13:4 States given opportunity to opt out of Bankruptcy Code's uniform exemption list
- § 13:5 —Bankruptcy Code opt-out provision as recognizing interests of states
- § 13:6 —Table of jurisdictions which have opted out
- § 13:7 —Table of jurisdictions in which exemptions listed in the Bankruptcy Code are available
- § 13:8 Comparison of Bankruptcy Code and state exemptions
- § 13:9 —State law as governing scope of state exemptions
- § 13:10 Venue requirements and their effect on exemptions

C. PURPOSE, CONSTRUCTION, AND CONSTITUTIONALITY OF EXEMPTION PROVISIONS

- § 13:11 Purpose of exemptions
- § 13:12 Construction of exemption statutes
- § 13:13 Applicability of exemption provisions in Chapter 12 and 13 cases
- § 13:14 Constitutionality of opt-out provisions—Uniformity under Bankruptcy Clause
- § 13:15 —Delegation of authority to states
- § 13:16 Constitutional issues—As to preemption and the Supremacy Clause
- § 13:17 —Retroactive state exemption statutes
- § 13:18 Other constitutional issues

D. EFFECT OF DEBTOR'S FRAUD; EXEMPTION PLANNING

- § 13:19 Debtor's fraud as affecting availability of exemptions
- § 13:20 Concealment of assets by debtor
- § 13:21 Prepetition conversion of nonexempt property to exempt property
- § 13:22 —Restrictions on prepetition conversion

E. EFFECT OF EXEMPTION OF PROPERTY

- § 13:23 Generally
- § 13:24 Liability of exempted property for debt
- § 13:25 Liability of exempted property for
administrative expenses

II. WHO MAY EXEMPT PROPERTY

- § 13:26 Individual debtors
- § 13:27 Dependents of debtor
- § 13:28 Joint cases; “Stacking” of Bankruptcy Code and
state exemptions
- § 13:29 —“Stacking” of state exemptions
- § 13:30 Restriction of exemption to individual with
equity in property

III. ESTABLISHING ENTITLEMENT TO EXEMPTIONS

A. IN GENERAL

- § 13:31 Filing list of property claimed as exempt
- § 13:32 Specificity required as to claim of exemption
- § 13:33 Necessity of compliance with state or local
requirements
- § 13:34 Requirements as to debtor’s statement of
intention
- § 13:35 Waiver of exemptions

B. TIME FOR CLAIMING EXEMPTIONS

- § 13:36 Generally
- § 13:37 Effect of conversion of case on eligibility for
exemption
- § 13:38 Extension of time
- § 13:39 Interests acquired or arising after filing of
bankruptcy petition

C. AMENDMENT OF LIST OF EXEMPTIONS CLAIMED

- § 13:40 Generally
- § 13:41 Debtor’s switch from Bankruptcy Code to state
exemptions or vice versa
- § 13:42 Necessity for obtaining leave of court

TABLE OF CONTENTS

§ 13:43 Liberal allowance of amendment

D. OBJECTIONS TO EXEMPTIONS

§ 13:44 Generally

§ 13:45 Effect of absence of timely objection

§ 13:46 Objections to the value and kind of exempt property

§ 13:47 Effect of conversion on time allowed for objection

§ 13:48 Raising objection on motion for lien avoidance

E. DETERMINATION OF ISSUES RAISED BY OBJECTION

§ 13:49 Generally

§ 13:50 Exemptions claimed under state law

§ 13:51 Burden of proof

§ 13:52 —Allowance or disallowance of exemptions as core proceeding

F. PROPERTY RECOVERED BY TRUSTEE

§ 13:53 Relationship to lien avoidance by trustee

§ 13:54 Property debtor could have exempted absent transfer of that property

§ 13:55 —Voluntary transfers

§ 13:56 Recovery and exemption of property after transfer avoided

IV. PROPERTY WHICH MAY BE EXEMPTED

A. HOMESTEAD AND OTHER RESIDENTIAL INTERESTS

1. In General

§ 13:57 Bankruptcy Code exemption

§ 13:58 State exemptions

§ 13:59 Impact of state law on manner of claiming exemption

2. Particular Requirements

§ 13:60 Necessity that debtor have interest in property claimed as exempt

§ 13:61 Use or occupancy requirement

§ 13:62 Abandonment of homestead

3. Exemption of Particular Property Interests and Types of Property

- § 13:63 Proceeds of sale of homestead
- § 13:64 Personal property as homestead
- § 13:65 Leased premises as homestead
- § 13:66 Effect of foreclosure action or judgment
- § 13:67 Tenancy by entireties property
- § 13:68 —Effect of nonfiling spouse's joint liability on debt
- § 13:69 State-law distinctions between urban and rural homesteads

B. MOTOR VEHICLES

- § 13:70 Bankruptcy Code exemption
- § 13:71 State exemptions
- § 13:72 Relationship to tool-of-trade exemption; Effect of business or personal use of vehicle
- § 13:73 —Necessity of vehicle to trade
- § 13:74 —Effect of specially equipping or modifying vehicle

C. ITEMS HELD PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE

- § 13:75 Generally
- § 13:76 Wearing apparel and jewelry
- § 13:77 Household furnishings and goods

D. IMPLEMENTS, PROFESSIONAL BOOKS, AND TOOLS OF THE TRADE

- § 13:78 Generally
- § 13:79 Tests for determining whether specific item is exempt
- § 13:80 Availability of exemption to married individuals
- § 13:81 Effect of debtor's engaging in multiple trades
- § 13:82 Farming as trade

E. PRIVATE INSURANCE, PENSION, AND KINDRED BENEFITS AND INTERESTS

1. In General

- § 13:83 Unmatured life insurance contracts

TABLE OF CONTENTS

§ 13:84	Exemptibility of life insurance proceeds received by debtor within 180 days after filing bankruptcy
§ 13:85	Cash surrender or loan value—Bankruptcy Code exemption
§ 13:86	—State exemptions
§ 13:87	Policy on life of one supporting debtor
§ 13:88	—State exemptions
§ 13:89	Life insurance proceeds payable to executors of debtor
§ 13:90	Fire and other casualty insurance proceeds
§ 13:91	No fault automobile insurance
2. Annuity, Pension, and Like Payments	
a. In General	
§ 13:92	Generally
§ 13:93	Policy underlying exemption
§ 13:94	Requirement that payment be reasonably necessary for support
§ 13:95	—Necessity as question of fact
b. ERISA-Qualified Plans, Retirement Funds, and IRAs	
§ 13:96	Generally
§ 13:97	Exclusion of ERISA-qualified plans from property of estate
§ 13:98	Qualification of ERISA plan
§ 13:99	Bankruptcy Code exemption for pension and similar plans
§ 13:100	—Preemption of state law by ERISA
§ 13:101	Individual retirement accounts (IRAs)
F. PROPERTY DEBTOR IS ENTITLED TO RECEIVE	
1. Publicly Funded Entitlements	
§ 13:102	Generally
§ 13:103	Social security benefits
§ 13:104	State and local public assistance benefits
§ 13:105	Veterans' benefits
§ 13:106	Disability and illness benefits
2. Other Entitlements	
§ 13:107	Unemployment compensation benefits

- § 13:108 Workers' compensation benefits
- § 13:109 Alimony, maintenance, and support
- § 13:110 Reparation awards to crime victims
- § 13:111 Wrongful death and personal injury payments
- § 13:112 Payments for loss of future earnings

G. OTHER EXEMPTIONS

- § 13:113 Burial plots and the like
- § 13:114 Health aids
- § 13:115 "Spillover" or "wild card" exemption
- § 13:116 Federal non-Bankruptcy Code exemptions

V. AVOIDANCE OF TRANSFERS OF OR LIENS ON EXEMPT PROPERTY; RECOVERY OF SETOFFS

A. DEBTOR'S POWER TO AVOID TRANSFERS OR RECOVER SETOFFS

- § 13:117 Generally
- § 13:118 Requirement that transfer debtor seeks to set
aside be involuntary
- § 13:119 Practice and procedure

B. DEBTOR'S POWER TO AVOID CERTAIN LIENS

1. In General

a. Introduction

- § 13:120 Generally
- § 13:121 Purpose of lien avoidance provision
- § 13:122 Necessity that debtor have interest in property;
Abandonment of property
- § 13:123 Requirement that debtor have equity in
property
- § 13:124 —When equity exists
- § 13:125 Requirement that property be exempt and be
claimed as exempt
- § 13:126 Requirement that lien impair exemption
- § 13:127 General rule of lien preservation

b. What Law Governs Avoidance of Liens

- § 13:128 Federal or state law as governing

TABLE OF CONTENTS

§ 13:129	Limitation on avoiding of security interest in implements, professional books, or tools of the trade
§ 13:130	Opting out of lien avoidance by states
§ 13:131	—Retroactivity of prohibition of lien avoidance opt out
c. Constitutionality of Lien Avoidance Provisions	
§ 13:132	Under contracts clause
§ 13:133	Under Eleventh Amendment
§ 13:134	As taking under Fifth Amendment
§ 13:135	As applied to “gap period” liens
§ 13:136	Retroactive application of lien avoidance provisions
d. Applicability of Lien Avoidance Provision in Particular Instances	
§ 13:137	Liens held by governmental units
§ 13:138	Chapter 13 cases
§ 13:139	In Chapter 12 cases
§ 13:140	Liens arising from divorce proceedings
§ 13:141	Lien that has been satisfied
2. Avoidance of Judicial Liens	
§ 13:142	Generally
§ 13:143	Determining whether lien is judicial or statutory
§ 13:144	Equitable liens as judicial liens
§ 13:145	Debtor’s fraud not a defense
§ 13:146	Avoidability of garnishment liens
3. Avoidance of Nonpossessory, Nonpurchase-Money Security Interests	
a. In General	
§ 13:147	Generally
§ 13:148	Purposes of avoidance provision
§ 13:149	Effect of judicial action
§ 13:150	Nonpossession component of security interest
§ 13:151	Purchase-money component of security interest
§ 13:152	—Effect of modification of security agreement

- § 13:153 Limitation to property on Bankruptcy Code list of exemptions
 - b. Avoidance of Particular Security Interests
 - i. Household Goods, Furnishings, and the Like
- § 13:154 Generally
- § 13:155 Strict or liberal construction of statute
- § 13:156 Effect of federal trade commission definition of “household goods”
- § 13:157 Mobile homes
- § 13:158 Animals
- § 13:159 Other particular items
 - ii. Implements, Professional Books, and Tools of the Trade
- § 13:160 Generally
- § 13:161 Tests of whether item is tool of the trade
- § 13:162 Effect of value and size of tool or status as capital asset
- § 13:163 Effect of debtor’s discontinuance of trade
- 4. Practice and Procedure
- § 13:164 Generally
- § 13:165 Use of adversary procedure in certain opt-out states
- § 13:166 Avoidance of lien as core proceeding
- § 13:167 Reopening case to avoid lien
- § 13:168 Waiver by debtor of exemption or avoiding power
- § 13:169 Effect of dischargeability of debt which lien secures

CHAPTER 14. COLLECTION AND TURNOVER OF PROPERTY

I. IN GENERAL

- § 14:1 Introduction
- § 14:2 Prosecution and defense of proceedings by trustee or debtor in possession
- § 14:3 Automatic preservation of avoided transfer

TABLE OF CONTENTS

- § 14:4 —Transfer preserved for benefit of estate
- § 14:5 —Preservation limited to property of estate
- § 14:6 —Priority of estate's interest upon preservation
- § 14:7 —Effect on senior lienholders
- § 14:8 —Effect on junior lienholders
- § 14:9 Recovery from secured property of trustee's costs and expenses
- § 14:10 Rights of partnership trustee against general partners in Chapter 7 cases
- § 14:11 Turnover in cases ancillary to foreign proceedings

II. DUTIES OF DEBTOR AND TRUSTEE

A. DEBTOR

- § 14:12 Surrender of property of estate and recorded information to trustee
- § 14:13 —Property subject to turnover requirement
- § 14:14 —Effect of Fifth Amendment privilege against self-incrimination
- § 14:15 Duty to inform trustee as to location of real property and persons holding money or property
- § 14:16 Other miscellaneous duties of debtor

B. TRUSTEE OR DEBTOR IN POSSESSION

- § 14:17 Collection and reduction to money of property of estate in Chapter 7 cases
- § 14:18 Reduction of securities to money in stockbroker liquidation cases
- § 14:19 Duty to give notice of case to entities holding money or property
- § 14:20 Duty to be accountable for all property received
- § 14:21 Duty to segregate and account for cash collateral
- § 14:22 Duty to keep record of receipt and disposition of money and property received
- § 14:23 Inventory of property
- § 14:24 Duty to transmit inventory and furnish quarterly fee information to U.S. Trustee
- § 14:25 Operating business and Chapter 11 reports
- § 14:26 Interim trustee's duty to deliver records and property to trustee in Chapter 7 cases; report and account

- § 14:27 Turnover of records and property to Chapter 7 trustee upon conversion of Chapter 11, 12, or 13 case
- § 14:28 —Property available in Chapter 13 case

III. TURNOVER OF PROPERTY BY THIRD PARTIES

A. GENERAL TURNOVER REQUIREMENTS

1. In General

- § 14:29 Introduction
- § 14:30 Who may assert right of turnover

2. Delivery of Property to Estate; Accounting

- § 14:31 Generally
- § 14:32 Entities subject to turnover duty
- § 14:33 Absolute nature of turnover duty
- § 14:34 Property subject to turnover
- § 14:35 —Property of inconsequential value or benefit to estate
- § 14:36 —Property transferred or checks honored after commencement of case
- § 14:37 —Property seized or repossessed by or on behalf of lienholder
- § 14:38 — —Adequate protection of lienholder's interest
- § 14:39 —Property held by alter ego of debtor
- § 14:40 —Property held in trust
- § 14:41 —Rights under lease agreements
- § 14:42 —Wages and retirement benefits
- § 14:43 —Tax refunds and payments
- § 14:44 —Other specific property

3. Payment of Debts to Estate

- § 14:45 Generally
- § 14:46 What debts must be paid to estate
- § 14:47 —Debts subject to right of setoff
- § 14:48 —Contingent, disputed, or unliquidated debts
- § 14:49 —Accounts receivable
- § 14:50 —Bank deposits
- § 14:51 —Other particular debts
- § 14:52 Assertion of claim against governmental unit; sovereign immunity

TABLE OF CONTENTS

4. Turnover of Recorded Information to Estate

- § 14:53 Generally
- § 14:54 Applicability of attorney-client or accountant-client privilege
- § 14:55 —Waiver of debtor's privilege by trustee or other successor in interest
- § 14:56 Effect of lien on recorded information; adequate protection of lienholder's interest
- § 14:57 Redirection of debtor's mail

B. EXCEPTIONS TO GENERAL TURNOVER REQUIREMENTS

- § 14:58 Good-faith transfers and payments made by entities without notice or knowledge of case
- § 14:59 —Protection limited to transferor or payor
- § 14:60 —Applicability of exception to transfers by bank
- § 14:61 —Other particular applications
- § 14:62 Automatic transfers of life insurance premiums

C. TURNOVER REQUIREMENTS APPLICABLE TO CUSTODIANS

1. In General

- § 14:63 Introduction
- § 14:64 Who are custodians
- § 14:65 —Creditors
- § 14:66 —Other particular entities
- § 14:67 Property subject to turnover

2. Duties of and Limitations on Custodians

- § 14:68 Prohibition against disbursement from property
- § 14:69 —Surcharge for improper or excessive disbursement
- § 14:70 Delivery of property to estate
- § 14:71 Report and account

3. Protections for Custodianship

- § 14:72 Protection of entities to which custodian is obligated
- § 14:73 Payment of compensation and expenses of custodian

- § 14:74 —Determination of reasonable compensation
- § 14:75 Court authorization to excuse compliance with turnover requirements
- § 14:76 —Best interests of creditors and equity security holders
- § 14:77 — —Particular applications
- § 14:78 —Assignee for benefit of creditors

IV. ADDITIONAL PROCEDURAL MATTERS

- § 14:79 Form of action as adversary proceeding or contested matter
- § 14:80 Core nature of turnover proceedings
- § 14:81 —Effect of dispute as to right of recovery
- § 14:82 —Collection of accounts receivable
- § 14:83 Evidence; burden of proof
- § 14:84 Contempt for violation of turnover requirements
- § 14:85 Expedited procedures for turnover of grain assets
- § 14:86 Where to file and transmit complaints, motions, and other papers

V. OTHER CONSIDERATIONS

- § 14:87 Deposit or investment of money of estate
- § 14:88 Unclaimed property
- § 14:89 Denial of discharge in liquidation cases for debtor's withholding of recorded information
- § 14:90 Crimes

PART 5. AVOIDING AND ADMINISTRATIVE POWERS

CHAPTER 15. OPERATING DEBTOR'S BUSINESS; USE, SALE, OR LEASE OF PROPERTY

I. OPERATING BUSINESS OR AFFAIRS

A. IN GENERAL

- § 15:1 Overview
- § 15:2 Duty to comply with state laws and regulations

TABLE OF CONTENTS

- § 15:3 Employment of professional persons to operate business

B. LIQUIDATION CASES

- § 15:4 Operation of debtor's business in Chapter 7 cases
- § 15:5 Stockbroker liquidation cases
- § 15:6 —Executory contracts for purchase or sale of securities
- § 15:7 —Securities held as property of estate
- § 15:8 —Distribution of customer property
- § 15:9 Commodity broker liquidation cases
- § 15:10 Involuntary cases
- § 15:11 —Appointment of interim trustee

C. CHAPTER 11 REORGANIZATION CASES

- § 15:12 Operation of debtor's business
- § 15:13 Fiduciary duties of trustees and debtors in possession
- § 15:14 Presumption of reasonableness of management decisions
- § 15:15 Discontinuance or modification of debtor's business
- § 15:16 Railroad reorganizations
- § 15:17 —Effect of federal, state, or local regulations

D. ADJUSTMENT OF DEBT CASES

- § 15:18 Operation of affairs of municipal debtor in Chapter 9 cases
- § 15:19 Operation of family farm in Chapter 12 cases
- § 15:20 Operation of business or affairs of Chapter 13 debtor

