

SELECTED STATUTES & CASE LAW THAT IMPACT THE INTERPLAY BETWEEN BANKRUPTCY & MATRIMONIAL LAW & THE FACT PATTERN

**By
Emily Harper**

28 U.S.C. § 1334 – Jurisdiction of the Bankruptcy Court Regarding Certain Issues in Matrimonial Cases

Synopsis: The federal District Courts have original and exclusive jurisdiction over bankruptcy cases, and the District Court has exclusive control over the debtor's property as of the commencement of the bankruptcy case. With regard to civil proceedings arising under or related to the Bankruptcy Code, the District Courts have original but not exclusive jurisdiction. However, District Courts can choose not to hear a case arising under or related to the Bankruptcy Code if doing so is in the interest of justice or comity. Finally, if a District Court decides to abstain from hearing such a case, that decision is not reviewable.

Cases: *In re Hilsen*, 405 B.R. 49 (Bkrtcy. E.D.N.Y. 2009).
In re Moulterrie, 398 B.R. 501 (Bkrtcy. E.D.N.Y. 2008).
Barber v. Barber, 62 U.S. 582 (1858) (holding that federal courts do not have jurisdiction over divorce cases or alimony issues).

11 U.S.C. § 101(14)(A) – Domestic Support Obligation Defined

Synopsis: Domestic Support Obligations include money owed to a spouse, former spouse, or child of the debtor, such as alimony, maintenance, or support. These obligations are typically set forth in a separation agreement, divorce decree, or property settlement agreement. Under § 523, Domestic Support Obligations are nondischargeable in a bankruptcy proceeding. Thus, a debtor remains liable for his Domestic Support Obligations, even those which arise after the debtor files for bankruptcy.

(Also included in the definition of a Domestic Support Obligation is a debt owed to a governmental unit, such as debt resulting from a duty to support one's dependents.)

Cases: *In re Spong*, 661 F.2d 6 (2d Cir. 1981).
In re Ridder, 79 F.2d 524 (2d Cir. 1935).
In re Peters, 133 B.R. 291 (S.D.N.Y. 1991).

11 U.S.C. § 362(b)(2) – Exceptions to Automatic Stay

Synopsis: When a debtor files bankruptcy an automatic stay is generally imposed which prevents creditors from taking enforcement actions against the debtor or property of the estate, including efforts to collect money on pre-petition obligations. However, for policy reasons, there are exceptions to the automatic stay. For example, one who is owed a Domestic Support Obligation, such as a creditor spouse, has a greater need to collect than a commercial creditor would have. Thus, a court may lift the stay to allow a spouse, former spouse, child, or governmental unit to collect money or property that is not part of the bankruptcy estate already set aside for other creditors.

In addition, section 362(b)(2) allows one to begin or continue a civil action to establish paternity, or to establish or modify a Domestic Support Obligation, or to address matters of child custody or visitation, domestic violence, or the dissolution of a marriage, except to the extent that the dissolution proceeding pertains to the division of estate property.

Although state courts determine the proper amount of alimony and support, the question of whether the debt sought is indeed in the nature of alimony or support is determined by federal law.

Cases: *In re Hilsen*, 119 B.R. 435 (Bkrtcy. S.D.N.Y. 1990).
In re Palmer, 78 B.R. 402 (Bkrtcy. E.D.N.Y. 1987).

11 U.S.C. § 507(a)(1) – Priorities

Synopsis: With regard to the order in which creditors receive distribution from estate property, those who are owed Domestic Support Obligations get first priority after costs of administration. More specifically, Domestic Support Obligations owed to a spouse, former spouse, or child receive top priority, regardless of whether that person actually filed the claim or if the government filed the claim on that person's behalf. The relevant concern is not who filed the claim, but the party to whom the debt is owed. The next priority is Domestic Support Obligations owed to a governmental unit.

Any expenses incurred by the trustee in administering assets to pay such Domestic Support Obligations must be repaid before satisfying the actual Domestic Support Obligations. This essentially provides an incentive for the trustee to set aside assets to satisfy Domestic Support Obligations and also protects trustees who do so by reimbursing them.

Cases: *In re Moulterie*, 398 B.R. 501, (Bkrtcy. E.D.N.Y. 2008).

11 U.S.C. § 522 – Exemptions

Synopsis: In the interest of helping debtors get a fresh start upon filing for bankruptcy, certain property is exempt from the claims of creditors. Section 522(d) provides a list of categories of property that are exempt in a bankruptcy case and also allows states to opt out of the federal exemptions. New York has opted out of the federal exemptions. Examples of exemptions, some subject to dollar limits, are the debtor's homestead, car, household goods and furnishings, jewelry, clothes, tools of the trade, medical aids, personal injury benefits, and qualified pensions or retirement accounts. However, states are permitted to set the amounts of exemptions or to opt out of certain exemptions altogether under section 522(b).

