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Bankruptcy Basics: A Primer

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Summary

U.S. bankruptcy law has two central aims. First, bankruptcy law seeks to relieve debtors of certain obligations they are unable to repay by providing them with a "fresh start" from financial difficulties. At the same time, bankruptcy law attempts to preserve the countervailing interests of creditors and other stakeholders by maximizing total creditor return in an orderly and efficient fashion. Congress and the courts have established a complex system of statutes, procedural rules, and judicial precedents intended to balance these competing interests.

Various types of debtors—from individual consumers with modest incomes to the largest multinational corporations—may potentially encounter difficulty repaying their debts. To accommodate the differing needs of such debtors, the Bankruptcy Code—which is the primary source of bankruptcy law in the United States—contains a variety of "Chapters" which create several different forms of bankruptcy proceedings. Although the end goal of each of those proceedings is to balance the conflicting interests of debtors, creditors, and other stakeholders, each Chapter has its own procedures, eligibility requirements, and forms of relief. Whereas some Chapters aim to liquidate the debtor, others attempt to reorganize the debtor so that it may continue to operate as a going concern, while still others adjust the debtor's debts.

This report serves as a primer for Members and their staffs on the basics of U.S. bankruptcy law. The report provides a brief overview of the most essential concepts necessary for an informed understanding of the U.S. bankruptcy system, including

- the competing policies underlying the Bankruptcy Code;
- the sources of bankruptcy law;
- the organization of the Bankruptcy Code;
- the key players in a bankruptcy proceeding;
- the initiation of a bankruptcy case;
- the "automatic stay" of creditor actions against the debtor;
- the various types of proceedings established by different Chapters of the Bankruptcy Code, as well as the differences between those proceedings; and
- the "discharge" of debt.

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The U.S. Constitution grants Congress the authority "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States."[1] Pursuant to that authority, Congress has enacted a statute called the "**Bankruptcy Code**"[2] which, along with other sources of law,[3] governs bankruptcies in the United States. The Bankruptcy Code generally attempts to balance two competing policy concerns.[4] On the one hand, bankruptcy aims to give honest debtors[5] a "fresh start"—that is, to grant debtors relief from certain debts they cannot repay—so that they may "reorder their affairs, make peace with their creditors, and enjoy 'a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.'"[6] This fresh start generally comes in the form of a "**discharge**"[7] of many forms of the debtor's debts, which consists of "a legal right not to pay" the discharged debts as well as "safeguards against harassment by the creditor"[8] whose debt is discharged.[9] At the same time, however, the bankruptcy system also attempts to maximize total creditor return by distributing a subset of the debtor's assets or income to creditors in an orderly, equitable, and efficient fashion.[10] Thus, "Congress and the judiciary are constantly striving to achieve a wise balance between" offering "a fresh start for debtors" and ensuring "fairness to creditors."[11] To that end, Congress has frequently amended the Bankruptcy Code since its initial enactment in 1978 in an attempt to recalibrate that balance.[12]

Because recent estimates indicate that "over a million people file bankruptcy every year,"[13] bankruptcy law is vitally important to Congress and the nation as a whole. This report accordingly provides a primer for Members and their staffs on the basics of U.S. bankruptcy law. In so doing, the report provides a broad overview[14] of the most essential concepts necessary for an informed understanding of the U.S. bankruptcy system, including

- the competing policies underlying the Bankruptcy Code;
- the sources of bankruptcy law;

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[1] U.S. CONST. art. I, § 8, cl. 4.

[2] 11 U.S.C. §§ 101-1532. **Appendix A** contains a glossary that defines all terms that are highlighted in **bold** in this report.

[3] *See infra* "The Bankruptcy Code and Other Sources of Bankruptcy Law."

[4] *See, e.g.*, Flores v. Yarnell (*In re* Flores), Nos. NV-09-1263-DJuP, 08-21047-MKN, 2010 WL 6259989, at *6 n.14 (B.A.P. 9th Cir. Apr. 6, 2010).

[5] See *infra* "The Key Players in a Bankruptcy Case" and **Appendix A** for the definition of "debtor."

[6] *E.g.*, Grogan v. Garner, 498 U.S. 279, 286 (1991) (quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)).

[7] *See infra* "Discharge."

[8] See *infra* "The Key Players in a Bankruptcy Case" and **Appendix A** for the definition of "creditor."

[9] *In re* Walker, 180 B.R. 834, 840 (Bankr. W.D. La. 1995). *Accord, e.g.*, 11 U.S.C. § 524(a) (describing the legal effect of a bankruptcy discharge).

[10] *E.g.*, Hoseman v. Weinschneider, 322 F.3d 468, 475 (7th Cir. 2003); Schaffer v. CC Invs., LDC, 286 F. Supp. 2d 279, 281 (S.D.N.Y. 2003).

[11] *E.g.*, *In re* Harding, 423 B.R. 568, 575 (Bankr. S.D. Fla. 2010).

[12] *See* Pamela Kohlman Webster, *The Malpractice of Health Care Bankruptcy Reform*, 32 LOY. L.A. L. REV. 1045, 1045 (1999).

[13] Pamela Foohey *et al.*, *"No Money Down" Bankruptcy*, 90 S. CAL. L. REV. 1055, 1056-57 (2017).

[14] This report is not intended to provide an exhaustive treatment of all bankruptcy-related topics, and it intentionally omits more advanced concepts that are unnecessary for an elementary understanding of the bankruptcy process. Well-known treatises that analyze U.S. bankruptcy law in greater depth include HENRY J. SOMMER & RICHARD LEVIN, COLLIER ON BANKRUPTCY (16th ed. 2011) and WILLIAM L. NORTON JR. & WILLIAM L. NORTON, III, NORTON BANKRUPTCY LAW & PRACTICE (3d ed. 2018).

- the organization of the Bankruptcy Code;
- the key players in a bankruptcy proceeding;
- the initiation of a bankruptcy case;
- the "automatic stay" of creditor actions against the debtor;
- the various types of proceedings established by different "Chapters" of the Bankruptcy Code, as well as the differences between those proceedings; and
- the discharge of debt.

The Bankruptcy Code and Other Sources of Bankruptcy Law

As noted above, the Bankruptcy Code is the primary source of bankruptcy law in the United States.[15] The Bankruptcy Code is codified at Title 11 of the United States Code and is divided into nine distinct "Chapters."[16] The first three Chapters—Chapter 1 (General Provisions),[17] Chapter 3 (Case Administration),[18] and Chapter 5 (Creditors, the Debtor, and the Estate)[19]—contain provisions that are generally applicable to most bankruptcy cases.[20] The remaining Chapters, which this report discusses below, create different types of bankruptcy proceedings for different types of debtors.