II. USING, SELLING, OR LEASING PROPERTY

A. GENERAL REQUIREMENTS

1. In General

- § 15:21 Overview
- § 15:22 Valuation and appraisals of property

2. Protection of Interests of Entities Other Than Bankruptcy Estate

- § 15:23 Adequate protection as limiting use, sale, or lease
- § 15:24 Prepetition security interests in after-acquired property
- § 15:25 Use of equipment subject to financing agreements—Aircraft and vessels
- § 15:26 —Railroad rolling stock
- § 15:27 Expedited determination of disposition of grain assets

3. Protection of Interests of Bankruptcy Estate

- § 15:28 Recovery of costs of preserving or disposing of property
- § 15:29 —Preservation of property; Operating expenses
- § 15:30 —Sale of property
- § 15:31 Use of property subject to bankruptcy forfeiture clause or other ipso facto clauses

B. TRANSACTIONS OTHER THAN IN ORDINARY COURSE OF BUSINESS

- § 15:32 Introduction
- § 15:33 Notice and hearing requirement
- § 15:34 —Service and content of notices
- § 15:35 —Notice of sale of property worth less than \$2,500
- § 15:36 —Effect of noncompliance
- § 15:37 Objections
- § 15:38 —Burden of proof
- § 15:39 What transactions are other than in ordinary course of business
- § 15:40 —Sale of all or substantially all of Chapter 11 debtor's assets
- § 15:41 —Transfer of personally identifiable information; Ombudsmen
- § 15:42 —Illustrative transactions
- § 15:43 —Transactions with insiders
- § 15:44 Requirement of business justification

TABLE OF CONTENTS

C. TRANSACTIONS IN ORDINARY COURSE OF BUSINESS

- § 15:45 Use, sale, or lease of property other than cash collateral
- § 15:46 Use of cash collateral
- § 15:47 —Agreement or stipulation for use of cash collateral
- § 15:48 —Motion for authorization
- § 15:49 —Notice and hearing; Ex parte relief
- § 15:50 Remedies for unauthorized use of cash collateral

D. SALE FREE AND CLEAR OF LIENS AND OTHER INTERESTS

- § 15:51 Generally
- § 15:52 Sale of farmland, farm equipment, or commercial fishing property in Chapter 12 cases
- § 15:53 Sale of interests of co-owners
- § 15:54 —Property held in tenancy by the entirety
- § 15:55 Sale free and clear of marital rights of dower or curtesy
- § 15:56 Right of first refusal of debtor's spouse or co-owners
- § 15:57 Co-owner or spouse's right to proportionate share of proceeds of sale
- § 15:58 Authorization to sell property free and clear; Notice

E. SALE PROCEDURE

- § 15:59 Generally
- § 15:60 Setoff of allowed claim of lienholder against purchase price
- § 15:61 Protection of good-faith purchasers and lessees from reversal or modification on appeal
- § 15:62 Remedies for collusive bidding
- § 15:63 Exemption from transfer tax under § 1146(a)
- § 15:64 Bankruptcy Rule 9019 and section 363(b)
- § 15:65 Retention of jurisdiction to interpret and enforce section 363(b) orders and sale transactions
- § 15:66 Appeals
- § 15:67 Res judicata effect of sale order

III. OBTAINING CREDIT OR INCURRING DEBT TO OPERATE OR WIND UP BUSINESS

- § 15:68 Unsecured credit or debt in ordinary course of business
- § 15:69 Unsecured credit or debt other than in ordinary course of business
- § 15:70 Credit with special administrative priority, or secured by first liens or junior liens
- § 15:71 Credit secured by superpriority lien; Subordination of existing liens
- § 15:72 Cross-collateralization as inducement to extend credit
- § 15:73 Motion for authorization to obtain credit; Notice and hearing
- § 15:74 Protection of lenders from reversal or modification of borrowing authorization
- § 15:75 Securities registration inapplicable to securities issued to obtain credit
- § 15:76 Checklist for obtaining credit
- § 15:77 Retroactive court approval of postpetition financing

CHAPTER 16. MAINTAINING THE STATUS QUO; AUTOMATIC STAY

I. AUTOMATIC STAYS

A. IN GENERAL

- § 16:1 Filing of petition as automatic stay
- § 16:2 When stay takes effect; self-executing nature of stay
- § 16:3 Entities stayed
- § 16:4 Comparison to stays under former law
- § 16:5 Waiver
- § 16:6 Jurisdiction
- § 16:7 Stays in specific chapter proceedings
- § 16:8 Extension of time for trustee to take certain actions
- § 16:9 —Applicability of automatic stay to redemption and other time periods

TABLE OF CONTENTS

- § 16:10 Extension of statutes of limitations for entities that are stayed

B. MATTERS AUTOMATICALLY STAYED

1. In General

- § 16:11 Generally
- § 16:12 Stay as imposing duty to act
- § 16:13 Effect of Norris-LaGuardia Act

2. Acts Against Debtor or to Recover Claim Against Debtor

a. In General

- § 16:14 Generally
- § 16:15 Claims subject to stay
- § 16:16 —Contingent claims
- § 16:17 Acts against nondebtors

b. Commencement or Continuation of Actions or Proceedings Against Debtor

- § 16:18 Generally
- § 16:19 Types of actions or proceedings affected
- § 16:20 Actions or proceedings commenced by debtor
- § 16:21 Appellate proceedings
- § 16:22 Eviction proceedings
- § 16:23 Contempt proceedings
- § 16:24 Interpleader actions
- § 16:25 Proceedings related to licenses
- § 16:26 Proceedings related to bonds
- § 16:27 Other particular acts, actions, or proceedings

c. Enforcement of Judgments

- § 16:28 Generally
- § 16:29 Particular applications

d. Acts to Collect, Assess, or Recover Prepetition Claim

- § 16:30 Generally
- § 16:31 Telephone contact
- § 16:32 Collection letters
- § 16:33 Informing debtor of creditor's policies; refusal to deal with debtor postpetition

- § 16:34 Recoupment
- § 16:35 Foreclosure or sale of property
- § 16:36 Garnishment and payroll deductions
- § 16:37 Contempt proceedings
- § 16:38 Public comment or statements regarding debtor
- § 16:39 Withholding of transcripts by educational institutions
- § 16:40 Acts by taxing authorities
 - e. Other Acts
- § 16:41 Setoffs
- § 16:42 Tax court proceedings
- 3. Acts Against Property of Estate or Property in Possession or Control of Estate
 - a. In General
 - § 16:43 Generally
 - b. What Property is Subject to Stay
 - § 16:44 Generally
 - § 16:45 Leasehold and other possessory interests
 - § 16:46 Rights under license or franchise agreements
 - § 16:47 Letters of credit
 - § 16:48 Rights under insurance policies
 - § 16:49 Surety bonds
 - § 16:50 Wages and earnings
 - § 16:51 Causes of action
 - § 16:52 Stock of corporate debtor
 - § 16:53 Property held in trust
 - § 16:54 Other particular interests
 - c. Enforcement of Judgments
 - § 16:55 Generally
 - § 16:56 Particular applications
 - d. Acts to Obtain Possession of or Exercise Control Over Property
 - § 16:57 Generally
 - § 16:58 Acts against nondebtors
 - § 16:59 —Issuers of letters of credit
 - § 16:60 —Insurers
 - § 16:61 Termination of lease

TABLE OF CONTENTS

§ 16:62	Revocation or termination of license
§ 16:63	Cancellation or nonrenewal of insurance policy or surety bond
§ 16:64	Foreclosure or sale of property
§ 16:65	Interpleader actions
§ 16:66	Reclamation of goods
§ 16:67	Other particular applications
	e. Acts to Create, Perfect, or Enforce Lien
§ 16:68	Generally
§ 16:69	Extension, continuation, or renewal of lien
§ 16:70	Other particular applications
	4. Acts to Create, Perfect, or Enforce Lien against Property of Debtor
§ 16:71	Generally
§ 16:72	What constitutes property of debtor
§ 16:73	Particular applications
	5. Additional Matters Stayed in Specific Chapter Proceedings
§ 16:74	Chapter 9; acts against officers or inhabitants or against taxes or assessments
§ 16:75	Chapters 12 and 13; acts to collect consumer debt from codebtor
§ 16:76	—What constitutes consumer debt
	C. EXCEPTIONS TO STAY
	1. In General
§ 16:77	Generally
§ 16:78	Construction and effect
	2. Criminal Proceedings
§ 16:79	Generally
§ 16:80	Criminal fines and restitution orders
§ 16:81	Bad check proceedings
§ 16:82	Contempt proceedings
§ 16:83	Other particular applications
	3. Establishment of Paternity or Establishment, Modification or Collection of Alimony, Maintenance, and Support
§ 16:84	Generally

§ 16:85 Collection from debtor's wages and earnings

4. Perfection of Certain Interests in Property

§ 16:86 Generally

§ 16:87 Particular applications

5. Acts by Governmental Units

a. Enforcement of Police and Regulatory Powers

i. In General

§ 16:88 Commencement or continuation of actions or proceedings

§ 16:89 Exception limited to governmental units

§ 16:90 What constitutes police and regulatory power

§ 16:91 Scope of exception

ii. Particular Actions or Proceedings

§ 16:92 Enforcement of labor and employment laws

§ 16:93 Enforcement of environmental laws

§ 16:94 Enforcement of consumer protection laws

§ 16:95 Proceedings related to licenses

§ 16:96 Enactment and enforcement of zoning laws

§ 16:97 Enforcement of rental laws

§ 16:98 Criminal proceedings

§ 16:99 Enforcement of motor vehicle laws

§ 16:100 Receivership proceedings

§ 16:101 Other particular applications

b. Other Acts

§ 16:102 Commencement of HUD foreclosure actions

§ 16:103 Tax audits, notices, demands, or assessments

6. Postpetition Property Tax Liens

§ 16:104 Generally

7. Acts by Lessor to Obtain Possession of Nonresidential Real Property

§ 16:105 Generally

8. Presentment of Negotiable Instrument

§ 16:106 Generally

TABLE OF CONTENTS

	9. Educational Institution Accreditation and Licensure; Educational Loans
§ 16:107	Generally
	10. Setoff by Swap Participant
§ 16:108	Generally
	11. Exceptions Added by BAPCPA
§ 16:109	Pension loan repayment exception
§ 16:110	In rem enforcement exception
§ 16:111	Ineligible filing exception
§ 16:112	Eviction exceptions
§ 16:113	Nonavoidable transfers
§ 16:114	Securities regulation exception
§ 16:115	Income tax refund setoff exception
§ 16:116	Small business cases
§ 16:117	Netting agreement setoff exception
§ 16:118	Social Security Act exception
	12. Additional Exceptions in Specific Chapter Proceedings
	a. Chapter 7 Cases Concerning Stockbroker or Commodity Broker
§ 16:119	Filing of application for protective decree by SIPC in stockbroker liquidation cases
§ 16:120	Setoffs in stockbroker and commodity broker liquidation cases
§ 16:121	—By repo participant or financial participant
	b. Chapter 11 Cases
§ 16:122	Acts to take possession of transportation equipment
§ 16:123	—Stay applicable for 60 days; extension of time
§ 16:124	Maritime foreclosure actions—By secretary of transportation
§ 16:125	—By secretary of commerce
	c. Other Proceedings
§ 16:126	Application of pledged special revenues in Chapter 9 cases
§ 16:127	Exceptions to codebtor stay in Chapters 12 and 13 cases

D. DURATION OF STAY

- § 16:128 Acts against property of estate
- § 16:129 Other acts stayed under general automatic stay
- § 16:130 Repeat filings
- § 16:131 —Presumption case not filed in good faith
- § 16:132 —Two or more filings within one year
- § 16:133 Debtor's statement of intention; timely redemption, reaffirmation, or assumption of unexpired lease
- § 16:134 Additional stay in Chapter 9 cases
- § 16:135 Codebtor stay in Chapters 12 and 13 cases

E. RELIEF FROM STAY

1. What Relief is Obtainable

- § 16:136 Generally
- § 16:137 Codebtor stay under Chapters 12 and 13
- § 16:138 Annulment of stay
- § 16:139 —Limited availability
- § 16:140 Modification of stay
- § 16:141 Conditioning of stay
- § 16:142 —Future events
- § 16:143 Ex parte relief
- § 16:144 In rem relief for fraud regarding realty

2. Who May Seek and Obtain Relief

- § 16:145 Generally
- § 16:146 Limitation to debtor and creditors
- § 16:147 Petitioning creditors in involuntary cases
- § 16:148 Holders of secured or unsecured claims
- § 16:149 Mortgagees and trustees under deeds of trust
- § 16:150 Lessors
- § 16:151 Illustrative applications to other entities

3. Grounds for Relief

a. General Automatic Stay

i. In General

- § 16:152 Generally
- § 16:153 Alternative grounds
- § 16:154 Discretion of court
- § 16:155 —“Balance of the hurt” test

TABLE OF CONTENTS

- § 16:156 Continuation of action pending in other forum
- § 16:157 —Judicial economy
- § 16:158 —Effect of abstention

ii. “Cause”

- § 16:159 Generally
- § 16:160 Lack of adequate protection
- § 16:161 Bad-faith filing and abuse of bankruptcy process and remedies
 - § 16:162 —Multiple bankruptcy filings
 - § 16:163 —Dismissal alternative
 - § 16:164 —Failure to file plan or filing of unconfirmable plan
- § 16:165 Breach of default-upon-filing clauses
- § 16:166 Default in Chapter 13 plan payments
- § 16:167 Cause arising out of insurance coverage or lack thereof
 - § 16:168 —Automobile insurance
- § 16:169 Cause arising out of domestic relations matters
- § 16:170 Nonpayment of general contractual obligations
- § 16:171 Default under mortgages and deeds of trust
- § 16:172 Contract and lease termination
- § 16:173 Allowing arbitration to proceed

iii. Lack of Equity in Property not Necessary to an Effective Reorganization

- § 16:174 Generally
- § 16:175 Determination of existence and amount of debtor’s equity
 - § 16:176 —Evidence
 - § 16:177 — —Speculative evidence
 - § 16:178 — —Sufficiency of evidence
- § 16:179 Requirement that property is not necessary to an effective reorganization
 - § 16:180 —What constitutes necessity
 - § 16:181 — —Sufficiency of evidence
 - § 16:182 —Specific property as necessary to an effective reorganization
 - § 16:183 — —Debtor’s residence
 - § 16:184 —Ability to propose plan
 - § 16:185 —Property as necessary when liquidation sought—Chapter 11 cases

- § 16:186 — — —Property as necessary when liquidation sought—Chapter 7 cases
- § 16:187 —Applicability to Chapter 13 cases
- § 16:188 — —Effect of plan confirmation or delay thereof

iv. Single Asset Real Estate Cases

- § 16:189 Generally
 - b. Debtor Stay Under Chapters 12 and 13
- § 16:190 Generally
- § 16:191 Debtor's nonreceipt of consideration for claim
- § 16:192 Plan proposes not to pay claim against codebtor
- § 16:193 Continuation of stay constitutes irreparable harm

4. Practice and Procedure

- § 16:194 Motion; core proceeding
- § 16:195 Preliminary and final hearings; automatic expiration of stay
- § 16:196 Preliminary and final hearings; Automatic expiration of stay—Termination of codebtor stay under Chapters 12 and 13
- § 16:197 Preliminary and final hearings; automatic expiration of stay—Expedited hearing regarding grain assets
- § 16:198 Waiver
- § 16:199 Notice of request for relief
- § 16:200 Necessity for hearing
- § 16:201 —Debtor's obtaining continuation of stay following request for relief
- § 16:202 Burden of proof
- § 16:203 —Codebtor stay under Chapters 12 and 13
- § 16:204 Counterclaims

F. VIOLATION OF STAY

1. Acts as Void or Voidable

- § 16:205 Generally
- § 16:206 Duty to restore status quo
- § 16:207 Standing to seek avoidance
- § 16:208 Exceptions to avoidance

TABLE OF CONTENTS

2. Damages for Willful Violation

- § 16:209 Generally
- § 16:210 What constitutes willful violation
- § 16:211 Relation to contempt
- § 16:212 Entities entitled to recover
- § 16:213 Damages recoverable
- § 16:214 Assessment of damages against governmental units

3. Contempt

- § 16:215 Generally
- § 16:216 Damages recoverable

II. RESTRAINTS, STAYS, OR INJUNCTIONS OTHER THAN UNDER AUTOMATIC STAY PROVISIONS

A. IN GENERAL

- § 16:217 Generally
- § 16:218 Effect of federal anti-injunction statutes
- § 16:219 Reimposition of automatic stay that has terminated; extension
- § 16:220 Effect of prior injunctions, orders, and other proceedings in removed actions
- § 16:221 Effect of arbitration agreements
- § 16:222 Injunctions and other relief in cases ancillary to foreign proceedings—Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
- § 16:223 —After the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

B. PARTICULAR ACTS OR PROCEEDINGS

- § 16:224 Acts against nondebtors
- § 16:225 —Officers, directors, shareholders, and employees
- § 16:226 —Partners
- § 16:227 —Guarantors
- § 16:228 —Codefendants in tort actions
- § 16:229 —Insurers
- § 16:230 Acts or proceedings by governmental units
- § 16:231 Criminal proceedings

§ 16:232 Proceedings based on postpetition claims

III. UTILITY SERVICE

A. PROTECTION FROM DISCRIMINATION AGAINST TRUSTEE OR DEBTOR BY UTILITY

- § 16:233 Generally
- § 16:234 Types of utilities affected
- § 16:235 Types of acts affected
- § 16:236 Grounds for discontinuance

B. ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION SERVICE

- § 16:237 Generally
- § 16:238 What constitutes adequate assurance
- § 16:239 Deposit
- § 16:240 Other security
- § 16:241 —Guarantee of administrative expense priority
- § 16:242 Requirement that trustee or debtor furnish
adequate assurance
- § 16:243 Request for adequate assurance by utility
- § 16:244 Request for modification of security; hearing
- § 16:245 Termination of service
- § 16:246 Where to file motions and other papers