Article 10-A of New York's Debtor & Creditor Law lays out New York's exemption scheme. (Discussed below in greater detail.)

Cases: *In re Arnold*, 33 B.R. 765 (Bkrcty. E.D.N.Y. 1983).

In re Hilsen, 405 B.R. 49 (Bkrcty. E.D.N.Y. 2009).

In re Moulterie, 398 B.R. 501, (Bkrcty. E.D.N.Y. 2008).

In re Keil, 88 R.2d 7 (2d Cir. 1937) (noting that exemption statutes are to be construed liberally in favor of the debtor).

N.Y.C.P.L.R. § 5206 -- Real Property Exempt from Application to The Satisfaction of Money Judgments

Synopsis: Under section 5206, also known as the "homestead exemption," a lot of land with a dwelling on it is one of the types of property exempt from being used to satisfy a money judgment as long as the homestead does not exceed \$50,000 in value above liens and encumbrances, and the homestead is owned and occupied as a principal residence. This exemption allows debtors to claim an exemption for \$50,000 of the value in a homestead. However, under section 5206(c), the homestead exemption ceases if the property is no longer used as a principal residence by a person for whose benefit it may so continue, except where the suspension of occupation is for a period not exceeding one year, and occurs in consequence of injury to, or destruction of, the dwelling house upon the premises.

In addition, no exempt homestead shall be exempt from taxation or from sale for non-payment of taxes or assessments.

Cases: *In re Moulterie*, 398 B.R. 501, (Bkrcty. E.D.N.Y. 2008) (noting that courts recognize the idea of constructive occupancy of the marital home when the debtor spouse leaves the principal marital residence pending the state court's resolution of property rights in the residence, while the debtor's family continues to inhabit the home).

In re Arnold, 33 B.R. 765 (Bkrcty. E.D.N.Y. 1983).

In re Rizzo, 21 B.R. 913 (Bkrtcy. W.D.N.Y. 1982).

11 U.S.C. § 523(a)(5) & 523(a)(15) – Dischargeable Debt

Synopsis: When a debt is discharged, the debtor is no longer liable for that debt. Domestic Support Obligations are not dischargeable. Consequently, the debtor remains liable for any debts in the nature of alimony, maintenance, or support that are subject to establishment in a separation agreement, divorce decree, property settlement, order of a court of record, or determination made by a governmental unit under nonbankruptcy law. Such debt must be owed to a spouse, former spouse, child, child's parent, legal guardian, responsible relative or governmental unit in order to be considered a Domestic Support Obligation.

Section 523(a)(15) distinguishes debts in the nature of alimony, maintenance and support from other debts connected with a marital relationship, such as a property settlement obligation, which arises in the course of a separation or divorce. The distinction plays no role in cases under chapters 7, 11, and 12. Under chapter 13, however, the distinction is significant because debts in the nature of alimony, maintenance, or support are nondischargeable, whereas property settlement obligations are dischargeable.

In addition, the issue of whether an obligation is alimony, maintenance, or support for the purposes of dischargeability is determined by federal bankruptcy law, not state law. However, the bankruptcy court may consider the relevant state law. One key factor in determining whether an obligation is in the nature of alimony, maintenance, or support -- as opposed to being a property settlement obligation -- is whether the parties intended it to support the debtor's spouse, former spouse, or child. Other factors to consider are: (1) labels in the agreement or order; (2) the income and needs of the parties at the time the obligation became fixed; (3) amount and outcome of property division; (4) whether the obligation terminates on obligee's death or remarriage or on emancipation of children; (5) number and frequency of payments; (6) waiver of alimony or support rights in agreement; (7) availability of state court procedures to modify the obligation or enforce it through contempt remedy; and (8) tax treatment of obligation.

Finally, the policy behind rendering Domestic Support Obligations nondischargeable is to ensure that the debtor fulfills his or her duty to provide for the well-being of his or her dependents. In 2005, the Bankruptcy Code was amended to make property division obligations nondischargeable in chapter 7 and 11 cases. In doing so, Congress acknowledged that alimony and support are no longer the only methods of financially protecting spouses and children. For instance, it is not uncommon for parties to trade higher support awards for greater property division awards that they otherwise would not have received.

Cases: *In re Spong*, 661 F.2d 6 (2d Cir. 1981).
Bieluch v. Cook, 216 F.3d 1071 (2d Cir. 2000).
In re Davis, 356 B.R. 385 (W.D. Pa. 2006).

In re Eisenberg, 18 B.R. 1001 (E.D.N.Y. 1982).
In re Kubera, 200 B.R. 13 (W.D.N.Y. 1996).
In re Peters, 133 B.R. 291 (S.D.N.Y. 1991).

11 U.S.C. § 547(c)(7) -- Preferences

Synopsis: In administering the bankruptcy estate, the trustee cannot avoid a transfer that was a good faith payment of debt for a Domestic Support Obligation. Again, Domestic Support Obligations encompass alimony, support, or maintenance owed to a spouse, former spouse, child, and governmental unit.