The Bankruptcy Code is not, however, the only source of U.S. bankruptcy law. For one, the Federal Rules of Bankruptcy Procedure,[21] which are "rules promulgated by the U.S. Supreme Court (on the recommendation of the U.S. Judicial Conference and its committees, and with the consent of Congress)," "provide a substantial set of procedural rules" that govern bankruptcy proceedings in the United States.[22] Many courts have supplemented the Federal Rules of Bankruptcy Procedure by promulgating their own local procedural rules and orders that govern bankruptcy cases in their respective districts.[23] The Judicial Conference of the United States has

[15] Michelle M. Harner, *The Corporate Governance and Public Policy Implications of Activist Distressed Debt Investing*, 77 FORDHAM L. REV. 703, 729 (2008).

[16] *See* 11 U.S.C. §§ 101-1532.

[17] *Id*. §§ 101-112.

[18] *Id*. §§ 301-366. Note that, with a single exception, the Bankruptcy Code contains no even-numbered Chapters. *See id*. §§ 101-1174, 1301-1532. *But see id*. §§ 1201-1232 (Chapter 12 of the Bankruptcy Code).

[19] *Id*. §§ 501-562.

[20] Jeffrey J. Harmon *et al.*, *Surviving a Collision at the Intersection of CERCLA and the Code*, 20 N. KY. L. REV. 47, 48 (1992) (describing the "provisions contained in Chapters 1, 3, and 5 of the Bankruptcy Code" as "generally applicable"). *But see, e.g.*, 11 U.S.C. § 901(a) (rendering certain provisions of Chapters 3 and 5 inapplicable to bankruptcy cases filed by a municipality).

[21] *See* FED. R. BANKR. P. 1001-9037. *See also* 28 U.S.C. § 2075 (governing the promulgation of bankruptcy rules).

[22] Hon. Samuel L. Bufford, *Center of Main Interests, International Insolvency Case Venue, and Equality of Arms: The* Eurofood *Decision of the European Court of Justice*, 27 NW. J. INT'L L. & BUS. 351, 412 (2007).

[23] Daniel A. Austin, *Bankruptcy and the Myth of "Uniform Laws,"* 42 SETON HALL L. REV. 1081, 1088-90 (2012) ("Local bankruptcy rules are district-wide rules that apply to bankruptcy proceedings generally . . . Bankruptcy courts also issue orders known as 'general procedure orders' or 'standing orders.' Like local rules, standing orders govern procedures and practices in the bankruptcy court.").

also promulgated official bankruptcy forms that litigants must use as templates when filing certain kinds of documents in a bankruptcy case.[24]

Other federal laws can impact bankruptcy cases as well. For example, both the U.S. Code and the U.S. Constitution restrict the types of issues that a bankruptcy judge[25] may adjudicate.[26] Additionally, "certain sections of the Bankruptcy Code . . . expressly incorporate state law, which is often different from state to state."[27]

The Key Players in a Bankruptcy Case

Although many types of people and entities can potentially play critical roles in a bankruptcy proceeding,[28] several participants in the bankruptcy process are particularly important. Perhaps the most important participants are the **debtor** (who seeks relief from debts he cannot repay)[29] and the **creditors** (who seek to promptly and efficiently collect as much of their debts as they can).[30]

Of equal importance is the **bankruptcy judge**, who generally presides over the bankruptcy proceeding; reviews and rules upon filings submitted by participants in the bankruptcy case; resolves certain types of disputes between the parties; and performs other similar duties.[31] The U.S. Courts of Appeals appoint bankruptcy judges to serve "as judicial officers of the United States district court[s] established under Article III of the Constitution" for fourteen-year terms.[32] Unlike U.S. District Judges, however, bankruptcy judges "enjoy neither tenure during good behavior nor salary protection,"[33] and therefore do not exercise "the judicial power of the United

[24] *See* FED. R. BANKR. P. 9009(a) ("The Official Forms prescribed by the Judicial Conference of the United States shall be used . . . ."); Official Bankruptcy Forms B 101-B 4100R.

[25] See *infra* "The Key Players in a Bankruptcy Case" and **Appendix A** for the definition of "bankruptcy judge."

[26] *See, e.g.*, 28 U.S.C. § 157 (specifying which cases a bankruptcy judge "may hear and determine"); Stern v. Marshall, 564 U.S. 462, 469 (2011) (articulating limits that Article III of the U.S. Constitution places upon a bankruptcy court's authority to adjudicate certain matters).

[27] Austin, *supra* note 23, at 1082. *See also id*. at 1086-87 (listing examples of "state law incorporated into the Bankruptcy Code").

[28] *See, e.g.*, 11 U.S.C. § 1109(b) ("A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in [certain types of bankruptcy cases].").

[29] *See, e.g., In re* Kestella, 269 B.R. 188, 192 (S.D. Ohio 2001) ("One of the most important policies behind the bankruptcy remedy is the provision of a 'fresh start' to debtors.").

[30] *See, e.g.*, Hoseman v. Weinschneider, 322 F.3d 468, 475 (7th Cir. 2003) ("The administration of bankruptcy estates has twin goals of maximization of realization on creditors' claims and of prompt and efficient administration of the estate.").

[31] *E.g.*, Hon. Stephen A. Stripp, *An Analysis of the Role of the Bankruptcy Judge and the Use of Judicial Time*, 23 SETON HALL L. REV. 1329, 1336-37, 1344 (1993). *See also* 28 U.S.C. § 157(b) ("Bankruptcy judges may hear and determine all cases under [the Bankruptcy Code] and all core proceedings arising under [the Bankruptcy Code], or arising in a case under [the Bankruptcy Code].").

[32] 28 U.S.C. § 152(a)(1).

[33] Stern v. Marshall, 564 U.S. 462, 469 (2011).

States" as defined in Article III of the U.S. Constitution.[34] As a consequence, both the U.S. Code[35] and the U.S. Constitution restrict a bankruptcy judge's authority to adjudicate certain matters.[36]

Serving as "an auxiliary to the Bankruptcy Court"[37] is the **United States Trustee**, who, among other duties,[38] oversees bankruptcy cases in most jurisdictions[39] in order "to prevent fraud, dishonesty, and overreaching in the bankruptcy system."[40] The United States Trustee works "under the general supervision of the Attorney General" of the United States, who "provide[s] general coordination and assistance to the United States trustees."[41]

Not to be confused with the United States Trustee is the **case trustee**,[42] whose role in the bankruptcy proceeding differs depending on which Chapter of the Bankruptcy Code the bankruptcy case proceeds under.[43] Some Chapters contemplate a major role for the case trustee;[44] other Chapters contemplate that a case trustee will have no role in the proceeding whatsoever absent exceptional circumstances.[45] A case trustee who is appointed in a case under Chapter 7 of the Bankruptcy Code is known as the "Chapter 7 trustee";[46] a case trustee appointed in a Chapter

[34] *See* U.S. CONST. art. III, § 1 ("The judges, both of the supreme and inferior courts, shall hold their offices *during good behaviour*, and shall, at stated times, receive for their services, a compensation, *which shall not be diminished during their continuance in office*.") (emphasis added).