Table of Contents

PART 5. AVOIDING AND ADMINISTRATIVE POWERS (CONTINUED)

CHAPTER 17. TRUSTEE AVOIDING POWERS AND LIMITATIONS THEREON; CREDITOR RECLAMATION RIGHTS

I. TRUSTEE'S AVOIDING POWERS

A. IN GENERAL

- § 17:1 Overview
- § 17:2 Who may exercise avoiding powers; exercise of powers for benefit of estate and creditors
- § 17:3 Assignability and sale
- § 17:4 Disallowance of claims of entities or transferees holding recoverable property

B. APPLICABILITY IN SPECIFIC CHAPTER PROCEEDINGS

- § 17:5 Chapter 7
- § 17:6 —Stockbroker and commodity broker cases
- § 17:7 Chapter 9
- § 17:8 Chapter 11
- § 17:9 —Exercise of avoiding powers by creditors' committee or individual creditor
- § 17:10 Chapter 12
- § 17:11 Chapter 13
- § 17:12 —Transfer affecting debtor's exemptions

C. TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR TO CERTAIN CREDITORS AND PURCHASERS

1. Hypothetical Creditor or Purchaser

a. In General

- § 17:13 Introduction
- § 17:14 Purpose
- § 17:15 Governing law
- § 17:16 Time when trustee acquires status
- § 17:17 Equity and estoppel defenses
- § 17:18 Knowledge of or notice to trustee or creditor
- § 17:19 —Constructive or inquiry notice
- § 17:20 Knowledge of or notice to debtor
- § 17:21 Property subject to avoidance
- § 17:22 —Property held in constructive trust

b. Lien Creditor or Unsatisfied Execution Creditor

- § 17:23 Generally
- § 17:24 Avoidance of unperfected lien or security interest
- § 17:25 —Illustrative cases
- § 17:26 Unperfected security interest in aircraft equipment and vessels in Chapter 11 cases
- § 17:27 Marshaling of assets

c. Bona Fide Purchaser of Real Property

- § 17:28 Generally
- § 17:29 Avoidance of unrecorded interest
- § 17:30 Avoidance of improperly recorded or defectively executed interest

2. Actual Unsecured Creditor

- § 17:31 Generally
- § 17:32 Particular applications

D. STATUTORY LIENS

1. In General

- § 17:33 Introduction
- § 17:34 What are statutory liens

TABLE OF CONTENTS

2. Particular Liens

- § 17:35 Lien effective on bankruptcy or insolvency
- § 17:36 Unperfected lien
- § 17:37 —Particular applications
- § 17:38 Lien for rent or of distress for rent

E. POSTPETITION TRANSACTIONS

1. In General

- § 17:39 Introduction
- § 17:40 Purpose
- § 17:41 Property subject to avoidance

2. Particular Transfers as Avoidable

- § 17:42 Transfer in ordinary course of business
- § 17:43 Payment to secured creditor
- § 17:44 Payment by check delivered prepetition but honored postpetition
- § 17:45 Transfer in violation of automatic stay
- § 17:46 Other particular applications

3. Protection of Certain Transferees

- § 17:47 “Involuntary gap” transferee
- § 17:48 Good-faith purchaser of realty
- § 17:49 —Perfection of transferee’s interest
- § 17:50 —Foreclosing mortgagee as purchaser

F. ADDITIONAL AVOIDING POWERS

- § 17:51 Lien securing disallowed claim
- § 17:52 Lien securing penalty claim in Chapter 7
- § 17:53 Collusive bidding on sale of property of estate

G. LIMITATIONS ON AVOIDING POWERS

- § 17:54 Generally
- § 17:55 Statute of limitations
- § 17:56 —Action or proceeding to avoid postpetition transfer
- § 17:57 Postpetition perfection of liens
- § 17:58 —Mechanic’s liens and assignments of rents
- § 17:59 —Other particular applications
- § 17:60 Margin and settlement payments in stockbroker and commodity broker cases

- § 17:61 —Repurchase agreements
- § 17:62 Prepetition transfers under swap agreement
- § 17:63 Return of goods
- § 17:64 Effect of conversion

H. LIABILITY OF TRANSFEREE OF AVOIDED TRANSFER

1. Recovery from Initial Transferee or Beneficiary and Subsequent Transferees

- § 17:65 Generally
- § 17:66 Recovery of property or its value

2. Limitations on Trustee's Right of Recovery

- § 17:67 Protection of subsequent, good-faith transferees
- § 17:68 —Exception inapplicable to initial transferee
- § 17:69 — —“Mere conduit” rule
- § 17:70 Recovery from noninsider transferee of avoided preference
- § 17:71 Trustee limited to single satisfaction
- § 17:72 Good-faith transferee's lien for improvements
- § 17:73 Statute of limitations

II. CREDITOR RECLAMATION RIGHTS

A. SELLER OF GOODS

- § 17:74 Generally
- § 17:75 Exclusiveness of Bankruptcy Code remedy
- § 17:76 Relation to remedy under Uniform Commercial Code
- § 17:77 Determination of insolvency
- § 17:78 Demand for reclamation
- § 17:79 —Timeliness
- § 17:80 —Sufficiency
- § 17:81 Property subject to reclamation
- § 17:82 Superior rights of good-faith purchaser
- § 17:83 —Secured creditor
- § 17:84 Grant of administrative expense claim as alternative to reclamation

B. OTHER PARTICULAR CREDITORS

- § 17:85 Grain producers and fishermen

TABLE OF CONTENTS

- § 17:86 Customers of stockbroker holding customer name securities in stockbroker liquidation cases

III. ADDITIONAL PROCEDURAL MATTERS

- § 17:87 Form of action as adversary proceeding
- § 17:88 Venue
- § 17:89 Burden of proof
- § 17:90 Where to file pleadings and other papers

CHAPTER 18. PREFERENTIAL TRANSFERS

I. ELEMENTS OF AVOIDABLE PREFERENCES (SECTION 547(B))

A. IN GENERAL

- § 18:1 Criteria for identification of preferences
- § 18:2 Preference distinguished from fraudulent transfer and setoff
- § 18:3 Purpose of preference rules
- § 18:4 —As to secured creditors
- § 18:5 Burden of proof

B. TRANSFER OF INTEREST OF DEBTOR IN PROPERTY

- § 18:6 Preferences as “transfers”
- § 18:7 Interest of debtor in property
- § 18:8 Diminution of estate
- § 18:9 The earmarking doctrine
- § 18:10 —Grounds for acceptance of doctrine
- § 18:11 —Criteria for application
- § 18:12 —Applicability in cases of substitution of secured for unsecured debt
- § 18:13 Non-earmarked funds of third parties—
Controlled by debtor
- § 18:14 —Controlled by third parties

C. TRANSFER TO OR FOR BENEFIT OF CREDITOR

- § 18:15 Who is a creditor

§ 18:16 Indirect transfers

**D. TRANSFER FOR OR ON ACCOUNT OF
ANTECEDENT DEBT**

§ 18:17 Requirement that debt be antecedent and owed
by the debtor

§ 18:18 Status of particular debts

§ 18:19 —Legal fees

§ 18:20 —Effect of time period involved

**E. TRANSFER WHILE DEBTOR WAS
INSOLVENT**

§ 18:21 Criteria of solvency

§ 18:22 Presumption of insolvency

§ 18:23 Valuation of assets

§ 18:24 Evidence of solvency

§ 18:25 —Rebutting presumption of insolvency

**F. TRANSFER DURING PREFERENCE
PERIOD**

§ 18:26 Within 90 days before filing

§ 18:27 —Effect of conversion or substantive
consolidation of case

§ 18:28 Transfer to insiders within one year before filing

§ 18:29 —Who are insiders

**G. TRANSFER GIVING CREDITOR AN
ADVANTAGE**

§ 18:30 Hypothetical liquidation

§ 18:31 Filing date determinative

§ 18:32 Greater amount test

§ 18:33 Comparison of percentages

§ 18:34 Net result rule not applicable

§ 18:35 Effect of other Code provisions

§ 18:36 Installment payments to undersecured creditors

**II. EXCEPTIONS TO AVOIDABILITY OF
PREFERENCES (SECTION 547(C))**

A. IN GENERAL

§ 18:37 Introduction

TABLE OF CONTENTS

§ 18:38 Burden of proof

B. SUBSTANTIALLY CONTEMPORANEOUS EXCHANGES FOR NEW VALUE

- § 18:39 Elements and purpose of exception
- § 18:40 Intent of parties
- § 18:41 Substitution of obligations
- § 18:42 Transfers by check
- § 18:43 Transfers by note
- § 18:44 Exchanges of security interests for enabling loans—View that § 547(c)(1) may be applied
- § 18:45 —View that § 547(c)(1) is inapplicable
- § 18:46 Security interests not involving enabling loans
- § 18:47 —Timeliness of perfection
- § 18:48 Releases of security interests
- § 18:49 Forbearance by creditor
- § 18:50 Availability of new credit
- § 18:51 Valuation of new value
- § 18:52 Other particular types of transactions
- § 18:53 Transactions involving particular time periods
- § 18:54 —One month or less
- § 18:55 —More than one month

C. PAYMENTS IN ORDINARY COURSE OF BUSINESS

- § 18:56 Elements and purpose of exception
- § 18:57 Ordinary business terms
- § 18:58 Factors to be considered
- § 18:59 —Past practices between parties
- § 18:60 —Timing of payments
- § 18:61 —Practices in parties' industry
- § 18:62 —View that industry practices need not be considered
- § 18:63 —Motive of debtor
- § 18:64 Effect of factors in particular cases—Timing of payment
- § 18:65 —Amount of payment
- § 18:66 —Form of payment
- § 18:67 —Prior dishonor of checks
- § 18:68 —Nature of debtor's business
- § 18:69 —Payments to insiders

- § 18:70 —Closing of debtor's business
- § 18:71 —Collection tactics of creditor
- § 18:72 —Settlement agreement
- § 18:73 Payments on long-term debt

D. PURCHASE MONEY SECURITY AGREEMENTS OR ENABLING LOANS

- § 18:74 Elements and purpose of exception
- § 18:75 Time period for perfection
- § 18:76 Commencement of perfection period
- § 18:77 Effect of delayed perfection

E. TRANSFERS FOLLOWED BY ADVANCE OF NEW VALUE

- § 18:78 Elements and purpose of exception
- § 18:79 Order of events
- § 18:80 Multiple transfers during preference period
- § 18:81 Relationship to net result rule
- § 18:82 New value under subsequent advance rule
- § 18:83 —Release and forbearance
- § 18:84 —New credit

F. SECURITY INTERESTS IN INVENTORY OR RECEIVABLES

- § 18:85 Elements and purpose of exception
- § 18:86 Improvement-in-position test
- § 18:87 Requirement of prejudice to other creditors
- § 18:88 Value of security interests

G. FIXING OF STATUTORY LIEN

- § 18:89 Elements and purpose of exception
- § 18:90 Satisfaction of statutory lien

H. BONA FIDE PAYMENTS FOR DOMESTIC SUPPORT OBLIGATIONS

- § 18:91 Elements and purpose of exception

I. PAYMENTS BY CONSUMER DEBTORS

- § 18:92 Elements and purpose of exception

TABLE OF CONTENTS

§ 18:93 Payments under garnishment

J. MISCELLANEOUS

§ 18:94 Payments not primarily for consumer debts

§ 18:95 Repayment schedule resulting from credit
 briefing

III. OTHER LAW GOVERNING OR RELATING TO PREFERENCE ACTIONS

§ 18:96 Applicability of preference rules to cases under
 Chapters 7, 9, 11, 12, and 13

§ 18:97 Authority to avoid and recover preferences

§ 18:98 —Transfers in reimbursement of a surety

§ 18:99 —Trustee as lien creditor and as successor to
 certain creditors and purchasers

§ 18:100 —Liability of transferee of avoided transfers

§ 18:101 — —Failure to turn over value of preference

§ 18:102 Determining when debt is incurred

§ 18:103 Determining when transfer is made

§ 18:104 —Perfection of transfers—Of real property

§ 18:105 — —Of other property

§ 18:106 —Additional factors

§ 18:107 Effect of 29 U.S.C.A. § 1103(c)(1)

§ 18:108 Prejudgment interest

§ 18:109 —Equitable basis for award

§ 18:110 —Statutory basis for award

§ 18:111 —When interest begins to accrue

§ 18:112 —Rate of interest

IV. PARTICULAR ISSUES RELATING TO MULTIPLE SUBSECTIONS OF SECTION 547

A. TRANSFERS RELATING TO LETTERS OF CREDIT

§ 18:113 Function of letters of credit

§ 18:114 As between issuer and creditor-beneficiary

§ 18:115 As between debtor and issuer

§ 18:116 As between debtor and creditor-beneficiary;
 direct/indirect transfer doctrine

§ 18:117 —When preference exists

§ 18:118 —Applicability of exceptions

§ 18:119 —Effect on validity of letters of credit

B. TIMING OF TRANSFERS BY CHECK

- § 18:120 Role of transfers by check
- § 18:121 Under § 547(b)—Transfer upon honoring
- § 18:122 Under § 547(c)(1)—Transfer upon delivery
- § 18:123 —Transfer upon honoring
- § 18:124 Under § 547(c)(2)—Transfer upon delivery
- § 18:125 — —Unless check not honored within
reasonable time
- § 18:126 —Transfer upon honoring
- § 18:127 Under § 547(c)(4)—Transfer upon delivery
- § 18:128 — —Unless check is postdated
- § 18:129 — —Unless check not honored within 30 days

C. OTHER PARTICULAR ISSUES

- § 18:130 Timing of payments under garnishment
orders—Continuing levy theory
- § 18:131 —View that transfer occurs when wages earned
- § 18:132 — —Effect of state law
- § 18:133 Funds in escrow
- § 18:134 Payments to noninsiders on debts guaranteed
by insiders
- § 18:135 Tax payments
- § 18:136 —From funds held in trust

CHAPTER 19. FRAUDULENT PREPETITION TRANSFERS AND OBLIGATIONS

I. INTRODUCTION

- § 19:1 Background
- § 19:2 Purpose of avoiding power
- § 19:3 Overview of fraudulent transfers and obligations
- § 19:4 Difference between fraudulent and preferential
transfers

II. INITIAL REQUIREMENTS

A. IN GENERAL

- § 19:5 Generally

TABLE OF CONTENTS

B. TRANSFER OR OBLIGATION

1. In General

- § 19:6 Generally
- § 19:7 To whom must transfer be made

2. Involuntary Transfers

- § 19:8 Generally
- § 19:9 Termination of executory contract rights
- § 19:10 Foreclosure sales
- § 19:11 —Effect of redemption period

C. INTEREST OF DEBTOR IN PROPERTY

- § 19:12 Generally
- § 19:13 Property fraudulently acquired
- § 19:14 Possessory interests
- § 19:15 Exempt property
- § 19:16 Other particular interests
- § 19:17 Effect of lack of equity in property
- § 19:18 Pleading and proof

D. TIME OF TRANSFER

- § 19:19 When must transfer be made
- § 19:20 —Effect of postpetition transfer
- § 19:21 When is transfer deemed made

III. ACTUAL FRAUDULENT INTENT

- § 19:22 Generally
- § 19:23 Nature of intent
- § 19:24 Intent to hinder or delay
- § 19:25 Intent to prefer
- § 19:26 Intent to incur debts beyond debtor's ability to pay
- § 19:27 Whose intent is relevant
- § 19:28 Evidence of intent; presumptions and inferences
- § 19:29 Effect of involuntary transfer

IV. CONSTRUCTIVE FRAUD

A. IN GENERAL

- § 19:30 Generally

B. REASONABLY EQUIVALENT VALUE

1. In General

§ 19:31 Generally

2. Value

a. In General

§ 19:32 Generally

b. Satisfaction or Securing of Indebtedness

§ 19:33 Satisfaction of indebtedness

§ 19:34 Securing of indebtedness

c. Property and Intangibles

§ 19:35 Generally

§ 19:36 Performance of marital and familial duties

§ 19:37 Future consideration

§ 19:38 Love and affection

§ 19:39 Forbearance from suit

§ 19:40 Gambling losses

§ 19:41 Other particular property and intangibles

d. Effect of Benefit to Third Party

§ 19:42 Generally

§ 19:43 Satisfaction of third party's debt

3. Reasonable Equivalence of Values

a. In General

§ 19:44 Generally

§ 19:45 Fair market value

§ 19:46 What values are compared

§ 19:47 Effect of good-faith transferee

b. Price at Foreclosure, Judicial, or Other Sales

§ 19:48 Mortgage foreclosure sales

§ 19:49 Other sales

c. Tripartite Transactions

§ 19:50 Generally

§ 19:51 Benefit to related corporate entity

TABLE OF CONTENTS

- § 19:52 —Intercorporate guaranties
- § 19:53 Benefit to corporation in which debtor holds stock
- § 19:54 Benefit to shareholder in corporate debtor
- § 19:55 Novation

C. FINANCIAL CONDITION OF DEBTOR

1. In General

- § 19:56 Generally
- § 19:57 Unreasonably small capital
- § 19:58 —Capital position
- § 19:59 —Cash flow

2. Insolvency

- § 19:60 Generally
- § 19:61 Evidence of insolvency
- § 19:62 Valuation date
- § 19:63 Valuation of assets
- § 19:64 Effect of contingent assets and liabilities
- § 19:65 Effect of partnership debtor
- § 19:66 Effect of debtor which is a municipality

V. PARTICULAR TRANSACTIONS

A. INTRAFAMILY TRANSFERS

- § 19:67 Generally
- § 19:68 Transfers between spouses
- § 19:69 —Transfer of homestead interest
- § 19:70 —Transfers in context of marital dissolution
- § 19:71 Other particular transfers

B. TRANSFERS TO INSIDERS IN CORPORATE DEBTOR

- § 19:72 Generally
- § 19:73 Reimbursement of back-due salary and expenses
- § 19:74 Stock redemptions
- § 19:75 Enhancement of pension benefits