11 U.S.C. § 1325(a)(8) – Requirements to Confirm a Chapter 13 Plan

Synopsis: Chapter 13 allows the debtor to propose his own payment plan to deal with both his secured and unsecured debts. Once the court confirms the plan, the debtor usually makes his payments to the trustee who then distributes them to creditors pursuant to the plan. Section 1325(a) lists certain requirements to confirm a chapter 13 plan. For example, section 1325(a)(8) requires the debtor to have paid all his Domestic Support Obligations, as well as gives domestic support obligees the right to challenge the confirmation if the debtor has not paid his postpetition support. The goal of section 1325(a)(8) is to protect the non-monied spouse.

Upon satisfaction of the requirements set forth in section 1325(a), the court must confirm the plan. In other words, once the requirements are met, the court does not have discretion and cannot reject the plan. However, the statute does not state that all requirements under section 1325(a) must be met before a court can confirm a plan. Rather, it merely says that if the requirements *are* met then the court *must* confirm the plan.

One benefit of filing a chapter 13 petition is that there are fewer types of nondischargeable debts in chapter 13 cases.

Cases: *In re Santa Maria*, 128 B.R. 32 (Bkrtcy. N.D.N.Y. 1991).

11 U.S.C. § 1328 – Debts Not Discharged in A Chapter 13 Case

Synopsis: Under 1328(a), a debtor cannot be granted a discharge unless he certifies that all Domestic Support amounts payable that are due before the certification have been paid. Once a debtor complies with his confirmed chapter 13 plan, certain debts will be discharged and the debtor will no longer be liable for them. In addition, sometimes when the debtor is unable to pay his debt due to

circumstances beyond his control, such debt may be discharged under section 1328(b)-(c).

Section 1328 limits from discharge the following types of claims: (1) postpetition claims filed during the chapter 13 case without prior approval by the trustee when such approval was reasonable; (2) debts provided for in the plan or disallowed under section 502 if the debtor has received a prior bankruptcy discharge in a prior bankruptcy case if the case was filed within the time period specified within section 1328(f); (3) claims filed when the debtor has not completed a personal financial management instructional course as described in section 111; and (4) claim filed after the court provides notice and a hearing on the question of whether section 522(q) applies to the debtor.

A chapter 13 discharge may only be revoked if less than a year has passed since the discharge was granted and the discharge was obtained through fraudulent circumstances.

Cases: *In re Meltzer*, 11 B.R. 624 (Bkrcty. E.D.N.Y. 1981).

NYCPLR § 5205(c) & (d) – Trust Exemption & Income Exemption

Synopsis:

5205(c) Trust Exemptions → Property held by a trustee is exempt from being used to satisfy a money judgment. Such exempt property includes trusts, custodial accounts, annuities, insurance contracts, monies, assets or interests established as part of a plan qualified as: (1) an individual retirement account; or (2) a retirement or other plan established by a corporation or created as a result of rollovers from such plans; or (3) a plan that satisfies the requirements of § 457 of the Internal Revenue Code. It is worth noting, however, that this section does not impair any rights provided by a domestic relations order, such as maintenance or support.

Also, additions made to the assets described above are not exempt if they were made fraudulently or within the last ninety days before the interposition of the claim on which the money judgment was entered.

5205(d) Income Exemptions → 90% of the debtor's income or other payments from a trust addressed in section 5205(c) shall not be used to satisfy a money judgment (unless that amount is unnecessary to support the debtor and his dependents' reasonable needs). Other personal property that is exempt is 90% of the debtor's earnings for his personal services rendered any time after 60 days prior to an income execution being delivered to the sheriff or a motion being made to secure the debtor's earnings to satisfy the judgment. And finally, payments awarded in a matrimonial action for the support of the debtor wife or debtor child shall be exempt.

Cases: *In re Hilsen*, 405 B.R. 49 (Bkrtcy. E.D.N.Y. 2009).

NY Debtor & Creditor Law § 282 – Permissible Exemptions in Bankruptcy

Synopsis: An individual domiciled in New York may exempt from satisfaction of a money judgment the following types of property:

- Any personal and real property that is exempt under NYCPLR §§ 5205 and 5206;

- Insurance policies and annuities pursuant to section 3212 of the NY Insurance Law;

- Under § 3212, a debtor shall not be forced to exercise any rights in an annuity contract for the purpose of satisfying creditors' claims unless there is evidence of fraud on the debtor's part. However, a court may order the debtor to use funds from the annuity contract to pay creditors in installments if doing so would be just and proper. In determining what is just and proper, courts consider what amount would be reasonably necessary for the support of the debtor and his dependents, which includes factors such as the debtor's present and anticipated living expenses, the debtor's present and anticipated income from all sources, the age of the debtor and his or her dependents, the health of the debtor and his or her dependents, the debtor's job skills, training and education, and the debtor's other assets and liquidity of those assets.