[35] *See* 28 U.S.C. § 157 (specifying which cases a bankruptcy judge "may hear and determine").

[36] *See, e.g.*, *Stern*, 564 U.S. at 469 (holding that Article III of the U.S. Constitution prohibits bankruptcy judges from adjudicating certain matters).

The parties to a dispute may, however, "knowingly and voluntarily consent to adjudication by a bankruptcy judge" of certain claims that a bankruptcy judge would otherwise lack constitutional authority to adjudicate. Wellness Int'l Network Ltd. v. Sharif, 135 S. Ct. 1932, 1939 (2015).

[37] *In re* Vance, 120 B.R. 181, 185 (Bankr. N.D. Okla. 1990).

[38] *See generally* 28 U.S.C. § 586(a).

[39] In North Carolina and Alabama, the U.S. Trustee's duties are instead performed by "Bankruptcy Administrators." Kara Bruce, *Closing Consumer Bankruptcy's Enforcement Gap*, 69 BAYLOR L. REV. 479, 489 n.52 (2017). *See also* Rafael I. Pardo & Kathryn A. Watts, *The Structural Exceptionalism of Bankruptcy Administration*, 60 UCLA L. REV. 384, 394-99 (2012) (comparing and contrasting U.S. Trustees with Bankruptcy Administrators and explaining that a "political compromise" "resulted in the [Bankruptcy Administrator] Program operating in Alabama and North Carolina and the [U.S. Trustee] Program operating everywhere else").

[40] *E.g.*, Citicorp N. Am., Inc. v. Finley (*In re* Wash. Mfg. Co.), 123 B.R. 272, 275 (Bankr. M.D. Tenn. 1991) (quoting H.R. REP. NO. 95-595, 95th Cong., 1st Sess., 88 (1977)).

[41] 28 U.S.C. § 586(c).

[42] *See* United States *ex rel.* Yelverton v. Fed. Ins. Co. (*In re* Yelverton), Case No. 09-00414, 2015 WL 525180, at *1 (Bankr. D.D.C. Feb. 5, 2015) ("However, as Yelverton apparently misapprehends, the chapter 7 case trustee is not the same entity as the United States Trustee.").

[43] *Compare* 11 U.S.C. § 704(a) (defining a Chapter 7 trustee's duties), *with id*. § 1106(a) (defining a Chapter 11 trustee's duties), *with id*. § 1202 (defining a Chapter 12 trustee's duties), *with id*. § 1302 (defining a Chapter 13 trustee's duties).

[44] *See, e.g.*, Midway Airlines, Inc. v. Nw. Airlines, Inc. (*In re* Midway Airlines, Inc.), 154 B.R. 248, 256-57 (N.D. Ill. 1993) (explaining that, in a case under Chapter 7 of the Bankruptcy Code, the case trustee "has the general duties of marshalling all available property, reducing it to money, distributing it to creditors, and closing up the estate").

[45] *See, e.g.*, Fifth Third Bank v. Circulatory Ctrs. of Am., LLC (*In re* Circulatory Ctrs. of Am., LLC), 579 B.R. 752, 758 (Bankr. W.D. Pa. 2017) ("The appointment of a trustee is exceptional in Chapter 11 reorganizations.") (quoting Official Comm. of Unsecured Creditors of Cybergenics Corp. *ex rel.* Cybergenics Corp. v. Chinery, 330 F.3d 548, 577 (3d Cir. 2003)).

[46] *See, e.g.*, *In re* Levine, 287 B.R. 683, 685 (Bankr. E.D. Mich. 2002).

13 case is known as the "Chapter 13 trustee,"[47] and so forth. This report discusses the case trustee's respective roles under each Chapter below.[48]

Filing for Bankruptcy

A debtor may declare bankruptcy by filing a document known as a bankruptcy "petition" with the clerk of the bankruptcy court.[49] In addition to the petition, most[50] debtors must also file a schedule of the debtor's assets and liabilities;[51] a schedule of the debtor's current income and expenditures;[52] a statement of the debtor's financial affairs;[53] and other required documents.[54] These filing requirements "are carefully designed to elicit certain information necessary to the proper administration and adjudication of the case"[55] and to "ensure that there is adequate information available to the debtor's creditors" to facilitate the fair and efficient distribution of the debtor's income or assets.[56] Depending on the debtor's financial circumstances, the debtor may also be required to pay a filing fee.[57]

The Bankruptcy Estate

Filing a petition in the bankruptcy court creates a bankruptcy "**estate**"[58] that, subject to certain exceptions,[59] is "comprised of the debtor's property as of the commencement of the case."[60] The assets in the bankruptcy estate are generally used "to satisfy claims of creditors and costs of the proceedings."[61]

Importantly, however, certain types of property are either not included in the estate or may otherwise be removed from the reach of creditors. For instance, property that the debtor acquires after filing his bankruptcy petition is, with some exceptions, "generally not property of the estate."[62] Furthermore, the Bankruptcy Code and applicable state law may allow an individual

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[47] *See, e.g.*, *In re* Rivera, 268 B.R. 292, 293 (Bankr. D.N.M. 2001).

[48] *See infra* "Types of Bankruptcy Proceedings."

[49] 11 U.S.C. § 301(a); FED. R. BANKR. P. 1002(a), 1005; Official Bankruptcy Forms B 101 & B 201.

Under certain circumstances, creditors may also force an unwilling debtor into bankruptcy by filing an "involuntary" bankruptcy petition against the debtor. 11 U.S.C. § 303; FED. R. BANKR. P. 1003.

[50] *But see* FED. R. BANKR. P. 1007(b)(1), (d), (e) (establishing different filing requirements for municipal debtors).

[51] FED. R. BANKR. P. 1007(b)(1)(A).

[52] FED. R. BANKR. P. 1007(b)(1)(B); Official Bankruptcy Forms B 106I & B 106J.

[53] FED. R. BANKR. P. 1007(b)(1)(D); Official Bankruptcy Forms B 107 & B 207.