C. LEVERAGED BUYOUTS

- § 19:76 Generally

- § 19:77 Actual fraudulent transfer
- § 19:78 Constructive fraudulent transfer

D. PREFERENTIAL TRANSFERS

- § 19:79 Generally
- § 19:80 Effect of debtor's collusion with third party

E. MISCELLANEOUS PARTICULAR TRANSACTIONS

- § 19:81 Transfers made pursuant to Ponzi scheme
- § 19:82 Transfers to trusts
- § 19:83 Transfers to corporate conduit
- § 19:84 Transfer of corporate assets to successor corporation
- § 19:85 Transfers of partnership property
- § 19:86 Conversion of nonexempt assets
- § 19:87 Gifts
- § 19:88 Religious or charitable contributions
- § 19:89 Transfers of foreign property

VI. OPTION TO PROCEED UNDER STATE LAW

- § 19:90 Generally
- § 19:91 Uniform Fraudulent Conveyance Act
- § 19:92 Uniform Fraudulent Transfer Act

VII. EFFECT OF AVOIDANCE

A. WHO IS LIABLE

- § 19:93 Transferees
- § 19:94 —Effect of transferee's bankruptcy
- § 19:95 Debtor-transferor
- § 19:96 Entity for whose benefit transfer was made
- § 19:97 Joint and several liability

B. WHAT MAY BE RECOVERED

- § 19:98 Generally
- § 19:99 Interest
- § 19:100 Punitive damages
- § 19:101 Attorneys' fees

C. PROTECTION AGAINST LIABILITY

- § 19:102 Initial transferees

TABLE OF CONTENTS

- § 19:103 Subsequent transferees
- § 19:104 Good-faith requirement
- § 19:105 —Effect of knowledge of voidability
- § 19:106 Value requirement
- § 19:107 —Margin and settlement payments
- § 19:108 Lien for improvements

D. OTHER EFFECTS

- § 19:109 Retention of claim
- § 19:110 Subordination of claim
- § 19:111 Denial of discharge

VIII. PRACTICE AND PROCEDURE

A. IN GENERAL

- § 19:112 Nature of proceedings
- § 19:113 Right to jury trial
- § 19:114 Burden of proof
- § 19:115 Standard of review

B. WHEN TO BRING ACTION

- § 19:116 Action for avoidance
- § 19:117 Action for recovery

C. THE COMPLAINT AND OTHER PAPERS

- § 19:118 Generally
- § 19:119 Sufficiency of pleadings
- § 19:120 Where to file

D. WHO MAY BRING ACTION

- § 19:121 Trustee
- § 19:122 Creditors' committee
- § 19:123 Individual creditor
- § 19:124 —Chapter 11 cases
- § 19:125 Chapter 11 debtors in possession
- § 19:126 Chapters 7 and 13 individual debtors

CHAPTER 20. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

I. INTRODUCTION

- § 20:1 What constitutes an executory contract
- § 20:2 —View that contract is executory when
substantial performance remains on both sides
- § 20:3 — —Effect of obligation to pay money
- § 20:4 — —Illustrative cases
- § 20:5 —View that contract may be executory when
only one party has substantial performance
remaining
- § 20:6 —Result-oriented approach
- § 20:7 Real property installment sale contracts
- § 20:8 —Effect of title placed in escrow
- § 20:9 What constitutes an unexpired lease
- § 20:10 Effect of prepetition termination of contract or
lease
- § 20:11 —Right to relief from forfeiture as assumable
interest
- § 20:12 Effect of postpetition expiration of agreement
- § 20:13 Postpetition obligation of Chapter 11 debtor to
perform under unexpired lease of personal
property
- § 20:14 Depository institution capital maintenance
commitments

II. RIGHT TO ASSUME OR REJECT

A. IN GENERAL

- § 20:15 Introduction
- § 20:16 Applicability to Chapter 9 cases
- § 20:17 Commodity broker cases
- § 20:18 Parties able to assume or reject contracts or
leases
- § 20:19 —Chapter 13 cases
- § 20:20 Exercise of right as affecting entire agreement
- § 20:21 —When two or more contracts exist in one
instrument
- § 20:22 Nullification of ipso facto or bankruptcy
termination provisions
- § 20:23 —Exceptions

TABLE OF CONTENTS

- § 20:24 Nonassignable and nonassumable contracts and leases—Where applicable law excuses performance
- § 20:25 — —Personal service contracts
- § 20:26 —Contracts for loans or other financial accommodations
- § 20:27 —Leases for nonresidential real property

B. PROCEDURE

- § 20:28 Necessity of court approval
- § 20:29 Application for approval
- § 20:30 Motion to reject, assume or assign multiple executory contracts or unexpired leases
- § 20:31 Standard for court approval—When contract or lease is assumed
- § 20:32 —Business judgment rule as standard
- § 20:33 — —Factors affecting determination
- § 20:34 — —Effect of harm suffered by entity other than debtor
- § 20:35 Assumption by conduct
- § 20:36 Time limitations on exercise of right
- § 20:37 —Chapter 7 cases
- § 20:38 — —Stockbroker liquidation cases
- § 20:39 Court forcing date of decision on request of party to contract

III. ASSUMPTION WHEN DEFAULT EXISTS

A. IN GENERAL

- § 20:40 Effect of default
- § 20:41 —What constitutes a default
- § 20:42 Cure of default
- § 20:43 Adequate assurance of prompt cure
- § 20:44 —What constitutes prompt
- § 20:45 Compensation for losses
- § 20:46 Adequate assurance of future performance
- § 20:47 —Factors considered

B. SHOPPING CENTER LEASES

- § 20:48 What is a shopping center
- § 20:49 Assumption of shopping center leases
- § 20:50 —Assurance of rent and other consideration

IV. ASSIGNMENT OF AGREEMENT

- § 20:51 Restriction on assignments
- § 20:52 Adequate assurance of future performance by assignee
- § 20:53 —Shopping center leases
- § 20:54 Ability to terminate or modify agreement because of assignment
- § 20:55 Postassignment obligations

V. CONSEQUENCES OF REJECTION

A. IN GENERAL

- § 20:56 Rejection treated as breach
- § 20:57 —Rejection of agreements previously assumed
- § 20:58 Availability of specific performance
- § 20:59 Distinction between “breach” and “termination”
- § 20:60 Obligations arising from postpetition use of property
- § 20:61 —Lease of nonresidential real property

B. REAL PROPERTY

- § 20:62 Timeshare interests and leases of real property—Termination of agreement
- § 20:63 —Continued possession of property interest
- § 20:64 — —Limitations on recovery of damages
- § 20:65 — —Postrejection obligations
- § 20:66 Contracts for sale of real estate or timeshare interests
- § 20:67 —Limitations on purchaser’s recovery for damages
- § 20:68 Entitlement to lien to recover purchase price
- § 20:69 Lease of railway line

C. INTELLECTUAL PROPERTY LICENSES

- § 20:70 Introduction
- § 20:71 Termination of licensing agreement
- § 20:72 Licensee’s retention of rights after rejection
- § 20:73 Obligations of trustee if licensee retains rights
- § 20:74 Royalty payments
- § 20:75 Limitations on licensee’s ability to recover damages

TABLE OF CONTENTS

- § 20:76 Continued performance of agreement prior to assumption or rejection

VI. LEASES OF NONRESIDENTIAL REAL PROPERTY

A. IN GENERAL

- § 20:77 Introduction
§ 20:78 What qualifies as nonresidential real property
§ 20:79 Time limitation on exercise of right to assume or reject
§ 20:80 —Rejection of lease by operation of law
§ 20:81 Extension of time to exercise right
§ 20:82 —Factors considered
§ 20:83 Manifestation of intent to assume or reject
§ 20:84 Timeliness of court's approval
§ 20:85 Surrender of premises
§ 20:86 Equitable relief from automatic rejection
§ 20:87 —Waiver
§ 20:88 — —Effect of acceptance of lessee's performance of lease obligations
§ 20:89 —Estoppel

B. POSTPETITION OBLIGATION TO PERFORM UNDER LEASE

- § 20:90 Duty of timely performance of postpetition obligations
§ 20:91 —Obligation to pay postpetition rent
§ 20:92 —Extension of time for performance
§ 20:93 Effect of failure to perform lease obligations
§ 20:94 —Claim treated as administrative expense
§ 20:95 —Priority of claim

VII. COLLECTIVE BARGAINING AGREEMENTS

A. IN GENERAL

- § 20:96 Introduction
§ 20:97 Exclusion of collective bargaining agreements subject to Railway Labor Act
§ 20:98 Status of agreement pending rejection
§ 20:99 Standard governing court approval of rejection

- § 20:100 —Nine-element test
- § 20:101 —Duty to meet and confer in good faith
- § 20:102 —*Bildisco* case
- § 20:103 Burden and degree of proof
- § 20:104 Effect of snap-back provision
- § 20:105 Effect of lack of good faith in filing bankruptcy petition

B. PREREQUISITES TO APPROVAL OF REQUEST FOR REJECTION

1. Proposal of Modification

- § 20:106 Duty to submit proposal to employees' authorized representative
- § 20:107 Complete and reliable information required as basis for proposal
- § 20:108 Requirement that proposal contain necessary modifications
- § 20:109 —What constitutes necessary modification
- § 20:110 —Modifications must be necessary to debtor's reorganization
- § 20:111 —Illustrative cases
- § 20:112 Fair and equitable treatment of relevant parties must be assured
- § 20:113 —Factors affecting determination
- § 20:114 —Sharing of burden by ownership interests
- § 20:115 Duty to supply relevant information

2. Other Criteria

- § 20:116 Authorized representative refused to accept modification proposal
- § 20:117 —Effect of authorized representative's failure to negotiate
- § 20:118 Balance of equities must clearly favor rejection
- § 20:119 —Factors considered when balancing test applied
- § 20:120 Duty to meet at reasonable times
- § 20:121 Duty to confer in good faith

C. PROCEDURE

- § 20:122 Application for court approval of rejection
- § 20:123 Hearing and notice
- § 20:124 Entry of judgment

TABLE OF CONTENTS

§ 20:125 Availability of protective orders

D. INTERIM RELIEF

§ 20:126 Availability of interim modifications

§ 20:127 Standard governing interim relief

§ 20:128 Procedure

VIII. RETIREE BENEFITS

A. IN GENERAL

§ 20:129 Introduction

§ 20:130 Type of benefits covered

§ 20:131 Benefit protection affected by retiree's income level

§ 20:132 Authorized representatives of retirees—Labor organization

§ 20:133 —Committee of retirees

§ 20:134 Obligation to continue payment of retiree benefits

§ 20:135 Claims for retiree benefits

§ 20:136 Prepetition modification

B. MODIFICATION OF BENEFITS

§ 20:137 Modification by consent or court order

§ 20:138 Standard governing court approval

§ 20:139 Preliminary proposal for modification

§ 20:140 Duty to supply relevant information

§ 20:141 Duty to negotiate

§ 20:142 Hearing on application for modification

§ 20:143 Entry of judgment on application

§ 20:144 Requests to increase benefits

§ 20:145 Frequency of opportunity for modification

§ 20:146 Emergency modifications

CHAPTER 21. ADEQUATE PROTECTION

I. INTRODUCTION

§ 21:1 Overview

§ 21:2 Constitutional and policy bases

§ 21:3 Preservation of status quo

§ 21:4 When adequate protection begins

§ 21:5 Balancing creditor's and debtor's interests

II. GENERAL PRINCIPLES

A. CIRCUMSTANCES UNDER WHICH ADEQUATE PROTECTION IS REQUIRED

§ 21:6 Automatic stay

§ 21:7 Use, sale, or lease of property

§ 21:8 Obtaining credit

B. WHAT CONSTITUTES ADEQUATE PROTECTION

§ 21:9 Generally

§ 21:10 Cash payment or periodic cash payments

§ 21:11 Additional or replacement lien

§ 21:12 Indubitable equivalent

C. WHAT IS PROTECTED

§ 21:13 Interest in property

§ 21:14 —As measured by value of interest

§ 21:15 —Protection against decrease in value

§ 21:16 Right to creditor's bargain

§ 21:17 Oversecured creditor's right to interest and fees

D. WHO IS ENTITLED TO ADEQUATE PROTECTION

§ 21:18 Secured creditors and creditors with right of
setoff

§ 21:19 Lessors

§ 21:20 Guarantors, co-owners, and others with interest
in property

E. VALUATION

§ 21:21 Generally

§ 21:22 Valuation date

§ 21:23 Valuation standards

§ 21:24 —Effect of Chapter under which case is
proceeding

§ 21:25 Evidence of value

TABLE OF CONTENTS

F. ADEQUATE PROTECTION IN SPECIFIC CHAPTER PROCEEDINGS

- § 21:26 Chapters 7, 11, and 13
- § 21:27 —Special protection for transportation equipment financiers in Chapter 11
- § 21:28 Chapter 9
- § 21:29 Chapter 12
- § 21:30 —Elimination of indubitable equivalence requirement
- § 21:31 —Payment of reasonable market rent

G. ADDITIONAL CONSIDERATIONS IN DETERMINING ADEQUATE PROTECTION

- § 21:32 Time and expense of repossession and sale
- § 21:33 Payment history
- § 21:34 Prospects for reorganization
- § 21:35 Violation of prior court order or court-approved stipulation

H. FAILURE OF ADEQUATE PROTECTION

- § 21:36 Superpriority for inadequately protected creditors
- § 21:37 —Necessity of prior court order or agreement; content of agreement
- § 21:38 Administrative expense status for inadequately protected creditors in Chapter 9

III. PARTICULAR FORMS OF PROTECTION AS ADEQUATE

A. EQUITY CUSHION

- § 21:39 Generally
- § 21:40 Calculation of equity cushion
- § 21:41 Criticism of equity cushion concept
- § 21:42 Equity cushion as only one factor
- § 21:43 Sufficiency of cushion
- § 21:44 Maintenance of cushion
- § 21:45 Equity cushion as adequate protection of cash collateral

B. CASH PAYMENT OR PERIODIC CASH PAYMENTS

- § 21:46 Generally

- § 21:47 Compensation for decrease in value of property
- § 21:48 Interest
- § 21:49 —Lost opportunity costs
- § 21:50 Plan payments
- § 21:51 —Payments before plan confirmation
- § 21:52 Lease payments
- § 21:53 —Dollar amount
- § 21:54 Offer to make payments

C. ADDITIONAL OR REPLACEMENT LIEN

- § 21:55 Generally
- § 21:56 Future crops

D. PAYMENTS TO THIRD PARTIES

- § 21:57 Senior lienholders
- § 21:58 Taxes, assessments, and other charges

E. INSURANCE AND THIRD-PARTY GUARANTEES

- § 21:59 Property insurance
- § 21:60 Guarantees
- § 21:61 Government loan insurance

F. ADDITIONAL FORMS OF ADEQUATE PROTECTION

- § 21:62 Appreciation in value of property
- § 21:63 Maintenance and improvement of property
- § 21:64 Accounting information and segregation of cash collateral
- § 21:65 Court monitoring

IV. PROCEDURE

- § 21:66 Proposal of adequate protection by trustee or debtor
- § 21:67 Motion for relief from automatic stay or to prohibit use, sale or lease of property; request by interest holder for adequate protection
- § 21:68 When to raise the adequate protection issue
- § 21:69 Burden of proof
- § 21:70 Agreements

TABLE OF CONTENTS

§ 21:71 Where to file motions and other papers

PART 6. CLAIMS AND INTERESTS

CHAPTER 22. ASSERTING CLAIM OR INTEREST

I. WHAT CONSTITUTES A CLAIM OR INTEREST

- § 22:1 Introduction
- § 22:2 General definition of a claim
- § 22:3 Claims against property of debtor
- § 22:4 Claims in Chapter 9 cases payable from special revenues
- § 22:5 Rights of partnership trustee against general partners

II. NECESSITY AND EFFECT OF FILING PROOF OF CLAIM OR INTEREST

- § 22:6 Generally
- § 22:7 Nondischargeable claims
- § 22:8 No dividend notice
- § 22:9 Proofs deemed filed
- § 22:10 —Chapter 9 cases
- § 22:11 Proof of claim as prima facie evidence
- § 22:12 —Burden of proof
- § 22:13 Effect of lack of objection or insufficiency of proof of claim on creditor's voting rights

III. WHO MAY FILE PROOF OF CLAIM OR INTEREST

A. IN GENERAL

- § 22:14 Creditor
- § 22:15 Indenture trustee
- § 22:16 Equity security holder
- § 22:17 Codebtor, surety, guarantor, and the like
- § 22:18 —Subrogation, reimbursement, and contribution
- § 22:19 Debtor or trustee
- § 22:20 Class claimants; Claims by agents

- § 22:21 Holders of certain postpetition claims in Chapter 13 cases
- § 22:22 Fuel use tax and miscellaneous claims

B. TRANSFEREE OR TRANSFEROR OF CLAIM

- § 22:23 Introduction
- § 22:24 Transfer other than for security
- § 22:25 Transfer for security
- § 22:26 Service of objection; Notice of hearing

IV. HOW PROOF OF CLAIM OR INTEREST IS FILED

- § 22:27 Form and content of claim
- § 22:28 Claim or security interest based on writing
- § 22:29 Notice relating to claims secured by security interest in the debtor's principal residence
- § 22:30 Claim based on open-end or revolving credit agreement
- § 22:31 Informal proofs of claim
- § 22:32 —Illustrative examples
- § 22:33 Evidence of perfection of security interest
- § 22:34 Commodity broker liquidation
- § 22:35 Place of filing
- § 22:36 —Claims register
- § 22:37 Withdrawal of claim

V. AMENDMENT OF PROOFS OF CLAIM

- § 22:38 Generally
- § 22:39 Tax claims
- § 22:40 Notice as prerequisite
- § 22:41 Informal proofs of claim

VI. TIME FOR FILING PROOF OF CLAIM OR INTEREST

A. IN GENERAL

- § 22:42 General rule
- § 22:43 Exceptions and extension of time in Chapters 9 and 11 cases—Generally
- § 22:44 —Extension of time for cause