- A motor vehicle not exceeding \$2,400 in value above liens and encumbrances of the debtor;

- The debtor's right to receive or the debtor's interest in: (a) social security benefits, unemployment or public assistance benefits; (b) veteran's benefits; (c) disability, illness, or unemployment benefits; (d) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and his dependents; and (e) payments under stock bonuses, pensions, profit sharing, or similar plans or contracts on account of illness, disability, death, age, or length of service, with few exceptions.

- The debtor's right to receive, or property that is traceable to: (a) an award under a crime victim's reparation law; (b) a payment for the wrongful death of someone of whom the debtor was a dependent to the extent reasonably necessary to support the debtor and his dependents; (c) a payment up to \$7,500 for personal injury of the debtor or someone of whom the debtor is a dependent; and (d) a payment for loss of future earnings of the debtor or someone of whom the debtor was a dependent to the extent reasonably necessary to support the debtor and his dependents.

Cases: *In re Lyons*, 381 B.R. 444 (Bkrtcy. S.D.N.Y. 2008).

In re Combes, 382 B.R. 186 (Bkrtcy. E.D.N.Y. 2008).

In re Lynch, 321 B.R. 114 (Bkrtcy. S.D.N.Y. 2005).

In re Moulterrie, 398 B.R. 501, (Bkrtcy. E.D.N.Y. 2008).

DISTRICT COURTS; JURISDICTION (CHAPTER 85)

28 USC § 1334 Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under this subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

DISTRICT

28 USC § 1408 Venue

Except as provided commenced in the di

(1) in which the States, or principal subject of such ca: immediately prece one-hundred-and- place of business, i of such person we

(2) in which the affiliate, general pa

28 USC § 1409 Venue related to cases und

(a) Except as otherw under title 11 or arisi in the district court i

(b) Except as provid title 11 may commenc a money judgment of less than \$16,425,⁴ or less than \$10,950,⁵ on resides.

(c) Except as provid title 11 may commenc successor to the debt district court for the c applicable nonbankru may be, may have con case under title 11 ha

(d) A trustee may cc related to a case unde of such case from the court for the district w nonbankruptcy venue

(e) A proceeding ar title 11, based on a cl operation of the busi

³ ED. NOTE: For cases c U.S.C. § 104(b).

⁴ ED. NOTE: For cases c 11 U.S.C. § 104(b).

⁵ ED. NOTE: For cases c 11 U.S.C. § 104(b).

assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

(13A) The term "debtor's principal residence"—

(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer.

(14) The term "disinterested person" means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determinat
ruptcy law by a gov

(D) not assigned to
assigned voluntarily b
such child's parent, leg
collecting the debt.

(15) The term "entity" i
United States trustee.

(16) The term "equity s

(A) share in a corpor
"stock", or similar secu

(B) interest of a limit

(C) warrant or right,
subscribe to a share, sec
(A) or (B) of this parag.

(17) The term "equity sec
the debtor.

(18) The term "family fai

(A) individual or indiv
whose aggregate debts
percent of whose aggre
debt for the principal re
spouse unless such debt
case is filed, arise out of
individual or such indiv
individual and spouse re
percent of such individu
for—

(i) the taxable year i

(ii) each of the 2d ar
the taxable year in which
individual and spouse was fi

(B) corporation or part
outstanding stock or equi
relatives of the members
conduct the farming oper;

(i) more than 80 per
related to the farming c

(ii) its aggregate debt;
percent of its aggregate i

² ED. NOTE: For cases commenced

³ ED. NOTE: For cases commenced

any debt owed by such assisted

ection 3 of the Federal Deposit
r State credit union (as those
eral Credit Union Act), or any
stitution or credit union; or

r of works subject to copyright
n capacity.

municipality concerning which a

g incidental property, without
to real property; and

cooperative unit, a mobile or

person that—

der, or an insider;

re the date of the filing of the
e debtor; and

diverse to the interest of the
urity holders, by reason of any
with, or interest in, the debtor,

" means a debt that accrues
lief in a case under this title,
is provided under applicable
provision of this title, that is—

e debtor or such child's parent,

, or support (including assis-
ich spouse, former spouse, or
thout regard to whether such

efore, on, or after the date of
itle, by reason of applicable

cree, or property settlement

(iii) a determination made in accordance with applicable nonbank-
ruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is
assigned voluntarily by the spouse, former spouse, child of the debtor, or
such child's parent, legal guardian, or responsible relative for the purpose of
collecting the debt.

(15) The term "entity" includes person, estate, trust, governmental unit, and
United States trustee.

(16) The term "equity security" means—

(A) share in a corporation, whether or not transferable or denominated
"stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or
subscribe to a share, security, or interest of a kind specified in subparagraph
(A) or (B) of this paragraph.

(17) The term "equity security holder" means holder of an equity security of
the debtor.