[54] *See generally* FED. R. BANKR. P. 1007; 11 U.S.C. § 521.

[55] *E.g.*, Beer Sheva Realty Corp. v. Pongvitayapanu (*In re* Pongvitayapanu), 487 B.R. 130, 138 (Bankr. E.D.N.Y. 2013) (quoting Siegel v. Weldon (*In re* Weldon), 184 B.R. 710, 715 (Bankr. D.S.C. 1995)).

[56] *E.g.*, Cho v. Park (*In re* Park), 480 B.R. 627, 639 (Bankr. D. Md. 2012).

[57] *See generally* 28 U.S.C. § 1930; FED. R. BANKR. P. 1006.

[58] *E.g.*, Westmoreland Human Opportunities, Inc. v. Walsh, 246 F.3d 233, 241 (3d Cir. 2001). *Accord* 11 U.S.C. § 541(a) (providing that "the commencement of a case" under the Bankruptcy Code "creates an estate," and specifying which property the "estate is comprised of").

[59] *See* 11 U.S.C. § 541(b) (listing categories of assets that are not included as property of the estate).

[60] *Westmoreland Human Opportunities*, 246 F.3d at 241. *Accord*, *e.g.*, 11 U.S.C. § 541(a).

[61] *E.g.*, Traina v. Sewell (*In re* Sewell), 180 F.3d 707, 710 (5th Cir. 1999).

[62] Jackson v. Novak (*In re* Jackson), 593 F.3d 171, 176 (2d Cir. 2010). *Accord*, *e.g.*, Peters v. Wise (*In re* Wise), 346 F.3d 1239, 1241 (10th Cir. 2003) ("Generally, property the debtor acquires post-petition does not become property of

debtor to "**exempt**" certain categories of assets from the property of the estate and thereby insulate those assets from the claims of creditors.[63] For example, depending on the circumstances, an individual debtor may be able to claim articles of clothing,[64] certain medical equipment,[65] and/or his residence[66] as exempt from the claims of creditors. Permitting an individual debtor to claim certain assets as exempt "allow[s] a debtor to protect property which is necessary for the survival of both the debtor and the debtor's family."[67] Note, however, that a *non*-individual debtor, such as a corporation or other business entity, may not declare property as exempt.[68]

The Automatic Stay

Filing for bankruptcy affords the debtor several immediate benefits. Perhaps most importantly,[69] "the filing of a bankruptcy petition stays the commencement or continuation of all nonbankruptcy judicial proceedings against the debtor";[70] precludes creditors from undertaking "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case";[71] and, with certain exceptions,[72] prohibits creditors from taking almost any action "against the debtor or the property of the estate."[73] These protections are collectively known as the

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the bankruptcy estate."). *But see, e.g.*, 11 U.S.C. § 541(a)(5)(B) (creating one of several exceptions to the general rule that the estate does not include post-petition property); *id.* § 1306(a) (expanding the definition of "property of the estate" in Chapter 13 cases to include certain assets acquired "after the commencement of the case").

[63] *E.g.*, 11 U.S.C. § 522(b)(1) ("An individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection."); *In re* Puff 'n Stuff of Winter Park, Inc., 183 B.R. 959, 960 (Bankr. M.D. Fla. 1995) ("Section 522(b) of the Bankruptcy Code permits debtors to exempt certain property from the claims of creditors.").

[64] *See, e.g.*, 11 U.S.C. § 522(b)(2), (d)(3) (permitting an individual debtor to exempt "the debtor's interest, not to exceed $400 in value in any particular item or $8,000 in aggregate value, in . . . wearing apparel [and other similar items] that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor" unless "State law . . . specifically does not so authorize").

[65] *See, e.g.*, *id.* § 522(b)(2), (d)(9) (permitting a debtor to exempt "professionally prescribed health aids for the debtor or a dependent of the debtor" unless "State law . . . specifically does not so authorize").

[66] *See, e.g.*, Goodrich v. Fuentes (*In re* Fuentes), 687 F. App'x 542, 543 (9th Cir. 2017) (affirming bankruptcy court's order permitting debtor to "claim a homestead exemption in a piece of real property"). *See also* 11 U.S.C. § 522(b)(2), (d)(1) (permitting a debtor to exempt "the debtor's aggregate interest, not to exceed $15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence" unless "State law . . . specifically does not so authorize").

[67] Menninger v. Schramm (*In re* Schramm), 431 B.R. 397, 400 (B.A.P. 6th Cir. 2010).

[68] *See, e.g.*, 11 U.S.C. § 522(b)(1) (providing that "an *individual* debtor may exempt" certain assets (emphasis added)); Nickless v. Prime Title Servs., Inc. (*In re* Prime Mortg. Fin., Inc.), Bankr. No. 08-40238-MSH, Adv. No. 09-4046, 2010 WL 4256191, at *2 (Bankr. D. Mass. Oct. 21, 2010) ("Prime Mortgage is not an individual and thus not entitled to exempt any property under § 522.").

[69] *See, e.g.*, Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1214 (9th Cir. 2002) (describing the automatic stay as "one of the most important protections in bankruptcy law").

[70] Soares v. Brockton Credit Union (*In re* Soares), 107 F.3d 969, 973 (1st Cir. 1997). *Accord, e.g.*, 11 U.S.C. § 362(a)(1).

[71] 11 U.S.C. § 362(a)(6).

[72] *See, e.g.*, *id.* § 362(b)(1) (providing that filing a bankruptcy petition does not stay "the commencement or continuation of a criminal action or proceeding against the debtor"); *id.* § 362(b)(2)(v) (providing that filing a bankruptcy petition does not stay "the commencement or continuation of a civil action or proceeding . . . concerning child custody or visitation"). *See generally id.* § 362(b)(1)-(28).

[73] *E.g.*, Crespo Torres v. Santander Fin. Servs. (*In re* Crespo Torres), 532 B.R. 195, 200 (Bankr. D.P.R. 2015) (quoting ALAN N. RESNICK & HENRY J. SOMMER, 3 COLLIER ON BANKRUPTCY ¶ 362.03 (16th ed. 2015)).