TABLE OF CONTENTS

- § 22:45 — —What constitutes excusable neglect
- § 22:46 Exceptions in Chapters 7, 12, and 13 cases—
Generally
- § 22:47 —Extension of time
- § 22:48 — —No equitable power to extend
- § 22:49 Effect of conversion
- § 22:50 Administrative expense claims
- § 22:51 Filing by debtor or trustee on behalf of creditor

B. NOTICE OF BAR DATE

- § 22:52 Generally
- § 22:53 Due process
- § 22:54 Notice by mail
- § 22:55 Electronic transmission of notice
- § 22:56 Notice by publication

CHAPTER 23. SIZE OR NATURE OF CLAIM

I. INTRODUCTION

- § 23:1 Determination of secured status and bifurcation
of claims
- § 23:2 —Chapters 9 and 11 exceptions
- § 23:3 —Construction of terms used in bifurcation
statute
- § 23:4 Matters determined on complaint or on motion;
Core proceedings
- § 23:5 Extent of claim as customer in stockbroker
liquidation cases
- § 23:6 Expedited procedure to determine secured status
in grain assets cases

II. VALUATION OF CLAIMS, PROPERTY, AND INTERESTS

- § 23:7 Generally
- § 23:8 Valuation in light of purpose and proposed
disposition or use
- § 23:9 Various standards used for valuation
- § 23:10 Expenses of sale as affecting value
- § 23:11 Time at which valuation is to be made
- § 23:12 Notice and hearing requirements respecting
valuation

§ 23:13 Schedules and lists as prima facie evidence

III. INTEREST, FEES, COSTS, OR CHARGES RECOVERABLE BY HOLDER OF CLAIM

§ 23:14 Generally

§ 23:15 Requirement that holder be oversecured in order
to recover postpetition interest

§ 23:16 Allowance of postpetition interest on
nonconsensual oversecured claims

§ 23:17 Rate of interest allowable

§ 23:18 —Default rate

§ 23:19 Requirement that fees, costs, or charges be
reasonable

§ 23:20 Requirement that underlying contract provide
for recovery of fees, costs, or charges

§ 23:21 Validity and enforceability of provisions for
attorney's fees

§ 23:22 Miscellaneous fees, costs, or charges recoverable

IV. LIEN AVOIDANCE

§ 23:23 Generally

§ 23:24 Necessity for filing proof of claim

§ 23:25 Effect of determination of claim's allowability on
lien avoidance

§ 23:26 Effect of discharge injunction on enforcement of
liens

§ 23:27 Lien stripping

§ 23:28 —Availability in Chapter 7 cases

§ 23:29 —Availability in cases filed under other chapters

§ 23:30 Effect of restrictions on modification of rights

V. POSTPETITION EFFECT OF SECURITY INTEREST

§ 23:31 General rule

§ 23:32 —Constitutionality

§ 23:33 —Applicability to crops

§ 23:34 —Applicability to accounts receivable

§ 23:35 Exception for security interest in property
acquired prepetition and proceeds, etc., thereof

§ 23:36 Exception for security interest in property
acquired prepetition and rents, etc., thereof

TABLE OF CONTENTS

- § 23:37 Prerequisites to applicability of exceptions
- § 23:38 Effect of equities of case
- § 23:39 Effect of nonbankruptcy law
- § 23:40 Exception applicable in Chapter 9 cases

CHAPTER 24. ALLOWANCE OR DISALLOWANCE OF CLAIM

I. INTRODUCTION

A. IN GENERAL

1. Significance of Allowance or Disallowance of Claim or Interest

- § 24:1 Generally
- § 24:2 Impact of allowance or disallowance on recovery
via bankruptcy distribution—Priorities;
determination of secured status
- § 24:3 —Recovery by way of plan payments
- § 24:4 Impact on participation in administration of
estate
- § 24:5 Redemption of personal property, setoff, and
subrogation
- § 24:6 Impact on recovery in foreign proceeding

2. Objection to Claim or Interest

- § 24:7 Generally
- § 24:8 Claim or interest deemed allowed absent
objection
- § 24:9 Who may object to claim
- § 24:10 —Cases in which partnership is debtor
- § 24:11 —Trustee and examiner
- § 24:12 — —Duty to investigate debtor's financial affairs
- § 24:13 —Debtor
- § 24:14 —Creditors
- § 24:15 How objection is made to allowance of claim
- § 24:16 —Contested matter or adversary proceeding
- § 24:17 —Omnibus objection
- § 24:18 —Time for objecting to allowance of claim
- § 24:19 Notice and hearing requirements
- § 24:20 Burden of proof and burden of going forward
with the evidence
- § 24:21 Determination and allowance of claim by court

- § 24:22 —Estimation of claim or right to payment for purpose of allowance

B. PARTICULAR CLAIMS

- § 24:23 Claim against general partner
- § 24:24 Postpetition claims in Chapter 13 cases
- § 24:25 —What tax claims become payable while case is pending
- § 24:26 —What consumer debts are for property or services necessary to debtor's performance under plan
- § 24:27 — —Requirement of prior approval of incurrence of debt
- § 24:28 "Involuntary gap" claims
- § 24:29 Prepetition claims of entities injured by rejection of executory contract or unexpired lease
- § 24:30 Prepetition claim of transferee of property recovered by trustee
- § 24:31 Prepetition claim for tax entitled to eighth priority

II. GROUNDS FOR DISALLOWANCE OF CLAIM

- § 24:32 Generally
- § 24:33 Claims unenforceable against debtor and property of debtor
- § 24:34 —State law defenses
- § 24:35 —Effect of claim based on rejection of contract
- § 24:36 Claims for unmatured interest
- § 24:37 Property tax claims which exceed value of estate's interest in property
- § 24:38 Claims for services of insider or attorney of debtor
- § 24:39 Claims for postpetition nondischargeable alimony, maintenance, and support obligations
- § 24:40 Damage claims by lessors resulting from termination of real property leases
- § 24:41 —Leases distinguished from financing transactions
- § 24:42 —Effect of debtor's breach of assumed lease
- § 24:43 —Applicability of limitations to debtor-guarantor
- § 24:44 Damage claims by employees for termination of employment contract
- § 24:45 —Inapplicability to retired employees

TABLE OF CONTENTS

- § 24:46 —Applicability to collective bargaining agreements
- § 24:47 Employment tax claims
- § 24:48 Untimely filed claims
- § 24:49 Certain claims of entities from which property recoverable and transferees of voidable transfer
- § 24:50 Certain claims for reimbursement or contribution of codebtor, surety, guarantor, and the like
- § 24:51 —Election between subrogation or reimbursement and contribution
- § 24:52 Reduction of unsecured consumer debts where creditor refused prepetition alternative repayment schedule

III. ADMINISTRATIVE EXPENSES

- § 24:53 Generally
- § 24:54 Equal treatment accorded administrative expenses
- § 24:55 “Superpriority” accorded certain administrative expenses
- § 24:56 Administrative expenses not limited to those enumerated by statute
- § 24:57 Requirement that administrative expense claim arise postpetition and benefit operation of debtor’s business
- § 24:58 Costs and expenses of preserving estate
- § 24:59 —Wages, salaries, or commissions for postpetition services
- § 24:60 —Rent
- § 24:61 —Expenses of removal or cleanup of hazardous waste
- § 24:62 Retiree benefits
- § 24:63 Pension plan withdrawal liability
- § 24:64 Taxes
- § 24:65 —Fine, penalty, or reduction in credit
- § 24:66 —Interest
- § 24:67 Compensation and reimbursement of trustee, examiner, professional person, and debtor’s attorney
- § 24:68 Expenses of petitioning creditors in involuntary case
- § 24:69 Expenses of creditor who recovers property for benefit of estate

- § 24:70 Expenses of creditor in connection with criminal prosecution
- § 24:71 Expenses in making substantial contribution in Chapter 9 or 11 case
- § 24:72 —Establishment of making of substantial contribution as matter within court's discretion
- § 24:73 —Grain assets
- § 24:74 —Compensation for services of indenture trustee
- § 24:75 Expenses and compensation of custodian
- § 24:76 Expenses of member of Chapter 11 creditors' committee
- § 24:77 Witness fees and mileage
- § 24:78 Inadequately protected creditors in Chapter 9 cases
- § 24:79 Assumed nonresidential real property leases subsequently rejected
- § 24:80 Costs related to closing a health care business
- § 24:81 Goods received within 20 days of filing and sold to debtor in ordinary course of debtor's business
- § 24:82 Statutory limitations on claims for retention bonuses or severance pay to insiders

IV. RECOVERY OF COSTS AND EXPENSES OF PRESERVING OR DISPOSING OF COLLATERAL

A. INTRODUCTION

- § 24:83 Generally
- § 24:84 Relationship to recovery of fees, costs, or charges provided for under agreement or state statute under which claim arose

B. ESTABLISHING RIGHT TO RECOVERY

1. In General

- § 24:85 Consent of creditor
- § 24:86 Three-part test of entitlement to recovery
- § 24:87 Burden of proof
- § 24:88 What is reasonable

2. Benefit Requirement

- § 24:89 Case-by-case determination of benefit; factors considered

TABLE OF CONTENTS

- § 24:90 Requirements that expenditures primarily benefit secured creditor and that benefit be actual
- § 24:91 Requirement that benefit be direct and quantifiable
- § 24:92 —Uncertain, speculative, or indirect benefit
- § 24:93 Preservation of going-concern value as benefit

C. WHO MAY RECOVER COSTS AND EXPENSES

- § 24:94 Limitation to trustee and debtor in possession

D. WHAT COSTS AND EXPENSES ARE RECOVERABLE

- § 24:95 General expenses of administration
- § 24:96 Expenses of sale
- § 24:97 Other particular costs and expenses

V. RECONSIDERATION OF ALLOWED OR DISALLOWED CLAIMS

- § 24:98 Generally
- § 24:99 Effect of reconsideration on payment or transfer from estate to holder of allowed claim
- § 24:100 Reopening of case as enabling reconsideration
- § 24:101 What constitutes “cause” for reconsideration
- § 24:102 —Relationship to Federal Rules of Civil Procedure
- § 24:103 Motion, notice, and hearing requirements
- § 24:104 —Timeliness of motion
- § 24:105 Codebtor as party in interest entitled to seek reconsideration

CHAPTER 25. SETOFF

I. AVAILABILITY OF SETOFF

A. IN GENERAL

- § 25:1 Generally
- § 25:2 Effect, generally, of Bankruptcy Code on right of setoff
- § 25:3 Relationship between setoff and preferential transfers

- § 25:4 Relationship, as to setoff, between bankruptcy and nonbankruptcy law
- § 25:5 Trustee's and debtor's right of setoff
- § 25:6 Recoupment distinguished from setoff
- § 25:7 Effect of discharge injunction

B. EXCEPTIONS TO AND LIMITATIONS ON AVAILABILITY

1. Mutuality Requirement

- § 25:8 Generally
- § 25:9 Debtor and debtor in possession as same entity or different entities
- § 25:10 Joint obligations
- § 25:11 Related entities; triangular relationship exception
- § 25:12 Security deposits

2. Effect of Administrative Powers

- § 25:13 Applicability of automatic stay—To setoff of prepetition debt
- § 25:14 —To recoupment of prepetition debt
- § 25:15 —To liquidation of stockbrokers and commodity brokers
- § 25:16 —To setoffs by repo or financial participants
- § 25:17 —To setoff by swap participant
- § 25:18 —To administrative holds or freezes
- § 25:19 —To setoff of income tax refund
- § 25:20 —To setoff by master netting agreement participant
- § 25:21 Necessity of relief from automatic stay to postpetition setoff of debt
- § 25:22 Adequate protection requirement
- § 25:23 Use of cash collateral
- § 25:24 Exercise of rejection power by real property lessees and timeshare purchasers

3. Effect of Nature of Obligation

- § 25:25 Disallowed claims
- § 25:26 Role of debtor's insolvency
- § 25:27 Unliquidated obligations and obligations not yet due
- § 25:28 Obligations based on remedial or penal liability

TABLE OF CONTENTS

- § 25:29 Secured status of claim
- § 25:30 Claims against a governmental unit
- § 25:31 —Offset against one unit’s claim of debt owed debtor by another unit
- 4. Effect of Time Debt Incurred or Transferred
- § 25:32 Transfer of claim by third party
- § 25:33 Offset of prepetition debt against another prepetition debt
- § 25:34 Offset of prepetition obligations against postpetition obligations and vice versa
- § 25:35 Mutual postpetition obligations
- § 25:36 Debts incurred less than 90 days before bankruptcy filing

II. ASSERTION AND DETERMINATION OF RIGHT TO SETOFF

- § 25:37 Prepetition exercise of setoff rights
- § 25:38 Postpetition exercise of setoff rights
- § 25:39 —By filing proof of claim
- § 25:40 —By asserting setoff as defense
- § 25:41 —Burden of proof
- § 25:42 —Necessity of obtaining relief from automatic stay or approval of use, sale, or lease of property
- § 25:43 —In involuntary cases
- § 25:44 Waiver of right to setoff

III. RECOVERY BY TRUSTEE OR DEBTOR OF AMOUNT OFFSET

- § 25:45 Trustee’s recovery under improvement in position test
- § 25:46 —Source and purpose of recovery provision
- § 25:47 —Calculation of improvement in position
- § 25:48 —Secured claims not subject to insufficiency
- § 25:49 Recovery by debtor

PART 7. CHAPTER 11 PLANS

CHAPTER 26. CONTENTS AND FILING

I. INTRODUCTION

- § 26:1 Purpose and goal of Chapter 11 plans
- § 26:2 Role of nondebtor entities in plan formation
- § 26:3 Examinations relevant to plan formulation
- § 26:4 Prepackaged plans

II. CONTENTS

A. MANDATORY PROVISIONS

- § 26:5 Generally
- § 26:6 Designation of classes
- § 26:7 Specification of unimpaired classes
- § 26:8 Specification of treatment of impaired classes
- § 26:9 Same treatment for claim or interest of particular class
- § 26:10 Adequate means of plan implementation
- § 26:11 —Transfer of property of estate
- § 26:12 —Merger or consolidation of debtor
- § 26:13 —Sale of property of estate
- § 26:14 — —Liquidation plans
- § 26:15 —Satisfaction or modification of lien
- § 26:16 —Curing or waiving default
- § 26:17 —Extensions or changes affecting outstanding securities
- § 26:18 —Amendment of debtor's charter
- § 26:19 —Issuance of securities
- § 26:20 Inclusion of certain voting provisions in corporate charter
- § 26:21 Selection of officer, director, or trustee
- § 26:22 Payment of individual debtor's income

B. DISCRETIONARY PROVISIONS

- § 26:23 Impairment or unimpairment of claims or interests
- § 26:24 Assumption, rejection, or assignment—
Executory contracts
- § 26:25 —Unexpired leases

TABLE OF CONTENTS

- § 26:26 Settlement or adjustment of claim or interest
- § 26:27 Retention and enforcement of claim or interest
- § 26:28 —Who may enforce claim or interest
- § 26:29 Sale of property of estate and distribution of proceeds
- § 26:30 —Liquidation plans
- § 26:31 Modification of secured claims
- § 26:32 Other provisions consistent with Bankruptcy Code

C. RAILROAD REORGANIZATION PLAN PROVISIONS

- § 26:33 Mandatory provisions
- § 26:34 Discretionary provisions
- § 26:35 Plan transfers and operations requiring Surface Transportation Board approval

III. CLASSIFICATION OF CLAIMS OR INTERESTS

- § 26:36 Generally
- § 26:37 Substantially similar claims or interests
- § 26:38 —Unsecured deficiency claims
- § 26:39 —Other particular claims or interests
- § 26:40 Separate administrative convenience class of claims

IV. IMPAIRMENT OF CLAIMS OR INTERESTS

- § 26:41 Generally
- § 26:42 Leaving rights unaltered
- § 26:43 Rectifying default and reinstatement of claim or interest
- § 26:44 —Curing default
- § 26:45 — —De-acceleration of foreclosure judgment
- § 26:46 —Reinstating maturity
- § 26:47 —Compensating for damages caused by reliance on contractual provisions or applicable law
- § 26:48 — —What constitutes compensatory damages
- § 26:49 — — —Interest
- § 26:50 —Compensating for actual pecuniary loss incurred by holder of claim or interest
- § 26:51 —Not otherwise altering rights

V. FILING

- § 26:52 Generally
- § 26:53 Filing of plan by debtor
- § 26:54 —Debtor's exclusive right to file
- § 26:55 —Multiple plans
- § 26:56 —Small business cases
- § 26:57 Filing of plan by party in interest
- § 26:58 —Enumerated parties in interest
- § 26:59 —Non-enumerated parties in interest
- § 26:60 Modification of 120-day and 180-day exclusivity periods
- § 26:61 —Requirement of cause
- § 26:62 — —Reduction of exclusivity periods
- § 26:63 — —Grants of extensions of exclusivity periods
- § 26:64 — —Denials of extension of exclusivity periods
- § 26:65 Impact of extending 120-day period on running of 180-day period

VI. PRECONFIRMATION PLAN MODIFICATION

- § 26:66 Generally
- § 26:67 Compliance with disclosure requirements
- § 26:68 Effect on prior acceptances or rejections

VII. SMALL BUSINESS DEBTOR REORGANIZATION

- § 26:69 Small Business Reorganization Act of 2019

CHAPTER 27. DISCLOSURE STATEMENTS; PLAN ACCEPTANCE OR REJECTION

I. DISCLOSURE

- § 27:1 Requirement of disclosure
- § 27:2 —Where a sale motion is filed prior to the plan
- § 27:3 —The disclosure statement
- § 27:4 What constitutes adequate information
- § 27:5 —Prepackaged plans
- § 27:6 —Access to outside sources of information

TABLE OF CONTENTS

§ 27:7	—Hypothetical reasonable investor typical of class
§ 27:8	Contents of disclosure statement
§ 27:9	Filing and transmittal of disclosure statement
§ 27:10	—Small business cases
§ 27:11	Hearing on disclosure statement
§ 27:12	—Necessity for hearing
§ 27:13	Objections to disclosure statement
§ 27:14	—Plan-based objections to disclosure statement approval
§ 27:15	Approval of disclosure statement by court
§ 27:16	—Small business cases
§ 27:17	Transmittal of approved disclosure statement
§ 27:18	Amendment of disclosure statement
§ 27:19	Appeal of order approving disclosure statement