(18) The term "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation
whose aggregate debts do not exceed \$3,544,525² and not less than 50
percent of whose aggregate noncontingent, liquidated debts (excluding a
debt for the principal residence of such individual or such individual and
spouse unless such debt arises out of a farming operation), on the date the
case is filed, arise out of a farming operation owned or operated by such
individual or such individual and spouse, and such individual or such
individual and spouse receive from such farming operation more than 50
percent of such individual's or such individual and spouse's gross income
for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such
individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the
outstanding stock or equity is held by one family, or by one family and the
relatives of the members of such family, and such family or such relatives
conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets
related to the farming operation;

(ii) its aggregate debts do not exceed \$3,544,525³ and not less than 50
percent of its aggregate noncontingent, liquidated debts (excluding a debt

² ED. NOTE: For cases commenced before April 1, 2007, the dollar amount is \$3,237,000.

³ ED. NOTE: For cases commenced before April 1, 2007, the dollar amount is \$3,237,000.

SUBCHAPTER IV Administrative Powers

§ 361 Adequate protection

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;

(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or

(3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

BANKRUPTCY RULE REFERENCE: 4001

§ 362 Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

due.

(c) Notwithstanding section 362 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

§ 506 Determination of secured status

(a) (1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

BANKRUPTCY RULE REFERENCES: 3012, 7001 and 9014

§ 507 Priorities

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims of the date of the filing of the petition, recoverable by a spouse, parent, legal guardian, or child, if such claim is filed by such person, on the date of the filing of the petition, shall be applied as provided in the bankruptcy law.

(B) Subject to the provisions of this section, claims for domestic support obligations, including child support, alimony, maintenance, or child support, are assigned to the governmental unit that funds received after the date of the filing of the petition in accordance with applicable law.

(C) If a trustee is appointed under sections 1202, or 1302, the trustee shall administer the claims of claims under such provisions of the bankruptcy law.

(2) Second, administrative expenses, including fees and costs, shall be paid in full.

(3) Third, unsecured claims shall be paid in full.

(4) Fourth, allowed unsecured claims of each individual or corporation, shall be paid in full before the date of the filing of the petition, the debtor's business, which shall be paid in full.

(A) wages, salaries, or commissions, including sick leave pay earned by an individual, shall be paid in full.

(B) sales commissions, shall be paid in full only if the employee, acting in the ordinary course of business, services for the debtor, only if, during the 12 months preceding the date of the filing of the petition, the individual contractor in the ordinary course of business, services for the debtor.

(5) Fifth, allowed unsecured claims shall be paid in full.

²² ED. NOTE: For cases coming under the old Bankruptcy Act.

²³ ED. NOTE: See note 22 supra.

termination by the court of
d with responsibility for
estate, the debtor, or a
any otherwise applicable

on property in which the
section 553 of this title,
creditor's interest in the
of the amount subject to
to the extent that the
ect to setoff is less than
e determined in light of
position or use of such
disposition or use or on

pter 7 or 13, such value
d claim shall be deter-
ty as of the date of the
ale or marketing. With
r household purposes,
hant would charge for
1 of the property at the

d by property the value
section, is greater than
holder of such claim,
r charges provided for
claim arose.

allowed secured claim
g, or disposing of, such
h claim, including the
the property.

debtor that is not an

b)(5) or 502(e) of this

y to the failure of any
this title.

ie following order:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

(3) Third, unsecured claims allowed under section 502(f) of this title.

(4) Fourth, allowed unsecured claims, but only to the extent of \$10,950²² for each individual or corporation, as the case may be, earned within 180 days²³ before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(5) Fifth, allowed unsecured claims for contributions to an employee benefit

²² ED. NOTE: For cases commenced before April 1, 2007, the dollar amount is \$10,000.

²³ ED. NOTE: See note 22 *supra*.

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B) a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

(C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;

(D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;

(E) an excise tax on—

(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or

(ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;

(F) a customs duty arising out of the importation of merchandise—

(i) entered for consumption within one year before the date of the filing of the petition;

(ii) covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or

(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisal or classification of such merchandise was not available to the appropriate customs officer before such date; or

(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss.

An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

(9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution.

s before the date of the
f the debtor's business,

such plan multiplied by

ees under paragraph (4)
l by the estate on behalf
t plan.

n, as defined in section
operates a grain storage
grain or the proceeds of

inst a debtor who has
ugh a sale or conversion,
e storage or processing

individual.

duals, to the extent of
eposit, before the com-
n the purchase, lease, or
the personal, family, or
vered or provided

ental units, only to the

ceipts for a taxable year
tition—

cluding extensions, after
etition;

the filing of the petition,

promise with respect to
240-day period, plus 30

dings against collections
ring that 240-day period,

dollar amount is \$4,925.

dollar amount is \$2,225.

(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

(b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

§ 508 Effect of distribution other than under this title

If a creditor of a partnership debtor receives, from a general partner that is not a debtor in a case under chapter 7 of this title, payment of, or a transfer of property on account of, a claim that is allowed under this title and that is not secured by a lien on property of such partner, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor from such general partner.