"**automatic stay**."[74] The stay is "automatic" because "it operates without the necessity for judicial intervention";[75] it "is triggered upon the filing of a bankruptcy petition regardless of whether the other parties to the stayed proceeding are aware that a petition has been filed."[76] The automatic stay generally remains in effect until the bankruptcy court closes the case, dismisses the case, or grants the debtor a discharge, whichever comes first.[77]

"The policy underlying the automatic stay is to protect the debtor's estate from 'the chaos and wasteful depletion resulting from multifold, uncoordinated and possibly conflicting litigation'" that could occur in the absence of the stay.[78] "The automatic stay provides debtors a breathing spell from creditors by preventing 'all collection efforts, all harassment, and all foreclosure actions.'"[79] "The stay protects creditors, too, by precluding certain 'creditors from acting unilaterally in self-interest to obtain payment from a debtor to the detriment of other creditors.'"[80]

A creditor who knowingly violates the automatic stay—such as by attempting to collect a debt the debtor owes to him[81]—does so at his peril.[82] "An individual injured by any willful violation of" the automatic stay may potentially "recover actual damages" against the violator, "including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."[83] Thus, if a creditor or other entity subject to the automatic stay wishes to take action against the debtor or his estate, it must usually ask the bankruptcy court to "grant relief from the stay, . . . such as by terminating, annulling, modifying, or conditioning the stay" to allow the creditor to take the requested action.[84] The court may grant relief from the automatic stay "for cause,"[85] as may exist when "the hardship to the movant" resulting from the enforcement of the automatic stay would outweigh "the hardship to the debtor" if the automatic stay were lifted,[86] or when the debtor has filed bankruptcy in bad faith solely to prevent an impending foreclosure.[87] Alternatively, the court may also grant relief "with respect to a stay of an act against property" if "the debtor does not have an equity in such property" and "such property is not necessary to an effective

[74] *See, e.g.*, 11 U.S.C. § 362.

[75] *E.g.*, LaBarge v. Vierkant (*In re* Vierkant), 240 B.R. 317, 320 (B.A.P. 8th Cir. 1999) (quoting *Soares*, 107 F.3d at 975).

[76] *E.g.*, LaBarge v. Vierkant (*In re* Vierkant), 240 B.R. 317, 320 (B.A.P. 8th Cir. 1999) (quoting Constitution Bank v. Tubbs, 68 F.3d 685, 691 (3d Cir. 1995)).

[77] 11 U.S.C. § 362(c)(2). To the extent that a creditor instead desires to take an action against specific "property of the estate," the automatic stay "continues until such property is no longer property of the estate." *Id.* § 362(c)(1).

[78] *E.g.*, *In re* Curtis, 40 B.R. 795, 799 (Bankr. D. Utah 1984) (quoting Litton Sys., Inc. v. Frigitemp Corp. (*In re* Frigitemp Corp.), 8 B.R. 284, 289 (S.D.N.Y. 1981)).

[79] *E.g.*, *In re* Capgro Leasing Assocs., 169 B.R. 305, 310 (Bankr. E.D.N.Y. 1994) (quoting Maritime Elec. Co. v. United Jersey Bank, 959 F.2d 1194, 1204 (3d Cir. 1991)).

[80] *E.g.*, *id.* (quoting *Maritime Elec. Co.*, 959 F.2d at 1204).

[81] *See, e.g.*, *In re* Capion, Nos. 98-2242 DH, 98-4140 DH, 2000 WL 35798603, at *5 (Bankr. S.D. Iowa June 28, 2000) ("The court finds that these . . . attempts to collect a debt were violations of the automatic stay.").

[82] *See, e.g.*, Clark v. United States (*In re* Clark), 207 B.R. 559, 565 (Bankr. S.D. Ohio 1997) ("Unless a particular proceeding is specifically designated an exception to the automatic stay . . ., creditors must obtain relief from the stay . . . *prior* to taking any action involving property of the estate. To the extent creditors fail to do so, they act at their own peril.") (internal citations omitted).

[83] 11 U.S.C. § 362(k)(1).

[84] *Id.* § 362(d). *See also* FED. R. BANKR. P. 4001(a) (governing motions for relief from the automatic stay).

[85] 11 U.S.C. § 362(d)(1).

[86] *E.g.*, *In re* Bell, 476 B.R. 168, 179 (Bankr. E.D. Pa. 2012).

[87] *E.g.*, *In re* Lippolis, 228 B.R. 106, 112 (E.D. Pa. 1998).

reorganization" of the debtor.[88] As a result, a creditor may, for example, be able to successfully obtain relief from the automatic stay when the debtor has failed to make timely mortgage payments.[89] The likelihood that a bankruptcy court will grant a party relief from the automatic stay varies depending on the context.[90]

Types of Bankruptcy Proceedings

Broadly speaking, "the United States has three methods of declaring bankruptcy: liquidation, reorganization, and adjustment of debts."[91] When filing a bankruptcy petition, the debtor must select which of these methods to utilize by choosing a "Chapter" of the Bankruptcy Code under which to file. The Bankruptcy Code functionally creates a menu of different bankruptcy proceedings that a debtor may potentially utilize:[92]

1. liquidation proceedings under Chapter 7;[93]
2. reorganization proceedings under Chapter 11;[94]
3. the adjustment of debts of an individual with regular income under Chapter 13;[95]
4. the adjustment of debts of a family farmer or fisherman with regular annual income under Chapter 12;[96]
5. the adjustment of debts of a municipality under Chapter 9;[97] and
6. ancillary and cross-border cases under Chapter 15.[98]

As explained in greater detail below, each of these types of proceedings has different eligibility requirements, is governed by different procedures, and results in different forms of relief.[99] Some debtors, depending on their individual characteristics, may be eligible to file bankruptcy under more than one Chapter, and may therefore select whichever form of bankruptcy proceeding would be most advantageous in light of the debtor's particular financial circumstances.[100] Other

[88] 11 U.S.C. § 362(d)(2).

[89] *See, e.g.*, *In re* Sterling, Case No. 14-12608-shl, 2018 WL 313085, at *5 (Bankr. S.D.N.Y. Jan. 5, 2018) ("The failure to make mortgage payments constitutes 'cause' for relief from the automatic stay and is one of the best examples of a 'lack of adequate protection' under Section 362(d)(1) of the Bankruptcy Code.") (quoting *In re* Schuessler, 386 B.R. 458, 480 (Bankr. S.D.N.Y. 2008)).

[90] *Compare In re* Qimonda AG, No. 09-14766-RGM, 2009 WL 2210771, at *4 (Bankr. E.D. Va. July 16, 2009) ("It is not uncommon for bankruptcy courts to grant relief from the automatic stay to allow complicated disputed claims to be liquidated in other courts."), *with* Hon. John M. Tyson, *Automatic Stays and Administrative Expenses: Rights and Remedies Available to Landlords and Tenants in Bankruptcy Proceedings*, 31 CAMPBELL L. REV. 413, 418 (2009) ("Relief from the automatic stay in order to evict a debtor-tenant for default on an unexpired lease is rare and difficult to obtain.").