II. SOLICITATION

§ 27:20	Generally
§ 27:21	Unauthorized solicitation
§ 27:22	Exemption from securities laws
§ 27:23	“Safe harbor” provision
§ 27:24	Effect of good faith or absence thereof

III. ACCEPTANCE OR REJECTION

§ 27:25	What constitutes acceptance—As to claims
§ 27:26	—As to interests
§ 27:27	Who may accept or reject a plan
§ 27:28	—Partially secured creditors
§ 27:29	Form of acceptance or rejection
§ 27:30	Time in which to accept or reject
§ 27:31	Acceptance or rejection by codebtor; substitution of creditor for codebtor
§ 27:32	Circumstances in which acceptance of plan is presumed
§ 27:33	Circumstances in which plan is deemed not accepted
§ 27:34	Prepetition acceptance or rejection
§ 27:35	Good-faith acceptance or rejection, and vote disqualification
§ 27:36	Withdrawal or change of vote

CHAPTER 28. CONFIRMATION

I. REQUISITES FOR CONFIRMATION

A. GENERAL REQUIREMENTS

- § 28:1 Generally
- § 28:2 Plan and plan proponent compliance with
Bankruptcy Code
- § 28:3 Good faith
- § 28:4 —Circumstances showing lack of good faith
- § 28:5 —Circumstances showing good faith
- § 28:6 —When good faith determination is made
- § 28:7 —Liquidating plans
- § 28:8 Approval of payments for services, costs and
expenses
- § 28:9 Disclosure of identities of principals and insiders
- § 28:10 Regulatory approval of rate changes
- § 28:11 Feasibility
- § 28:12 —Factors used in determining feasibility
- § 28:13 —Illustrations of application of feasibility
standards
- § 28:14 Payment of fees under 28 U.S.C.A. § 1930
- § 28:15 Continuance of retiree insurance benefits
- § 28:16 Acceptance of plan or absence of impairment
- § 28:17 Payment of domestic support obligations
- § 28:18 Payment of disposable income of individual
debtor
- § 28:19 Compliance with nonbankruptcy law governing
transfers of property by nonbusiness
corporations

B. REQUIREMENTS FOR IMPAIRED CLASSES

- § 28:20 Best interest of creditors test
- § 28:21 —Where debtor is limited partnership
- § 28:22 —Interest payments
- § 28:23 —Election of treatment under 11 U.S.C.A.
§ 1111(b)
- § 28:24 —Illustrations of application of best interest test
- § 28:25 Acceptance by at least one impaired class

C. REQUIREMENTS FOR UNIMPAIRED CLASSES

- § 28:26 Receipt by administrative and “involuntary gap”

TABLE OF CONTENTS

- creditors of cash equal to allowed amount of claim
- § 28:27 Deferred cash payments—For priority claims of accepting class
- § 28:28 Cash payment on plan’s effective date for priority claims of nonaccepting class
- § 28:29 Deferred cash payments—For tax claims

D. RAILROAD REORGANIZATION

- § 28:30 Generally
- § 28:31 Compatibility with public interest

II. CONFIRMATION UNDER CRAM DOWN PROVISIONS

A. GENERAL REQUIREMENTS

- § 28:32 Compliance of plan with all requirements of 11 U.S.C.A. § 1129(a)
- § 28:33 Unfair discrimination prohibited

B. FAIR AND EQUITABLE REQUIREMENT

1. In General

- § 28:34 Overview

2. Secured Claims

- § 28:35 Retention of liens; liens attaching to proceeds of sale
- § 28:36 Receipt of deferred cash payments equal to value of claimholder’s secured interest
- § 28:37 —Interest
- § 28:38 —Negative amortization
- § 28:39 —Valuation
- § 28:40 Realization of indubitable equivalent
- § 28:41 —Illustrations of operation of indubitable equivalent test
- § 28:42 — —Payment in property

3. Unsecured Claims

- § 28:43 Retention or receipt of property of value equal to allowed amount of claim
- § 28:44 Absolute priority rule
- § 28:45 —New value exception

§ 28:46 —Illustrations of absolute priority rule violations

4. Interests

§ 28:47 Generally

III. PROCEDURAL AND ADMINISTRATIVE MATTERS

§ 28:48 Notice of time fixed for confirmation hearing and for filing objections

§ 28:49 Hearing on confirmation

§ 28:50 Objections to plan confirmation

§ 28:51 Deposit

§ 28:52 Single plan rule

§ 28:53 Tax or securities law avoidance as improper reason for confirmation

§ 28:54 Order of confirmation

IV. POSTCONFIRMATION MATTERS

A. IN GENERAL

§ 28:55 Implementation of plan

§ 28:56 Distribution requirements

§ 28:57 Filing of reports and application for final decree

§ 28:58 Revocation of confirmation order

§ 28:59 Conversion or dismissal postconfirmation

§ 28:60 Special tax provisions

§ 28:61 —Exemption for stamp or similar tax

B. EFFECT OF CONFIRMATION

§ 28:62 Binding effect

§ 28:63 Vesting of property of estate in debtor

§ 28:64 Property free and clear of claims and interests

§ 28:65 Discharge of debtor

§ 28:66 —Exceptions to and denial of discharge

§ 28:67 Postconfirmation jurisdiction

C. MODIFICATION

§ 28:68 Generally

§ 28:69 Requirement that modification be proposed before substantial consummation of plan

TABLE OF CONTENTS

- § 28:70 Requirement of disclosure
- § 28:71 Acceptance or rejection of modified plan

D. EXEMPTION FROM SECURITIES LAWS FOR OFFER OR SALE OF SECURITIES UNDER PLAN

- § 28:72 Securities exchanged for claims, interests, or
administrative expenses
- § 28:73 Securities arising from subscription rights or
conversion privileges
- § 28:74 Portfolio securities
- § 28:75 Transactions by stockbrokers
- § 28:76 Sale of securities by underwriters
- § 28:77 Offer or sale considered to be public offering;
inapplicability of Trust Indenture Act

Table of Contents

PART 8. CHAPTER 13 PLANS

CHAPTER 29. CONTENTS

I. PRELIMINARY MATTERS

- § 29:1 Introduction
- § 29:2 Plan format

II. MANDATORY PLAN PROVISIONS

- § 29:3 Submission of future earnings or other future income
- § 29:4 Full payment of priority claims
- § 29:5 —Different treatment of a priority claim
- § 29:6 —Entitlement to postpetition interest
- § 29:7 Claims within a particular class entitled equal treatment

III. DISCRETIONARY PLAN PROVISIONS

A. CLASSIFICATION OF UNSECURED CLAIMS

- § 29:8 Introduction; unfair discrimination prohibited
- § 29:9 Exception for cosigned consumer debts
- § 29:10 Unfair discrimination determination
- § 29:11 Unfair discrimination standards
- § 29:12 Unfair discrimination factors
- § 29:13 Payments outside the plan as unfair discrimination

B. MODIFICATION OF RIGHTS OF CLAIMHOLDERS

- § 29:14 Introduction
- § 29:15 Claims secured only by debtor's principal residence not subject to modification

- § 29:16 —Security interest defined
- § 29:17 —Security interest only in the debtor's principal residence defined
- § 29:18 —Effect of cancellation or waiver of liens on ability to modify
- § 29:19 —Distinction between modification and cure
- § 29:20 —Bifurcation of undersecured claims as impermissible modification

C. CURE OR WAIVER OF DEFAULT

1. In General

- § 29:21 Right to cure or waive default
- § 29:22 Cure of long-term obligations
- § 29:23 Effect of prepetition acceleration of debt on eligibility for cure
- § 29:24 Reasonable time for cure
- § 29:25 —Factors affecting determination of reasonableness

2. Claims Secured Only by Security Interest in Debtor's Principal Residence

- § 29:26 Right to cure
- § 29:27 When the right to cure is extinguished
- § 29:28 Claims discharged in prior bankruptcy proceeding
- § 29:29 Claims that mature by their own terms prepetition
- § 29:30 Cure of postpetition defaults
- § 29:31 Payment of interest and costs

D. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

- § 29:32 Provision for assumption, rejection, or assignment of any executory contract or unexpired lease

E. ADDITIONAL DISCRETIONARY PROVISIONS

- § 29:33 Concurrent payment of secured and unsecured claims
- § 29:34 Payment of postpetition claims

TABLE OF CONTENTS

- § 29:35 Exclusion of certain claims from plan
- § 29:36 —Claims secured only by security interest in debtor's principal residence
- § 29:37 Payment of claims using estate property
- § 29:38 Vesting of estate property
- § 29:39 Postpetition interest on nondischargeable claims
- § 29:40 Plan provisions that are not inconsistent with the Bankruptcy Code
- § 29:41 —Expansion of codebtor stay

IV. PROHIBITED PLAN PROVISIONS CHAPTER 13

- § 29:42 Generally

V. DURATION OF CHAPTER 13 PLAN

- § 29:43 Generally
- § 29:44 Payment period commencement—Assessing duration of period

CHAPTER 30. FILING AND MODIFICATION

I. FILING OF CHAPTER 13 PLAN

- § 30:1 Introduction
- § 30:2 Place of filing
- § 30:3 Time of filing
- § 30:4 —Extension of time for filing
- § 30:5 Notice of time for filing objections and confirmation hearing

II. PRECONFIRMATION MODIFICATION OF CHAPTER 13 PLANS

- § 30:6 Introduction
- § 30:7 Effect of creditor's acceptance or rejection of plan prior to modification

III. POSTCONFIRMATION MODIFICATION OF CHAPTER 13 PLANS

A. IN GENERAL

- § 30:8 Introduction

- § 30:9 Parties entitled to request or object to modification
- § 30:10 Applicability of other Bankruptcy Code provisions
- § 30:11 Completing payments under plan as terminating right to modification
- § 30:12 Requirement that debtor prove postconfirmation change in circumstances
- § 30:13 Requirement that trustee or holder of allowed unsecured claim prove postconfirmation change in debtor's circumstances
- § 30:14 —Determination of whether change could have been anticipated
- § 30:15 Duration of modified plan
- § 30:16 —What constitutes cause to extend payment period

B. TYPE OF MODIFICATION PERMITTED

- § 30:17 Increase or reduction in amount of payments on claims of particular classifications
- § 30:18 Extension or reduction of time for payment
- § 30:19 Alteration of creditor's distribution to account for payment of claim other than under plan
- § 30:20 Reduction of payments to permit purchase of health care
- § 30:21 Reclassification of claims

CHAPTER 31. CONFIRMATION

I. PRELIMINARY MATTERS

- § 31:1 Introduction
- § 31:2 Duty to commence payments after plan is filed
- § 31:3 —Treatment of payments made prior to confirmation

II. PLAN CONFIRMATION REQUIREMENTS

A. COMPLIANCE WITH BANKRUPTCY CODE; PAYMENT OF FEES AND CHARGES— § 1325(a)(1), (2)

- § 31:4 Bankruptcy Code compliance
- § 31:5 Payment of fees and charges

TABLE OF CONTENTS

B. PLAN TO BE PROPOSED IN GOOD FAITH—§ 1325(a)(3)

- § 31:6 Introduction
- § 31:7 Scope of inquiry into debtor's good faith
- § 31:8 Good faith assessed under totality of circumstances
- § 31:9 —Effect of 1984 Amendments
- § 31:10 Effect of meaningful repayment of debt
- § 31:11 Effect of debtor's prior bankruptcy proceedings
- § 31:12 Effect of debtor's prepetition and postpetition conduct
- § 31:13 Effect of date of bankruptcy filing
- § 31:14 Effect of dischargeability of particular claims
- § 31:15 —Educational loans
- § 31:16 —Claims arising from illegal conduct
- § 31:17 Effect of inaccuracies and omissions in bankruptcy documents

C. BEST INTEREST OF CREDITORS TEST—§ 1325(a)(4)

- § 31:18 Introduction
- § 31:19 Role of present value of claim
- § 31:20 —Discount rate to determine present value
- § 31:21 Time for valuation
- § 31:22 Determination of liquidation value in hypothetical Chapter 7 case
- § 31:23 —Exemptions
- § 31:24 —Effect of nondischargeable debts
- § 31:25 —Effect of debtor's ineligibility for a Chapter 7 discharge

D. TREATMENT OF SECURED CLAIMS—§ 1325(a)(5)

- § 31:26 Three alternatives and BAPCPA effects
- § 31:27 Acceptance of plan by secured creditors—§ 1325(a)(5)(A)
- § 31:28 Surrender of security—§ 1325(a)(5)(C)
- § 31:29 Claimholder's retention of lien under cramdown provision—§ 1325(a)(5)(B)
- § 31:30 Payment of present value on secured claims under cramdown provision—§ 1325(a)(5)(B)

- § 31:31 Discount rate to determine present value of claim—§ 1325(a)(5)(B)
- § 31:32 Application of cramdown provision to claims secured only by a security interest in the debtor's principal residence—§ 1325(a)(5)(B)

E. FEASIBILITY OF DEBTOR'S COMPLIANCE WITH PLAN—§ 1325(a)(6)

- § 31:33 Introduction
- § 31:34 Standard for determining feasibility
- § 31:35 Factors affecting determination of feasibility
- § 31:36 —Failure to provide cushion for contingencies and emergencies
- § 31:37 —Debtor's employment
- § 31:38 —Contingent or speculative source of funding for plan

F. OTHER PLAN CONFIRMATION REQUIREMENTS—§§ 1325(a)(7), (8), (9)

- § 31:39 Good faith filing of petition
- § 31:40 Domestic support obligations paid
- § 31:41 Tax returns and documents filed

III. PLAN APPROVAL AFTER OBJECTION TO CONFIRMATION BY TRUSTEE OR HOLDER OF ALLOWED UNSECURED CLAIM

- § 31:42 Introduction
- § 31:43 Standing to object
- § 31:44 Full payment of claims
- § 31:45 Commitment of debtor's disposable income to plan payments
- § 31:46 —Effect on plan duration
- § 31:47 —Determination of debtor's disposable income
- § 31:48 — —Specific types of deductions
- § 31:49 — —Scope of the court's review
- § 31:50 —Expenses associated with a dependent
- § 31:51 —Adjustments for future income
- § 31:52 —Luxury items
- § 31:53 —Cushion for contingencies or emergencies
- § 31:54 —Religious or charitable donations

TABLE OF CONTENTS

IV. OBJECTIONS TO CONFIRMATION

- § 31:55 Introduction
- § 31:56 Parties entitled to object to confirmation
- § 31:57 Effect of a failure to object

V. CONFIRMATION HEARING AND NOTICE

- § 31:58 Notice of confirmation hearing
- § 31:59 Confirmation hearing
- § 31:60 Court's independent duty to determine
compliance with confirmation requirements
- § 31:61 Evidence on the issue of debtor's good faith in
proposing plan
- § 31:62 Entities required to appear at a confirmation
hearing
- § 31:63 Burden of proof
- § 31:64 Order of confirmation

VI. POSTCONFIRMATION MATTERS

- § 31:65 Binding effect of confirmed plan
- § 31:66 —Entities bound by provisions of confirmed plan
- § 31:67 Vesting of estate property
- § 31:68 —Effect of vesting on bankruptcy estate
- § 31:69 —Validity of liens after plan is confirmed
- § 31:70 Trustee as disbursement agent under plan
- § 31:71 Debtor as disbursement agent under plan
- § 31:72 —Effect on the payment of trustee's fee
- § 31:73 Collection of future income by trustee
- § 31:74 Payment of certain unpaid priority claims and
fees
- § 31:75 —Prior case Chapter 7 trustee compensation

VII. REVOCATION OF CONFIRMATION ORDER

- § 31:76 Introduction
- § 31:77 Standing to request revocation
- § 31:78 Entry of revocation order
- § 31:79 Grounds for revocation
- § 31:80 Disposition of case after revocation

PART 9. OTHER PLANS

CHAPTER 32. CHAPTER 9 PLANS

I. CONTENTS

- § 32:1 Mandatory requirement that plan provide for classification and treatment on claims or interests
- § 32:2 Mandatory requirement that plan provide for impaired and unimpaired claims or interests
- § 32:3 Mandatory requirement that plan provide for adequate means for plan's implementation
- § 32:4 Permissive plan provisions

II. FILING

- § 32:5 Filing of Chapter 9 plan
- § 32:6 Disclosure statement
- § 32:7 —Mailing, hearing and notice, objections or modifications following filing
- § 32:8 —Election prior to conclusion of hearing
- § 32:9 —Determination by court
- § 32:10 Transmittals required upon approval of disclosure statement
- § 32:11 List of creditors and certain real property title holders

III. ACCEPTANCE OR REJECTION; MODIFICATION

- § 32:12 Who may accept or reject
- § 32:13 Solicitation; Timing, change, or withdrawal of acceptance or rejection
- § 32:14 —Prepetition acceptance or rejection
- § 32:15 —Exchange of securities before filing claim as acceptance
- § 32:16 —Postpetition solicitation of acceptance or rejection
- § 32:17 Form and content of acceptance or rejection
- § 32:18 Modification of accepted plan before confirmation

TABLE OF CONTENTS

IV. CONFIRMATION

A. PREREQUISITES

1. Chapter 9 Requirements

§ 32:19 Generally

§ 32:20 Compliance with “best interests of creditors” standard; “Cram down”

2. Chapter 11 Requirements Applicable to Chapter 9 Plans

§ 32:21 Generally

§ 32:22 Confirmation despite nonacceptance by impaired classes; “Cram down”

§ 32:23 —Secured claims

§ 32:24 —Unsecured claims

B. PROCEDURE

§ 32:25 Notice and hearing

§ 32:26 Objections

§ 32:27 Order

§ 32:28 —Effects of denial of confirmation

§ 32:29 —Revocation

C. POSTCONFIRMATION MATTERS

§ 32:30 Modification of accepted plan after confirmation

§ 32:31 Effects of confirmation binding effect of plan

§ 32:32 —Discharge of debtor

§ 32:33 Time for performing certain acts under plan for participation in distribution