§ 509 Claims of codebtors

(a) Except as provided in subsection (b) or (c) of this section, an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

(b) Such entity is not subrogated to the rights of such creditor to the extent that—

(1) a claim of such entity for reimbursement or contribution on account of such payment of such creditor's claim is—

(A) allowed under section 502 of this title;

(B) disallowed other than under section 502(e) of this title; or

(C) subordinated under section 510 of this title; or

(2) as between the debtor and such entity, such entity received the consideration for the claim held by such creditor.

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or

that has secured, such claim either through payments
BANKRUPTCY RULE REFERENCE

§ 510 Subordination

(a) A subordination agreement has the same extent that such agreement has under applicable law.

(b) For the purpose of rescission of a purchase of a claim of a debtor, for damages arising from a claim, shall be subordinated to the claim or interest representing common stock, such claim

(c) Notwithstanding such hearing, the court may—

(1) under principles of distribution all or part of a claim or all or part of interest; or

(2) order that any lien in the estate.

BANKRUPTCY RULE REFERENCE

§ 511 Rate of interest on

(a) If any provision of this title or on an administrative claim of a creditor to receive the present value of interest shall be the rate

(b) In the case of taxes payable, interest shall be determined as confirmed.

§ 523 Exceptions to discharge.⁴⁴

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained, by—

(A) false pretenses, a false representation, or actual fraud; other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) (i) for purposes of subparagraph (A)

(I) consumer debts owed to a single creditor and aggregating more than \$550⁴⁵ for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

⁴⁴ ED. NOTE: The following is a related provision of section 304 ("Protection of Child Support and Alimony") of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394 (1994):

(g) APPEARANCE BEFORE COURT.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy case or proceeding in any bankruptcy court or district court of the United States if such creditors or representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

⁴⁵ ED. NOTE: For cases commenced before April 1, 2007, the dollar amount is \$500.

(II) cas
of consu
individu
this title,

(ii) for pu

(I) the
the same

(II) the
services r
debtor or

(3) neither liste
name, if known to
time to permit—

(A) if such de
subsection, time
or actual knowl

(B) if such de
subsection, tim
determination c
graphs, unless s
time for such ti

(4) for fraud or
ment, or larceny;

(5) for a domesti

(6) for willful and
property of another

(7) to the extent
for the benefit of
pecuniary loss, othe

(A) relating to
subsection; or

(B) imposed wi
three years before

(8) unless excepti
impose an undue ha

(A) (i) an educ
guaranteed by
in whole or in j

(ii) an obliga
scholarship, or

⁴⁶ ED. NOTE: For cases cc

, or 1328(b) of this title

n section 507(a)(3) or
such tax was filed or

ent report or notice, if

such return, report, or
der any extension, and
e petition; or

ulent return or willfully
ax;

newal, or refinancing of

ual fraud, other than a
ancial condition;

icial condition;

is liable for such money,
id

ublished with intent to

r and aggregating more
urred by an individual
for relief under this title

304 ("Protection of Child
Pub. L. No. 103-394 (1994):
eir representatives shall be
ithout meeting any special
n any bankruptcy case or
the United States if such
that contains information
acteristics.

dollar amount is \$500.

(II) cash advances aggregating more than \$825⁴⁶ that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph—

(I) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(II) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

(A) (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

⁴⁶ ED. NOTE: For cases commenced before April 1, 2007, the dollar amount is \$750.

ified education loan, as defined
e Code of 1986, incurred by a

debtor's operation of a motor
s unlawful because the debtor
another substance;

eduled by the debtor in a prior
under the Bankruptcy Act in
ied a discharge under section
der section 14c(1), (2), (3), (4),

able order, or consent order or
s or of any State, issued by a
y, or contained in any settle-
ising from any act of fraud or
ommitted with respect to any

ny commitment by the debtor
ency to maintain the capital of
is paragraph shall not extend
e terminated due to any act of

issued under title 18, United

that would be nondischarge-

l unit, other than the United
ragraph (1);

d under Federal election law;

e debtor and not of the kind
he debtor in the course of a
eparation agreement, divorce
r a determination made in
ernmental unit;

nd payable after the order for
to the debtor's interest in a
of a cooperative corporation,
the debtor or the trustee has
est in such unit, such corpo-
shall except from discharge
ion fee or assessment for a
in a pending or subsequent

ourt for the filing of a case,
and expenses assessed with

respect to such filing, regardless of an assertion of poverty by the debtor under
subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law),
or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or
a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established
under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue
Code of 1986, under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement
Income Security Act of 1974, or subject to section 72(p) of the Internal
Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of
chapter 84 of title 5, that satisfies the requirements of section 8433(g) of
such title;

but nothing in this paragraph may be construed to provide that any loan made
under a governmental plan under section 414(d), or a contract or account
under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim
or a debt under this title; or

(19) that—

(A) is for—

(i) the violation of any of the Federal securities laws (as that term is
defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of
the State securities laws, or any regulation or order issued under such
Federal or State securities laws; or

(ii) common law fraud, deceit, or manipulation in connection with the
purchase or sale of any security; and

(B) results, before, on, or after the date on which the petition was filed,
from—

(i) any judgment, order, consent order, or decree entered in any Federal
or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty,
citation, restitutionary payment, disgorgement payment, attorney fee,
cost, or other payment owed by the debtor.