[91] Richard H.W. Maloy, *Comparative Bankruptcy*, 24 SUFFOLK TRANSNAT'L L. REV. 1, 10 (2000).

[92] For the sake of clarity, and to more clearly illustrate the pertinent differences between the various Chapters of the Bankruptcy Code, this report does not discuss these Chapters in numerical order.

[93] 11 U.S.C. §§ 701-784.

[94] *Id*. §§ 1101-1174.

[95] *Id*. §§ 1301-1330.

[96] *Id*. §§ 1201-1232.

[97] *Id*. §§ 901-946.

[98] *Id*. §§ 1501-1532.

[99] **Appendix B** to this report contains a table of the most important differences between each Chapter.

[100] *See generally* 11 U.S.C. § 109 (establishing eligibility requirements for declaring bankruptcy under the various

debtors may be eligible to file only under a single Chapter, and must either file bankruptcy under that Chapter or not file at all.[101] Still other debtors may not be eligible to file for bankruptcy under any Chapter of the Bankruptcy Code whatsoever.[102]

Chapter 7 Liquidation

A liquidation proceeding under "Chapter 7 is the most common form of bankruptcy" in the United States.[103] According to statistics published by the United States Courts, approximately half a million debtors file bankruptcy pursuant to Chapter 7 each year.[104] Notable examples of companies that have filed bankruptcy under Chapter 7 include the Bennigan's restaurant chain,[105] IndyMac Bancorp,[106] and Acclaim Entertainment (perhaps best known for porting the "Mortal Kombat" video game to the Sega Genesis and Super Nintendo video game consoles).[107]

"The primary purpose" of Chapter 7 "is to liquidate the [d]ebtor['s] assets in order to satisfy the [d]ebtor['s] creditors."[108] To facilitate this liquidation, the case is administered by a Chapter 7 trustee[109] who, among other responsibilities,[110] "has the general duties of marshalling all available property, reducing it to money, distributing it to creditors, and closing up the estate."[111]

Eligibility for Chapter 7 Bankruptcy

Although both individual debtors and non-individual debtors (such as corporations, limited liability companies, and other business entities) may potentially be eligible for Chapter 7 relief, Chapter 7 treats the two types of debtors differently, as explained below.

Chapters of the Bankruptcy Code).

[101] *See, e.g.*, *id*. § 109(b)(1), (d) (limiting the Chapters under which a railroad may validly file for bankruptcy).

[102] *See, e.g.*, *id*. § 109(g) ("No individual or family farmer may be a debtor under [any Chapter of the Bankruptcy Code] who has been a debtor in a case pending under [the Bankruptcy Code] at any time in the preceding 180 days if . . . the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case.").

[103] Arthur Best, *Lying Lawyers and Recumbent Regulators*, 49 IND. L. REV. 1, 13 (2015). *Accord, e.g.*, *In re* Brooks, 784 F.3d 380, 381 (7th Cir. 2015) (same).

[104] United States Courts, "June 2017 Bankruptcy Filings Down 2.8 Percent" (July 21, 2017), http://www.uscourts.gov/news/2017/07/21/june-2017-bankruptcy-filings-down-28-percent.

[105] Jack F. Williams *et al.*, *American Bankruptcy Institute Media Teleconference to Examine the Future of Retail Sector Distress*, 17 AM. BANKR. INST. L. REV. 85, 93 (2009) ("Bennigan's, for example, a casual retail dining chain, decided not to even do a chapter 11, but went straight to chapter 7 . . . And one of the key elements in that decision was that so many of their properties needed capital expenditures for improvements and there just wasn't the money to do it.").

[106] *See* Siegel v. FDIC (*In re* Indymac Bancorp, Inc.), Bankr. No. 2:08-bk-21752-BB, Adv. No. 2:09-ap-01698-BB, 2012 WL 1037481, at *1 (Bankr. C.D. Cal. Mar. 29, 2012).

[107] *See In re* Acclaim Entm't, Inc., Case No. 8:04-BK-85595 (Bankr. E.D.N.Y.), Docket No. 1 (Chapter 7 bankruptcy petition).

[108] *E.g.*, *In re* Cohen, 141 B.R. 1, 1 (Bankr. D. Mass. 1992).

[109] *See* 11 U.S.C. § 701 (providing for the appointment of an interim Chapter 7 trustee); *id*. § 702 (providing for the election of a permanent Chapter 7 trustee to replace the interim trustee).

[110] *See generally id*. § 704(a)(1) (enumerating the duties of a Chapter 7 trustee).

[111] *E.g.*, Midway Airlines, Inc. v. Nw. Airlines, Inc. (*In re* Midway Airlines, Inc.), 154 B.R. 248, 256-257 (N.D. Ill. 1993).

Individual Debtors

Chapter 7 potentially "allows an individual who is overwhelmed by debt to obtain a 'fresh start' in the form of a discharge of most types of debt by surrendering for distribution his or her nonexempt property."[112] However, the Bankruptcy Code limits an individual debtor's ability to obtain Chapter 7 relief by imposing a "means test" to determine whether "an individual debtor . . . whose debts are primarily consumer debts" qualifies for Chapter 7 relief.[113] If the debtor's current monthly income, reduced by certain allowable expenses, exceeds statutory thresholds established by the Bankruptcy Code, then the bankruptcy court must either dismiss the Chapter 7 case or convert the case to a debt adjustment proceeding under Chapter 13.[114] "The primary purpose of the means test in Chapter 7 is to shift consumer debtors into Chapter 13" of the Bankruptcy Code—which this report discusses in greater detail below[115]—when those debtors are able to "pay some or all of their debts in a Chapter 13 plan."[116]

Non-Individual Debtors

Many (though not all) types of non-individual debtors are, like individual debtors, potentially eligible for Chapter 7 bankruptcy as well.[117] "[I]n a Chapter 7 proceeding involving a business entity, the trustee assumes control of the entity for the purpose of realizing the maximum value that is available for the benefit of the creditors."[118] Also, for reasons explained in greater detail below, some bankruptcy cases filed by non-individual debtors begin as Chapter 11 reorganizations[119] but are subsequently converted to Chapter 7 liquidations.[120]

Unlike an individual debtor, however, a non-individual debtor does not receive a discharge of its outstanding debts at the conclusion of a Chapter 7 liquidation.[121] Congress opted to prohibit non-individual debtors from obtaining a discharge under Chapter 7 in order "to prevent businesses from evading liability by liquidating debtor corporations and resuming business free of debt."[122] "Corporate debt" therefore "survive[s] Chapter 7 proceedings" and is "charged against the

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[112] *In re* Lopez, No. 08-14625-SSM, 2008 WL 5786897, at *1 (Bankr. E.D. Va. Nov. 6, 2008) (quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)). *See generally* 11 U.S.C. § 109(b) (establishing eligibility requirements for Chapter 7).