§ 32:34 Continuing jurisdiction; Implementation of plan; Closing of case

CHAPTER 33. CHAPTER 12 PLANS

I. INTRODUCTION

§ 33:1 Generally

§ 33:2 Filing

§ 33:3 —When to file

§ 33:4 —Dismissal for failure to file or denial of extension of time

- § 33:5 —Place of filing; documents deemed filed
- § 33:6 Duration

II. CONTENTS

- § 33:7 Mandatory provisions—Adequate income for execution of plan
- § 33:8 —Full deferred payment of priority claims
- § 33:9 —Equal treatment for claims or interests within same class
- § 33:10 Discretionary provisions
- § 33:11 —Classification of unsecured claims, including consumer debts
- § 33:12 —Modification of claimholder's right
- § 33:13 — —Right of mortgage redemption
- § 33:14 —Curing or waiving of default
- § 33:15 —Payment of long-term debt
- § 33:16 —Concurrent payments
- § 33:17 —Use, sale, or lease of property
- § 33:18 —Treatment of executory contracts, unexpired leases, and timeshare interests
- § 33:19 —Payment from property of estate or of debtor
- § 33:20 —Sale or distribution of property of estate
- § 33:21 —Vesting of property of estate
- § 33:22 —Payment of interest on nondischargeable claims
- § 33:23 Time period for repayment

III. MODIFICATION PRIOR TO CONFIRMATION

- § 33:24 Generally
- § 33:25 Objections by Farmers Home Administration

IV. CONFIRMATION

A. REQUISITES FOR CONFIRMATION

- 1. Compliance with Code; Payment of Fees, Costs, and Charges
 - § 33:26 Compliance with Chapter 12 and Title 11
 - § 33:27 Payment of fees, charges, and other amounts
- 2. Plan Proposed in Good Faith
 - § 33:28 What constitutes good faith

TABLE OF CONTENTS

§ 33:29	—Sufficiency of evidence
§ 33:30	Particular determinations
	3. Meeting “Best Interests of Creditors” Test
§ 33:31	Generally
§ 33:32	Inclusion of provision for payment of interest
	4. Compliance with Allowed Secured Claims Provision
	a. In General
§ 33:33	Introduction
§ 33:34	Limitation on setoffs
	b. Holder of Claim Must Retain Lien Securing Claim
§ 33:35	Generally
	c. Value of Property Must Be Not Less Than Allowed Amount of Claim
§ 33:36	Introduction
§ 33:37	Time of valuation
§ 33:38	Direct payments to creditors
§ 33:39	Determining present value
§ 33:40	Interest (discount) rate used for determining present value
§ 33:41	—Risk factor
	d. Surrender of Property Securing Claim to Holder
§ 33:42	Generally
	5. Compliance with Feasibility Requirement
§ 33:43	Generally
§ 33:44	Standard of proof
§ 33:45	Weight and sufficiency of evidence
§ 33:46	Long-term payments
	6. Approval of Plan over Objection by Trustee or Unsecured Creditor
§ 33:47	Generally
	7. Payment of Domestic Support Obligations
§ 33:48	Generally

B. CONFIRMATION HEARING

- § 33:49 Generally
- § 33:50 Objections
- § 33:51 Notice
- § 33:52 Time for concluding hearing
- § 33:53 Confirmation

V. POSTCONFIRMATION MATTERS

- § 33:54 Payment of debtor's income to trustee
- § 33:55 Distribution upon confirmation of plan
- § 33:56 —Direct payments
- § 33:57 —Priority payments of unpaid claims and trustees fees
- § 33:58 — —As affected by direct payments
- § 33:59 Return of and deductions from payments upon denial of confirmation
- § 33:60 Effect of confirmation
- § 33:61 Modification of plan after confirmation
- § 33:62 Revocation of order of confirmation

CHAPTER 33A. CHAPTER 15 PLANS

I. IN GENERAL

- § 33A:1 Chapter 15 and its purpose
- § 33A:2 Scope of application of Chapter 15
- § 33A:3 Definitions
- § 33A:4 International obligations of the U.S.
- § 33A:5 Commencement of ancillary case
- § 33A:6 Authorization to act in a foreign country
- § 33A:7 Public policy exception
- § 33A:8 Additional court assistance
- § 33A:9 Interpretation

II. ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

- § 33A:10 Right of direct access
- § 33A:11 Limited jurisdiction
- § 33A:12 Commencement of case under section 301 or 303
- § 33A:13 Participation of a foreign representative in a Chapter 15 case

TABLE OF CONTENTS

§ 33A:14 Access of foreign creditors to a Chapter 15 case

III. RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

§ 33A:15 Application for recognition

§ 33A:16 Order granting recognition

§ 33A:17 Effects of recognition of a foreign main proceeding

§ 33A:18 Relief that may be granted upon recognition

IV. COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

§ 33A:19 Cooperation and direct communication between court and foreign courts or foreign representatives

§ 33A:20 Cooperation and direct communication between trustee and foreign courts or foreign representatives

§ 33A:21 Forms of cooperation

V. CONCURRENT PROCEEDINGS

§ 33A:22 Commencement of Chapter 15 case after recognition of a foreign proceeding

§ 33A:23 Coordination of a Chapter 15 case and a foreign proceeding

§ 33A:24 Coordination of more than one foreign proceeding

§ 33A:25 Presumption of insolvency

§ 33A:26 Rule of payment in concurrent proceedings

PART 10. FINAL STAGES OF CASE

CHAPTER 34. DISTRIBUTION

I. IN GENERAL

§ 34:1 Generally

§ 34:2 Applicability of distribution rules in particular Chapter proceedings

§ 34:3 Trustee's duty and liability

II. PRIORITIES

A. IN GENERAL

- § 34:4 Generally
- § 34:5 Allowance of priority claim; burden of proof
- § 34:6 Order of payment—Among claims of different priority
- § 34:7 —Among claims of same priority
- § 34:8 Prohibition against subrogation
- § 34:9 Effect of debtor's setoff rights
- § 34:10 Differences between priorities and liens

B. SUPERPRIORITIES

- § 34:11 Generally
- § 34:12 Inadequately protected secured claims
- § 34:13 Claims based on extension of postpetition business credit
- § 34:14 —Superpriority lien
- § 34:15 Postconversion administrative “burial expenses”

C. DOMESTIC SUPPORT OBLIGATIONS

- § 34:16 Generally
- § 34:17 Trustee costs and expenses for administering assets to pay domestic support obligations

D. ADMINISTRATIVE EXPENSES

1. In General

- § 34:18 Generally
- § 34:19 What constitutes an administrative expense
- § 34:20 —Effect of confirmation of plan
- § 34:21 Order of payment of expenses

2. Property Out of Which Expenses are Payable

- § 34:22 Generally
- § 34:23 Exempt property
- § 34:24 Property subject to lien

3. Particular Expenses

a. Costs of Preserving Estate

- § 34:25 Generally

TABLE OF CONTENTS

§ 34:26	Debts incurred in operating business
§ 34:27	—Debts incurred outside ordinary course of business
b. Taxes and Liabilities Relating to Taxes	
§ 34:28	Generally
§ 34:29	Liability for excessive “quickie refund”
§ 34:30	Fines, penalties, and reduction in credit
§ 34:31	Interest on postpetition taxes
c. Professional Compensation and Reimbursement	
§ 34:32	Attorneys and accountants employed by creditors and other parties in interest
§ 34:33	Custodians
§ 34:34	Officers of the court
d. Other Miscellaneous Expenses	
§ 34:35	Expenses of filing petition and accompanying papers
§ 34:36	Expenses of recovering property and prosecuting crime
§ 34:37	“Substantial contribution” expenses
§ 34:38	Expenses of Chapter 11 committee members
§ 34:39	Judicial fees and costs; U.S. Trustee quarterly fees
§ 34:40	Nonresidential real property lease obligations
§ 34:41	Costs and expenses to close a health care business
§ 34:42	Goods received within 20 days of bankruptcy
§ 34:43	Transfers to or obligations for insiders
E. EMPLOYEE COMPENSATION AND BENEFITS CLAIMS	
1. Wages, Salaries, Commissions, and Similar Items	
a. In General	
§ 34:44	Generally
§ 34:45	What are wages
§ 34:46	Amount of priority claim

§ 34:47 When must wages and similar items be earned

**b. When Are Wages and Similar Items
Deemed Earned**

§ 34:48 Generally

§ 34:49 Wages

§ 34:50 Commissions

§ 34:51 Vacation pay

§ 34:52 —Effect of business cessation prior to vesting of
right to pay

§ 34:53 Severance pay

§ 34:54 —Effect of postpetition termination of
employment

c. Who is Entitled to Priority

§ 34:55 Generally

§ 34:56 Effect of wage assignment

2. Benefits Claims

§ 34:57 Generally

§ 34:58 What is an employee benefit plan

§ 34:59 What is a plan contribution

§ 34:60 Amount of priority claim

§ 34:61 When must services be rendered

§ 34:62 Who is entitled to priority

§ 34:63 Analysis of claims arising under Employee
Retirement Income Security Act

**F. TAXES AND CUSTOMS DUTIES AND
RELATED LIABILITIES**

1. In General

§ 34:64 Generally

§ 34:65 What is a tax

§ 34:66 Customs duties

2. Income and Gross Receipts Taxes

a. In General

§ 34:67 Generally

§ 34:68 Taxes for taxable year ending on or before filing
date

§ 34:69 Taxes assessed before bankruptcy filing

TABLE OF CONTENTS

b. Unassessed Taxes

- § 34:70 Generally
- § 34:71 Stay of limitations period for assessment
- § 34:72 Taxes remaining assessable by agreement
- § 34:73 Taxes excluded

3. Property Taxes

- § 34:74 Generally
- § 34:75 Water and sewer rents

4. Withholding Taxes

- § 34:76 Generally
- § 34:77 Sales taxes

5. Other Taxes and Liabilities Relating to Taxes or Customs Duties

- § 34:78 Employment taxes
- § 34:79 Excise taxes
- § 34:80 Erroneous tax refund or credit
- § 34:81 Interest on taxes
- § 34:82 Penalties

G. OTHER PRIORITIES

- § 34:83 Involuntary gap claims
- § 34:84 Claims for grain assets
- § 34:85 —Effect of expedited distribution procedures
- § 34:86 Claims for fish assets
- § 34:87 Claims for consumer deposits
- § 34:88 Claims for depository institution capital maintenance commitments
- § 34:89 Claims for death or personal injury resulting from unlawful operation of motor vehicle or vessel due to debtor's intoxication

III. SUBORDINATION AND DEFERRAL

A. SUBORDINATION

1. In General

- § 34:90 Generally
- § 34:91 Difference between subordination and disallowance

2. Subordination Agreements

- § 34:92 Generally
- § 34:93 Limitations on enforceability

3. Mandatory Subordination

- § 34:94 Securities rescission claims
- § 34:95 —Effect of purchase or sale of securities of debtor's affiliate
- § 34:96 —Limitations on subordination
- § 34:97 Subordination of codebtor's claim

4. Equitable Subordination

- § 34:98 Generally
- § 34:99 Elements of equitable subordination
- § 34:100 —Inequitable conduct
- § 34:101 —Harm
- § 34:102 Particular claimants—Insiders
- § 34:103 — —Stock redemptions
- § 34:104 — —Loans to undercapitalized corporate debtors
- § 34:105 —Noninsiders
- § 34:106 — —Effect of noninsider's control over debtor
- § 34:107 Practice and procedure—Nature of proceedings
- § 34:108 —Burden and nature of proof
- § 34:109 —Time for bringing action
- § 34:110 —Attorney-client privilege
- § 34:111 —Standing—Trustees
- § 34:112 — — —Creditors
- § 34:113 — — —Debtors
- § 34:114 — — —Bankruptcy court

B. DEFERRAL

- § 34:115 Claims collected from partner in debtor-partnership

IV. ADDITIONAL DISTRIBUTION RULES IN CHAPTER 7

A. IN GENERAL

- § 34:116 Generally

TABLE OF CONTENTS

**B. DISTRIBUTION OF PROPERTY IN WHICH
OTHER ENTITY HAS INTEREST**

1. Property Subject to Liens

a. In General

§ 34:117 General rule

§ 34:118 Exceptions to general rule

**b. Property Subject to Tax Liens and
Liens Treated As Tax Liens**

§ 34:119 Generally

§ 34:120 Liens treated as tax liens

§ 34:121 Claims secured by senior lien

§ 34:122 Priority claims

§ 34:123 Claims secured by junior lien; distribution to
estate

§ 34:124 Effect of two or more competing distributees

2. Property Subject to Other Interests

§ 34:125 Generally

C. FINAL DISTRIBUTION

1. In General

§ 34:126 Generally

§ 34:127 Priority claims

2. Timely Filed Claims

§ 34:128 Claims filed by creditor

§ 34:129 Claims filed by other entity

3. Tardily Filed Claims

§ 34:130 Excused tardy filing

§ 34:131 Unexcused tardy filing

4. Other Claims and Surplus Property

§ 34:132 Fines, penalties, and similar claims

§ 34:133 Postpetition interest

§ 34:134 Surplus

**D. DISTRIBUTION OF ESTATE WHICH
INCLUDES COMMUNITY PROPERTY**

§ 34:135 Generally

- § 34:136 Administrative expenses
- § 34:137 Other claims

E. DIVIDENDS

- § 34:138 Generally
- § 34:139 Small dividends
- § 34:140 Unclaimed dividends

F. PARTNERSHIP LIQUIDATIONS

- § 34:141 Payment of partner who is not a debtor
- § 34:142 Effect of partner's also being a debtor
- § 34:143 Distribution of surplus recovered from debtor partners

G. STOCKBROKER LIQUIDATIONS

1. In General

- § 34:144 Generally
- § 34:145 Effect of Securities Investor Protection Act
- § 34:146 Treatment of customer accounts

2. Liquidation and Distribution of Securities

- § 34:147 Liquidation
- § 34:148 Delivery of customer name securities
- § 34:149 Limitation on distribution

3. Distribution of Customer Property

a. In General

- § 34:150 Generally

b. What Constitutes Customer Property

- § 34:151 Generally
- § 34:152 Property excluded
- § 34:153 Apportionment of equity after liquidation of security interest

c. Net Equity Claims

- § 34:154 Computation of net equity
- § 34:155 Date of valuation of account; effect of postpetition transaction
- § 34:156 Subordination

TABLE OF CONTENTS

d. Excess or Insufficient Customer Property

- § 34:157 Excess property
- § 34:158 Insufficient property

H. COMMODITY BROKER LIQUIDATIONS

1. In General

- § 34:159 Generally
- § 34:160 Treatment of customer accounts

2. Liquidation of Securities and Commodity Contracts

- § 34:161 Securities
- § 34:162 Commodity contracts
- § 34:163 Effect of contract which cannot be closed

3. Distribution of Customer Property

a. What Is Customer Property

- § 34:164 Generally
- § 34:165 Property included
- § 34:166 Property excluded

b. Net Equity Claims

- § 34:167 Generally
- § 34:168 Computation of net equity
- § 34:169 Effect of debtor's failure to keep adequate books and records
- § 34:170 Mode of distribution
- § 34:171 Subordination of proprietary accounts
- § 34:172 Special distribution rules when debtor is a clearing organization
- § 34:173 Specifically identifiable property
- § 34:174 —Customer instructions
- § 34:175 —Margin calls and payments

c. Excess or Insufficient Customer Property

- § 34:176 Excess property
- § 34:177 —Specifically identifiable property
- § 34:178 Insufficient property

V. ADDITIONAL DISTRIBUTION RULES IN CHAPTERS 9, 11, 12, AND 13

A. IN GENERAL

- § 34:179 Generally
- § 34:180 Effect of confirmation of plan

B. CHAPTER 9

- § 34:181 Generally
- § 34:182 Administrative expenses
- § 34:183 Conditions to participation; unclaimed property

C. CHAPTER 11

- § 34:184 Generally
- § 34:185 Priority claims
- § 34:186 Conditions to participation; unclaimed property
- § 34:187 Solvent debtor
- § 34:188 Railroad reorganizations
- § 34:189 —Administrative expenses
- § 34:190 —The six-months rule

D. CHAPTER 12

- § 34:191 Generally
- § 34:192 Priority claims
- § 34:193 Small dividends
- § 34:194 Unclaimed property

E. CHAPTER 13

- § 34:195 Generally
- § 34:196 Priority claims
- § 34:197 Small dividends
- § 34:198 Unclaimed property

CHAPTER 35. DISCHARGE OF DEBTOR

I. DISCHARGE OF DEBTOR

A. INTRODUCTION

- § 35:1 Dischargeability of debt distinguished
- § 35:2 Nature of discharge of debtors

TABLE OF CONTENTS

§ 35:3 Liberal construction

B. WHO MAY OBTAIN

§ 35:4 Individuals

§ 35:5 Other entities

C. HOW AND WHEN OBTAINED

1. Liquidation Cases

a. In General

§ 35:6 Chapter 7 cases

§ 35:7 Chapter 11 liquidating plans

b. Grounds for Denial

i. Transfer, Removal, Destruction, Mutilation, or Concealment of Property

§ 35:8 Generally

§ 35:9 Intent

§ 35:10 —Establishing intent

§ 35:11 —Badges of fraud

§ 35:12 Bankruptcy planning; conversion of nonexempt
property to exempt property

ii. Failure to Keep or Preserve Recorded Information

§ 35:13 Generally

§ 35:14 Sufficiency of recorded information

§ 35:15 —Records kept by persons other than debtor

§ 35:16 Justification for failure to keep or preserve
information

§ 35:17 —Impact of particular factors

iii. Knowing and Fraudulent Activities in or in Connection with Case

§ 35:18 Generally

§ 35:19 Intent

§ 35:20 False oath or account

§ 35:21 —Materiality

§ 35:22 —Later amendment or disclosure

§ 35:23 —Omissions

iv. Failure to Explain Loss or
Deficiency of Assets

§ 35:24 Generally

§ 35:25 Satisfactory explanation

§ 35:26 —Debtor's exercise of privilege against
self-incrimination

v. Refusal to Obey Lawful Court
Order or to Answer Material
Question

§ 35:27 Generally

§ 35:28 Discretion of court

§ 35:29 Debtor's exercise of privilege against
self-incrimination

vi. Other Grounds

§ 35:30 Conduct in connection with another case
concerning "insider"