For purposes of this subsection, the term "return" means a return that satisfies the
requirements of applicable nonbankruptcy law (including applicable filing
requirements). Such term includes a return prepared pursuant to section 6020(a)
of the Internal Revenue Code of 1986, or similar State or local law, or a written
stipulation to a judgment or a final order entered by a nonbankruptcy tribunal,
but does not include a return made pursuant to section 6020(b) of the Internal
Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted
from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under
section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the
Higher Education Act of 1965, or under section 733(g) of the Public Health Service

Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

BANKRUPTCY RULE REFERENCES: 1007, 1009, 1019, 2002, 4007, 5005 and 7001

§ 524 Effect of discharge

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c)

and 523(d) of this title
on the date of the fil
whether or not disch
waived.

(b) Subsection (a)(3) o

(1) (A) the debtor's s
or a debtor in a case
B 21 of the date of the fili

(B) the court does
concerning the debt

(2) (A) the court was under chapter 7 of title 11 of the filing of the petition

(B) a determination made by the bankruptcy court for a determination granted a discharge.

(c) An agreement between or among two or more persons for which, in whole or in part, bankruptcy law under this title is enforceable by nonbankruptcy law, whether

(1) such agreement, section 727, 1141, 1228,

(2) the debtor received before the time at which

(3) such agreement accompanied by a declaration of the debtor during the continuation, which states that—

(A) such agreement by the debtor;

(B) such agreement
a dependent of the d

(C) the attorney fees and expenses of—

(i) an agreement

(ii) any default u

(4) the debtor has not
discharge or within sixt
whichever occurs later,
claim;

(5) the provisions of sub-section (1) and

forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(f) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to (or for the benefit of) a repo participant or financial participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer, made by or to (or for the benefit of) a swap participant or financial participant, under or in connection with any swap agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

(i) (1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7-209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, or any successor to such section 7-209.

(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to (or for the benefit of) a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.

§ 547 Preferences

(a) In this section—

(1) "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in

process, or materials used such as crops or livestock,

(2) "new value" means a credit, or release by a transferee in a transaction trustee under any applicable not include an obligation s

(3) "receivable" means ri earned by performance; ar

(4) a debt for a tax is ir without penalty, including

(b) Except as provided in sui avoid any transfer of an intere

(1) to or for the benefit o

(2) for or on account of a transfer was made;

(3) made while the debto

(4) made—

(A) on or within 90 day

(B) between ninety day petition, if such creditor a

(5) that enables such cre receive if—

(A) the case were a case

(B) the transfer had not

(C) such creditor receive the provisions of this title.

(c) The trustee may not avoid

(1) to the extent that such

(A) intended by the debt transfer was made to be a to the debtor; and

(B) in fact a substantially

(2) to the extent that such tr debtor in the ordinary course the transferee, and such transi

(A) made in the ordinary debtor and the transferee; c

(B) made according to orc

stitution, financial participation made by or to (or for the benefit of) a merchant, stockbroker, financial institution, or agency, in connection with a commodity contract, as defined in section 548(b), before the commencement of the case.

(B), and 548(b) of this title, for the benefit of) a repurchase agreement, except under section 548(b).

(B) and 548(b) of this title, for the benefit of) a swap agreement, except under section 548(b).

under sections 544(a), 545, and 548(b) of this title, the trustee may avoid a transfer made by the debtor in a case under chapter 11 of this title, if the transfer is in the best interests of the estate and subject to the prior claims of creditors, the proceeds of such goods, before the commencement of the case, or the price of such goods, that arose before the commencement of the case.

under section 545, the trustee may avoid a transfer made by the debtor, or other costs of the case.

applied in a manner that is similar to the effect on the date of the filing of the petition of the Consumer Protection Act.

under section 548(b) the trustee may avoid a master netting agreement, or a master netting agreement, before the commencement of the case, except to the extent that the transfer is made under an individual contract.

held, held for sale or lease, or materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the transferee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) "receivable" means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was—

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

- (3) that creates a security interest in property acquired by the debtor—
- (A) to the extent such security interest secures new value that was—
- (i) given at or after the signing of a security agreement that contains a description of such property as collateral;
 - (ii) given by or on behalf of the secured party under such agreement;
 - (iii) given to enable the debtor to acquire such property; and
 - (iv) in fact used by the debtor to acquire such property; and
- (B) that is perfected on or before 30 days after the debtor receives possession of such property;
- (4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—
- (A) not secured by an otherwise unavoidable security interest; and
- (B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;
- (5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—
- (A) (i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or
 - (ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or
 - (B) the date on which new value was first given under the security agreement creating such security interest;
- (6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;
- (7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;
- (8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600; or
- (9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475.⁵⁰
- (d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that

⁵⁰ ED. NOTE: For cases commenced before April 1, 2007, the dollar amount is \$5,000.

would have been avoidable liability of such surety under extent of the value of such to the trustee.