[113] 11 U.S.C. § 707(b)(1)-(2). *See also, e.g.*, *In re* Fredman, 471 B.R. 540, 542 (Bankr. S.D. Ill. 2012) ("With the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 11 U.S.C. § 707(b) was amended to add a screening mechanism, known as the 'means test.' The purpose of the means test is to weed out chapter 7 debtors who are capable of funding a chapter 13 case."); Official Bankruptcy Form 122A-2 (Chapter 7 Means Test Calculation form).

[114] *E.g.*, *In re* Arndt, Case No. 17-30226, 2017 WL 5164141, at *3 (Bankr. N.D. Ohio Nov. 6, 2017); *In re* Ralston, 400 B.R. 854, 856 (Bankr. M.D. Fla. 2009); 11 U.S.C. § 707(b)(1)-(2). *See also* 11 U.S.C. § 104(a) (providing that 11 U.S.C. § 707(b)'s dollar limits automatically adjust every three years "to reflect the change in the Consumer Price Index for All Urban Consumers[] published by the Department of Labor").

[115] *See infra* "Chapter 13 Consumer Cases."

[116] *E.g.*, *In re* Richardson, No. 08-82000, 2009 WL 65178, at *2 (Bankr. C.D. Ill. Jan. 8, 2009).

[117] *See* 11 U.S.C. § 109(b).

[118] *E.g.*, Ormet Corp. v. Boury (*In re* Boury, Inc.), No. Civ.A. 5:01CV134, 2002 WL 32290985, at *2 (N.D. W. Va. Aug. 23, 2002).

[119] *See infra* "Chapter 11 Reorganization."

[120] *See infra* "Conversion to Another Chapter."

[121] 11 U.S.C. § 727(a) ("The court shall grant the debtor a discharge, *unless . . . the debtor is not an individual*.") (emphasis added).

[122] *E.g.*, NLRB v. Better Bldg. Supply Corp., 837 F.2d 377, 379 (9th Cir. 1988).

corporation when it resume[s] operations."[123] "Despite the inability to obtain a discharge, some corporations" and other business entities nonetheless "choose Chapter 7 bankruptcy because it provides an efficient process by which the corporation may sell off its assets and distribute the proceeds to its creditors."[124] "After filing Chapter 7 bankruptcy, . . . the corporate debtor is usually expected to dissolve because its debts are not 'discharged' and continued business will impact its relationships with creditors."[125]

Liquidation and Distribution of the Estate

As noted above, in a Chapter 7 liquidation, the case trustee "sells the property of the estate and distributes the proceeds to the debtor's creditors."[126] The Bankruptcy Code establishes a complex hierarchy of expenses and claims that are entitled to payment before others.[127] To name one example, a "**secured creditor**"—that is, a creditor who has a legal right against certain property (known as "**collateral**") that the debtor has pledged as security against the debt in the event the debtor defaults[128]—is generally "entitled to be paid in full out of the proceeds of the collateral before any of those proceeds may be used to pay"[129] any "**unsecured creditors**" who, "upon giving credit" to a debtor, "take[] no rights against specific property of the debtor."[130] To name another example, claims for specified types of domestic support obligations are entitled to be paid before certain unpaid property taxes.[131]

"Lower priority creditors cannot receive anything until higher priority creditors are paid in full."[132] If, due to a shortfall of assets in the estate, "a priority tier cannot be paid in full," then "distribution is made pro rata among creditors within such tier."[133] If, by contrast, "the estate has

[123] *E.g.*, *id*.

[124] Moody v. Tiny Treasures of Richland, Inc., Civil Action No. 3:08-CV-318-HTW-LRA, 2014 WL 12709475, at *5 (S.D. Miss. Feb. 20, 2014). *See also*, *e.g.*, Kelley v. Cypress Fin. Trading Co., L.P. (*In re* Cypress Fin. Trading Co., L.P.), 620 F. App'x 287, 289 (5th Cir. 2015) ("A corporate Chapter 7 (and the resulting automatic stay) may allow breathing space for a neutral third party to marshal assets for orderly distribution to creditors.").

[125] *E.g.*, *Moody*, 2014 WL 12709475, at *5. Importantly, however, "liquidation through Chapter 7 does not" itself "effect dissolution of the company." *E.g.*, *In re* Or. Homes, LLC, No. 13-33349, 2014 WL 4794861, at *4 (Bankr. N.D. Ohio Sept. 25, 2014). To officially dissolve a liquidated debtor, the debtor must instead utilize the dissolution procedures established by state law. *See*, *e.g.*, *Better Bldg.*, 837 F.2d at 379 ("Chapter 7 proceedings cannot dissolve a corporation. If the Mylans sought to dissolve their corporations, they should have used state procedures.").

[126] *In re* Hawk, 871 F.3d 287, 292 (5th Cir. 2017). *Accord*, *e.g.*, 11 U.S.C. § 704(a)(1) ("The trustee shall . . . collect and reduce to money the property of the estate."); *id*. § 725 ("The trustee, after notice and a hearing, shall dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title."); *id*. § 726 (governing distribution of the property of the estate).

[127] *See generally* 11 U.S.C. §§ 507, 725, 726(a).

[128] *See* "Secured Claim," BLACK'S LAW DICTIONARY (10th ed. 2014); "Collateral," BLACK'S LAW DICTIONARY (10th ed. 2014).

[129] *E.g.*, Greaves v. Office of the Del. Attorney Gen. (*In re* Two Springs Membership Club), 424 B.R. 808, 815 (Bankr. N.D. Ohio 2010). *See also* 11 U.S.C. §§ 725, 726(a).

[130] "Unsecured Creditor," BLACK'S LAW DICTIONARY (10th ed. 2014).

[131] *Compare* 11 U.S.C. § 507(a)(1)(A), *with id*. § 507(a)(8)(B). *See also id*. § 726(a) (specifying that "property of the estate shall" generally "be distributed . . . in the order specified in[] section 507").

[132] Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973, 983 (2017).