§ 35:31 Prior discharge within eight years

§ 35:32 —Effect of revocation of or failure to enter
discharge

§ 35:33 —Best effort test

§ 35:34 Waiver of discharge

§ 35:35 Failure to complete debtor education

§ 35:36 Debtor's conviction or engagement in certain
criminal conduct

2. Rehabilitative Cases

§ 35:37 Chapter 9 cases

§ 35:38 Chapter 11 cases

§ 35:39 —Involving individual debtors

§ 35:40 Chapters 12 and 13 cases

§ 35:41 —Hardship discharge

D. OBJECTION TO DISCHARGE

§ 35:42 How made

§ 35:43 Amendment of complaint

§ 35:44 Who may object

§ 35:45 Time for objecting

§ 35:46 —Converted cases

TABLE OF CONTENTS

- § 35:47 —Extension of time
- § 35:48 Hearing
- § 35:49 —Debtor’s duty to attend and testify
- § 35:50 Burden of proof
- § 35:51 Standard of proof
- § 35:52 Dismissal of complaint

E. EFFECT ON LIABILITY AND ENFORCEMENT THEREOF

- § 35:53 Generally
- § 35:54 Judgments voided
- § 35:55 Injunctive effect—As to personal liability of debtor
 - § 35:56 —As to certain property of debtor
 - § 35:57 —Supplemental injunctions in Chapter 11 asbestos cases
- § 35:58 Liability of codebtors, guarantors, and the like
- § 35:59 Insurers to cover all potential recoveries
- § 35:60 Enforcement of liens
- § 35:61 Voluntary repayment of debt

F. REVOCATION OF DISCHARGE

- § 35:62 Grounds—Chapters 7 and 11 cases
- § 35:63 —Chapters 12 and 13 cases
- § 35:64 Practice and procedure

II. DISCHARGEABILITY OF DEBTS

A. INTRODUCTION

- § 35:65 Dischargeability of debts under various chapters
- § 35:66 Chapter 7 cases
- § 35:67 Chapter 9 cases
- § 35:68 Chapter 11 cases
 - § 35:69 —Individual and corporate debtors
- § 35:70 Chapter 12 cases
- § 35:71 Chapter 13 cases
- § 35:72 —“Superdischarge”
- § 35:73 Construction of exceptions to discharge

B. DEBTS WHICH MAY SURVIVE DISCHARGE WHEN DEBTOR IS AN INDIVIDUAL

1. Debts for Taxes and Customs Duties

a. In General

- § 35:74 Types of taxes and customs duties made nondischargeable
- § 35:75 Policy underlying exception to discharge of debt for tax or customs duty
- § 35:76 Fees distinguished
- § 35:77 Subrogation rights of codebtor or surety

b. Priority Claims

- § 35:78 “Involuntary gap” (third priority) claims
- § 35:79 Tax or customs duty (eighth priority) claims
- § 35:80 —Income or gross receipts tax
- § 35:81 —Property tax
- § 35:82 —Tax required to be collected or withheld; “trust fund” taxes
- § 35:83 —Excise tax
- § 35:84 —Overlap between “trust fund” and excise tax provisions
- § 35:85 —Employment tax on wage, salary, or commission
- § 35:86 —What customs duties included
- § 35:87 —Tax penalty

c. Tax Returns; Tax Evasion

- § 35:88 Return not filed or filed late
- § 35:89 Fraudulent returns; willful attempt to evade or defeat tax

2. Debts Incurred Through Falsity and Fraud

a. Other Than by Statement Respecting Financial Condition

- § 35:90 Generally
- § 35:91 False pretenses, false representation, or actual fraud
- § 35:92 —False pretenses and false representation distinguished
- § 35:93 —Characteristics of actual fraud
- § 35:94 —Promises or opinions as to future

TABLE OF CONTENTS

§ 35:95	—Checks drawn on insufficient funds
§ 35:96	Materiality of representation
§ 35:97	Falsity of representation
§ 35:98	Intent
§ 35:99	—Inferring intent
§ 35:100	Reliance by creditor
§ 35:101	—Justifiable reliance
§ 35:102	Obtaining money, property, service, etc
§ 35:103	—Forbearance
§ 35:104	—Debtor or agent of debtor

b. By Written Statement Respecting Financial Condition

§ 35:105	Generally
§ 35:106	Money or property obtained for the debtor
§ 35:107	—New value; refinancing agreements
§ 35:108	Writing respecting debtor's or insider's financial condition
§ 35:109	Materiality of falseness
§ 35:110	Reasonable reliance
§ 35:111	—Question of fact
§ 35:112	—Creditor's duty to investigate
§ 35:113	—Creditor's business acumen
§ 35:114	—Business practices and industry standards
§ 35:115	—Partial reliance
§ 35:116	—On history of dealings with debtor
§ 35:117	Intent

c. Matters Unique to Use of Charge Cards

§ 35:118	Implied representation theory
§ 35:119	Assumption of risk theory
§ 35:120	—Mass charge card solicitations
§ 35:121	Modified assumption of risk theory
§ 35:122	Numerous charges under “call-in” limit
§ 35:123	Factors considered in determining intent

d. Consumer Debts for Luxury Goods and Services or Cash Advances

§ 35:124	Generally
§ 35:125	What constitutes luxury goods and services
§ 35:126	Open-end credit plans under Truth in Lending provisions

3. Unlisted and Unscheduled Debts

- § 35:127 Generally
- § 35:128 Why “2, 4, 6 claims” are treated differently
- § 35:129 Degree of exactness required as to creditor’s name and address
- § 35:130 Notice or actual knowledge of case
- § 35:131 Partial listing or scheduling
- § 35:132 No asset Chapter 7 cases
- § 35:133 Reopening case to add omitted creditor
- § 35:134 Debts owed before prior case commenced

4. Debts for Fraud or Defalcation by Fiduciary, Embezzlement, or Larceny

- § 35:135 Generally
- § 35:136 Fiduciary capacity
- § 35:137 —Type of trust creating relationship
- § 35:138 —How relationship created
- § 35:139 — —Express or technical trusts
- § 35:140 — —State law
- § 35:141 — —Trusts ex maleficio
- § 35:142 Defalcation
- § 35:143 —Intent
- § 35:144 Illustrative specific applications
- § 35:145 What constitutes embezzlement or larceny

5. Debts for Domestic Support Obligations

a. Actual Nature of Liability

i. In General

- § 35:146 Generally
- § 35:147 Fact question
- § 35:148 Property settlements

ii. Role of Federal and State Law

- § 35:149 Federal question
- § 35:150 Label attached by state court, state law, or parties
- § 35:151 Modification of award by state court
- § 35:152 Duty of support under state law
- § 35:153 Military personnel

TABLE OF CONTENTS

b. Factors Considered in Determining Liability

i. General Considerations

- § 35:154 Generally
- § 35:155 Label
- § 35:156 Need
- § 35:157 —Effect of changed circumstances
- § 35:158 Intent of matrimonial court and/or parties

ii. Family Situation

- § 35:159 Marital situation
- § 35:160 Children
- § 35:161 —Adult children
- § 35:162 —Illegitimate children; paternity judgments
- § 35:163 Unmarried cohabitants

c. Specific Expenditures

- § 35:164 Debts paid directly to third party
- § 35:165 Attorney's fees
- § 35:166 Assignment of support rights to qualify for AFDC
- § 35:167 Social Security Act's "anti-assignment" provision

6. Willful and Malicious Injury

a. In General

- § 35:168 Generally
- § 35:169 What constitutes "willful"
- § 35:170 Showing of specific or implied malice
- § 35:171 —Source of disagreement as to required showing
- § 35:172 Illustrative particular applications

b. Conversion

- § 35:173 Generally
- § 35:174 Technical conversion
- § 35:175 Secured property

c. Drunk Driving

- § 35:176 Generally
- § 35:177 Effect of enactment of specific drunk driver exception

§ 35:178 Continued applicability of willful and malicious injury exception

7. Debts for Fines, Penalties, or Forfeitures

§ 35:179 Generally

§ 35:180 Restitution obligations—In criminal cases

§ 35:181 —In civil cases

8. Debts for Educational Loans

a. In General

§ 35:182 Generally

§ 35:183 Nature of lender and loan

§ 35:184 Contingent obligation loans; HEAL loans and PSAP grants

§ 35:185 Liability of person other than student

b. Undue Hardship

§ 35:186 Ground for discharge of debt

§ 35:187 Discretion of court

§ 35:188 Tests

§ 35:189 Factors considered

§ 35:190 —Health problems

§ 35:191 —Dependents

§ 35:192 —Living expenses

§ 35:193 —Debtor's future prospects

§ 35:194 —Good faith efforts to repay loan

9. Debts Caused by Intoxicated Debtor's Operation of a Motor Vehicle

§ 35:195 Generally

§ 35:196 What constitutes legal intoxication

§ 35:197 Causation

10. Other Nondischargeable Debts

§ 35:198 Unlisted debts from prior case

§ 35:199 Debts for acts of fraud or defalcation while acting in a fiduciary capacity with respect to a depository institution

§ 35:200 Debts for malicious or reckless failure to fulfill capital maintenance commitments

§ 35:201 Debts for restitution under Title 18

§ 35:202 Debts incurred to pay nondischargeable taxes

§ 35:203 Election law fines or penalties

TABLE OF CONTENTS

§ 35:204	Debts in the nature of a domestic support obligation
§ 35:205	Debts for condominium or similar membership fees or assessments
§ 35:206	Debts for filing fees, costs and expenses
§ 35:207	Debts for pension loans
§ 35:208	Debts for violation of securities laws
§ 35:209	Military bonuses and special pay

C. DETERMINATION OF DISCHARGEABILITY

1. In General

§ 35:210	Generally
§ 35:211	Who may file complaint
§ 35:212	—Governmental units as creditors
§ 35:213	—Trustees
§ 35:214	Debts dischargeable if creditor does not act
§ 35:215	Burden of proof and of going forward with the evidence
§ 35:216	Standard of proof

2. Time Limit for Commencing Proceeding

§ 35:217	When time limit imposed
§ 35:218	Under particular chapters
§ 35:219	Calculation from date of creditors' meeting
§ 35:220	Filing fees
§ 35:221	Notice from court
§ 35:222	Actual notice or knowledge
§ 35:223	—Imputation from notice to counsel
§ 35:224	—Due process
§ 35:225	Service of complaint by mail
§ 35:226	—Amendment of complaint
§ 35:227	Conversion of case
§ 35:228	Extension of time
§ 35:229	—Who may seek

3. Costs and Attorney's Fees

§ 35:230	Award to consumer debtor
§ 35:231	—Discretion of court
§ 35:232	Recovery by creditors

4. Res Judicata and Collateral Estoppel

§ 35:233	General principles
----------	--------------------

- § 35:234 —Elements
- § 35:235 Applicability to dischargeability actions

III. REAFFIRMATION

- § 35:236 Generally
- § 35:237 Requisites for enforceable agreement
- § 35:238 Voluntariness
- § 35:239 Approval by court
- § 35:240 —Best interest of debtor
- § 35:241 Discharge hearing
- § 35:242 —Informing debtor of rights
- § 35:243 Applicability of Truth in Lending Act

CHAPTER 36. CLOSING AND REOPENING OF CASE

I. CLOSING OF CASE

- § 36:1 General rule
- § 36:2 Rule in Chapter 9 cases
- § 36:3 What constitutes closing
- § 36:4 Final report and account
- § 36:5 Personal liability of trustee
- § 36:6 Entry of final decree in Chapter 11 case
- § 36:7 Effect of closing

II. REOPENING

- § 36:8 Generally
- § 36:9 Discretion of court
- § 36:10 —Considerations entering into decision to reopen
- § 36:11 —Reopening case sua sponte
- § 36:12 Administration of assets—Previously unadministered assets
- § 36:13 — —Newly discovered or newly realizable assets
- § 36:14 — —Concealed or transferred assets
- § 36:15 Dischargeability determination
- § 36:16 —Adding creditors
- § 36:17 —Adding claims
- § 36:18 What constitutes good cause for reopening case
- § 36:19 —Fraud; absence of fraud
- § 36:20 —Matters relating to exempt property

TABLE OF CONTENTS

§ 36:21	— —Consolidating cases involving entireties property
§ 36:22	—Conduct of attorney
§ 36:23	—Resolving questions of title to property
§ 36:24	—Miscellaneous grounds—Reopening granted
§ 36:25	— —Reopening denied
§ 36:26	Who may seek to reopen—Debtors and creditors
§ 36:27	—Trustees
§ 36:28	—Other parties in interest
§ 36:29	Who may object to reopening
§ 36:30	Timeliness
§ 36:31	Notice
§ 36:32	Burden of proof
§ 36:33	Review

CHAPTER 37. APPEAL

I. GENERAL CONSIDERATIONS

§ 37:1	Appellate remedies
§ 37:2	Filing fees
§ 37:3	Proceedings in forma pauperis; appointment of counsel
§ 37:4	Appealability of final judgments, orders, and decrees and as of right
§ 37:5	—Decisions of district court sitting in bankruptcy
§ 37:6	—Finality requirement at BAP and district court level
§ 37:7	—Particular judgments, orders, and decrees as final
§ 37:8	—Particular judgments, orders, and decrees as not final
§ 37:9	Appealability of interlocutory orders—By leave of court
§ 37:10	— —Under collateral order or irreparable injury rule
§ 37:11	— —Particular orders as appealable
§ 37:12	— —Particular orders as not appealable
§ 37:13	—To court of appeals under 28 U.S.C.A. § 1292
§ 37:14	Direct appeals certified to the courts of appeal
§ 37:15	Matters not reviewable by statute
§ 37:16	Appeal as moot

- § 37:17 Review by mandamus
- § 37:18 Scope of review
- § 37:19 Standard of review—Clearly erroneous rule
- § 37:20 — —When is a finding clearly erroneous; burden of proof
- § 37:21 — —Rule as applicable to questions of fact only; when de novo standard applies
- § 37:22 — —Particular matters presenting questions of fact
- § 37:23 — —Particular matters presenting questions of law
- § 37:24 —Abuse of discretion standard
- § 37:25 —Harmless error rule

II. APPEAL TO BANKRUPTCY APPELLATE PANELS AND DISTRICT COURTS

A. GENERAL CONSIDERATIONS

- § 37:26 Bankruptcy Appellate Panels—Establishment and jurisdiction
- § 37:27 —Consent to panel appeal
- § 37:28 —Constitutionality of panels
- § 37:29 —Disqualification of judge
- § 37:30 —Precedential effect of panel decisions
- § 37:31 — —Reference by district court to United States magistrate not authorized
- § 37:32 District court jurisdiction; precedential effect of district court decisions

B. APPEALS PROCEDURES

- § 37:33 Applicable provisions
- § 37:34 Who may appeal
- § 37:35 —Entities statutorily prohibited from appealing
- § 37:36 Notice of appeal
- § 37:37 —When to file
- § 37:38 — —Docketing date as determinative of commencement of appeal period; separate document requirement
- § 37:39 — —Effect of premature filing
- § 37:40 — —Effect of particular motions on time for appeal
- § 37:41 —Extension of time for appeal
- § 37:42 — —Excusable neglect

TABLE OF CONTENTS

§ 37:43	— —Unique circumstances doctrine
§ 37:44	—Form and contents
§ 37:45	—Service of notice of filing
§ 37:46	—Effect of filing on bankruptcy court jurisdiction
§ 37:47	Motion for leave to appeal from interlocutory order or decree
§ 37:48	—When improperly taken appeal may be deemed motion for leave to appeal
§ 37:49	Effect of failure to take any steps beyond filing of notice of appeal; involuntary dismissal of appeal
§ 37:50	Voluntary dismissal of appeal
§ 37:51	Stay pending appeal, approval of supersedeas bond, or other relief pending appeal—Motion to bankruptcy court
§ 37:52	—Motion to district court or Bankruptcy Appellate Panel
§ 37:53	—Stay under Fed. R. Civ. P. 62
§ 37:54	—Bond requirement
§ 37:55	—Standards for granting stay
§ 37:56	—Effect of failure to obtain stay
§ 37:57	—On orders relating to sale or lease of property, or obtaining credit
§ 37:58	Filing and service of designated record items and statement of issues
§ 37:59	—Effect of failure to file and serve
§ 37:60	Record on appeal
§ 37:61	Obtaining and transmitting the record; docketing of appeal
§ 37:62	—Effect of failure to obtain and transmit record
§ 37:63	Briefs—When to file and serve; extension of time to file
§ 37:64	—Effect of failure to file timely brief
§ 37:65	—Form requirements
§ 37:66	—Length requirements
§ 37:67	—Effect of failure to comply with form and length requirements
§ 37:68	—Amicus curiae
§ 37:69	Filing and service of papers
§ 37:70	Motion practice
§ 37:71	—Emergency motions
§ 37:72	Oral argument

- § 37:73 Clerk's duties on disposition of appeal
- § 37:74 Rehearing after disposition
- § 37:75 Taxation of costs; award of attorney's fees
- § 37:76 Stay of judgment of appellate court
- § 37:77 Mediation

III. APPEAL TO COURT OF APPEALS

- § 37:78 Jurisdiction
- § 37:79 Applicable procedural provisions
- § 37:80 —Notice of appeal; time for filing
- § 37:81 —Petition for permission to appeal interlocutory order
- § 37:82 —Record on appeal
- § 37:83 —Stay or injunction pending appeal

IV. REVIEW BY UNITED STATES SUPREME COURT

- § 37:84 Jurisdiction; appellate procedure
- § 37:85 Review of courts of appeals cases
- § 37:86 Review of highest state court decisions