(e) (1) For the purposes of

(A) a transfer of real interest of a seller or purchaser is perfected when a bond against whom applicable acquire an interest that

(B) a transfer of a fixed when a creditor on a superior to the interest

(2) For the purposes of this subsection, a transfer

(A) at the time such transferee, if such transfer except as provided in

(B) at the time such transfer such 30 days; or

(C) immediately before is not perfected at the

(i) the commencement

(ii) 30 days after the the transferee.

(3) For the purposes of has acquired rights in the

(f) For the purposes of the insolvent on and during the of the petition.

(g) For the purposes of the avoidability of a transfer under party in interest against who proving the nonavoidability

(h) The trustee may not avoid an alternative repayment security debtor created by an approved

(i) If the trustee avoids under and 1 year before the date of that is not an insider for the shall be considered to be a creditor that is an insider.

BANKRUPTCY RULE REFERENCES:

would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e) (1) For the purposes of this section—

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) the commencement of the case; or

(ii) 30 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budgeting and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

BANKRUPTCY RULE REFERENCES: 6010, 7001 and 9017

§ 1325 Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—⁷²

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to

⁷² ED. NOTE: Section 1228(b) of the 2005 Act provides: "CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court."

other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2) if the debtor has current monthly income, when multiplied by 12, greater than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$575⁷⁴ per month for each individual in excess of 4.

(4) For purposes of this subsection, the “applicable commitment period”—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$575⁷⁵ per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

BANKRUPTCY RULE REFERENCES: 1007, 2002 and 3015

§ 1326 Payments

(a) (1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

(A) proposed by the plan to the trustee;

(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief,

⁷⁴ ED. NOTE: For cases commenced before April 1, 2007, the dollar amount is \$525.

⁷⁵ ED. NOTE: See note 74 *supra*.

1(A) by the amount so paid and payment, including the amount

irectly to a creditor holding an
erty to the extent the claim is
y by the debtor for that portion
e order for relief, reducing the
ount so paid and providing the
cluding the amount and date of

shall be retained by the trustee
a plan is confirmed, the trustee
ce with the plan as soon as is
trustee shall return any such
nd owing to creditors pursuant
any unpaid claim allowed under

on notice and a hearing, modify,
under this subsection pending

ng of a case under this chapter,
roperty subject to a lease or
t to the purchase price of such
litor reasonable evidence of the
ge with respect to the use or
o so for so long as the debtor

itors under the plan, there shall

section 507(a)(2) of this title;

on 586(b) of title 28 is serving
tanding trustee under section

ed compensation due to the
se pursuant to section 707(b),
unpaid in a case converted to
tion 707(b) and refiled under
pensation, which shall be paid

ining duration of the plan; and
e greater of—

, the dollar amount is also \$25.

(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

(d) Notwithstanding any other provision of this title—

(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior case under this title; and

(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).

BANKRUPTCY RULE REFERENCES: 3010, 3011, 3015, 3021 and 9006

§ 1327 Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

BANKRUPTCY RULE REFERENCE: 3015

§ 1328 Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

(b) Subject to subsection (d), at any time after the confirmation of the plan and

after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5) of this title; or

(2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

(1) such discharge was obtained by the debtor through fraud; and

(2) the requesting party did not know of such fraud until after such discharge was granted.

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

(g) (1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(2) Paragraph (1) shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less

infrequently than annual

(h) The court may not after notice and a hearing of the order granting the believe that—

(1) section 522(q)(1)

(2) there is pending a of a felony of the kind the kind described in s

BANKRUPTCY RULE REFERENC

§ 1329 Modification of p

(a) At any time after c payments under such plan the trustee, or the holder

(1) increase or reduce provided for by the pl

(2) extend or reduce

(3) alter the amount for by the plan to the e claim other than unde

(4) reduce amounts expended by the debt any dependent of the d insurance coverage) if demonstrates that—

(A) such expenses

(B) (i) if the debtor materially larger necessary to main

(ii) if the debt materially larger debtor who purch expenses, age, and location with the health insurance

(C) the amount is disposable income u and upon request of any p was purchased.

(b) (1) Sections 1322(a) of section 1325(a) of th this section.

frequently than annually thereafter.

(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

BANKRUPTCY RULE REFERENCES: 1007, 1007-I, 4004, 4006, 4007 and 7001

§ 1329 Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments;

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

(A) such expenses are reasonable and necessary;

(B) (i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.

(b) (1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.