[133] *In re* Swann, 149 B.R. 137, 145 (Bankr. D.S.D. 1993) (quoting *In re* Higgins, 29 B.R. 196, 199 (Bankr. N.D. Iowa 1983)).

enough assets to pay in full all . . . priority claims, distribution will be made pro rata among" creditors in the lower tiers.[134]

Chapter 11 Reorganization

Whereas the purpose of a Chapter 7 proceeding is to liquidate the debtor, most Chapter 11 proceedings aim to reorganize the debtor's debt structure so that the debtor may continue to operate.[135] A Chapter 11 reorganization "is premised on the concept that the debtor is worth more as a going concern than in liquidation. That is, continuation of the debtor's business will create more value than will dismemberment and piecemeal sale of the assets."[136] Thus, a debtor that aims to emerge from bankruptcy as an operating entity as opposed to shuttering its doors will likely prefer a Chapter 11 reorganization to a Chapter 7 liquidation.[137] Some creditors may likewise prefer that the debtor reorganize under Chapter 11 instead of liquidating under Chapter 7, depending on whether or not they stand to derive a greater economic benefit from the debtor continuing to operate as a going concern than if the debtor were promptly liquidated.[138]

Chapter 11 is "intended primarily for the use of business debtors" such as corporations and limited liability companies.[139] Notable examples of large companies that have filed for bankruptcy under Chapter 11 include Kmart,[140] General Motors,[141] and the Los Angeles Dodgers.[142]

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[134] *Id*. (quoting *Higgins*, 29 B.R. at 199).

[135] *Czyzewski*, 137 S. Ct. at 979. *Accord, e.g.*, Tamir v. U.S. Trustee, 566 B.R. 278, 282-83 (D. Me. 2016) ("Chapter 11 debtors are generally seeking to emerge from bankruptcy as viable, profitable individuals or enterprises.").

That said, some Chapter 11 proceedings are intended to liquidate the debtor rather than reorganize the debtor as a going concern. *See, e.g.*, Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 554 U.S. 33, 37 n.2 (2008) ("Although the central purpose of Chapter 11 is to facilitate reorganizations rather than liquidations (covered generally by Chapter 7), Chapter 11 expressly contemplates liquidations."); *In re* Poydras Manor, Inc., 242 B.R. 603, 605, 608 (Bankr. E.D. La. 2000) (confirming a "Chapter 11 liquidation" plan "under which all of [the debtor's] assets will be liquidated and the proceeds distributed to creditors"). In contrast to a Chapter 7 liquidation, a Chapter 11 liquidation "allows a debtor in possession (who is presumably more familiar with the organization's assets, and their values), rather than a Chapter 7 trustee, to plan for an orderly divestiture" of the debtor's assets "over time. In a proper case, the expertise of the debtor in possession can result in a liquidation that produces more for the benefit of creditors than would a liquidation conducted by a Chapter 7 trustee." Rachlin Cohen & Holtz, LLP v. Mirabilis Ventures, Inc. (*In re* Mirabilis Ventures, Inc.), Nos. 6:08-bk-04237-KSJ, 6:09-cv-1658-Orl-31, 6:09-cv-1659, 6:09-cv-1660, 2010 WL 1644915, at *5 (M.D. Fla. Apr. 21, 2010).

[136] *E.g.*, Frederick Tung, *Confirmation and Claims Trading*, 90 NW. U. L. REV. 1684, 1689 (1996).

[137] *See* Maloy, *supra* note 91, at 13 ("A debtor prefers Chapter 11 to Chapter 7 when the debtor is experiencing temporary difficulties in paying its debts due to cash flow problems, shrinking markets, or the like. In these circumstances, the debtor needs a breathing spell to work out of its financial bind.").

[138] *See id*. ("Supplier creditors may prefer Chapter 11 to Chapter 7 in order to keep alive a good customer, who is merely experiencing a temporary financial problem. Employee creditors may prefer Chapter 11 as well, because it will keep their paychecks coming, albeit possibly in smaller amounts. Creditors often prefer Chapter 11 because a Bankruptcy Judge will not confirm a Chapter 11 plan unless creditors are assured of receiving at least as much as they would receive under Chapter 7."). *But see* Alan Schwartz, *A Contract Theory Approach to Business Bankruptcy*, 107 YALE L.J. 1807, 1836-37 (1998) ("Senior creditors today commonly prefer firms to use Chapter 7 . . . while junior creditors commonly prefer firms to use Chapter 11.").

[139] Toibb v. Radloff, 501 U.S. 157, 166 (1991).

[140] *See* Kmart Corp. v. Intercraft Co. (*In re* Kmart Corp.), 310 B.R. 107, 111 (Bankr. N.D. Ill. 2004).

[141] *See* Chenault v. Gen. Motors LLC (*In re* Motors Liquidation Co.), No. 16-CV-3764 (RA), 2017 WL 698387, at *1 (S.D.N.Y. Feb. 21, 2017).

[142] *See In re* L.A. Dodgers LLC, No. 11-12010 (KG), 2012 WL 1601177 (Bankr. D. Del. May 3, 2012) (order

Notwithstanding that Chapter 11 is "intended primarily for the use of business debtors," "individual debtors not engaged in business" may be eligible to "file for relief under Chapter 11" as well.[143] In particular, an individual debtor who is ineligible to file for bankruptcy under Chapter 13 because his outstanding debt exceeds statutory debt limits established by the Bankruptcy Code[144] may instead be able to file under Chapter 11.[145] That said, even though "Chapter 11 is not restricted to business-debtors, business entities file under Chapter 11 far more frequently than individual debtors do."[146]

"The primary goal of Chapter 11" is "to formulate a comprehensive reorganization **plan**"[147] that adjusts "the rights and obligations among the debtor and its debt- and equityholders . . . so as to render the reorganized debtor a viable economic entity."[148] "The chapter 11 plan becomes a binding contract between the debtor and its creditors, and governs their rights and obligations."[149]

The Debtor-In-Possession

Unlike in a Chapter 7 liquidation, in which a trustee administers the debtor's assets in order to satisfy the claims of creditors,[150] a Chapter 11 debtor generally remains in possession of its assets throughout the entire reorganization proceeding[151] "and administers them for the benefit of the creditor body."[152] Congress decided when enacting the Bankruptcy Code that "current management is generally best suited to orchestrate the process of rehabilitation for the benefit of creditors and other interests of the estate," and as a result Chapter 11 typically permits the debtor (rather than a trustee) to remain in control of its assets and operations.[153] When acting in this capacity, the debtor is known as the "debtor-in-possession."[154] Managers of the debtor therefore generally "prefer Chapter 11 to Chapter 7 because Chapter 11 allows them to retain control of the

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confirming Chapter 11 plan).

[143] *Toibb*, 501 U.S. at 166. *See also* 11 U.S.C. § 109(d), (g)-(h) (establishing eligibility requirements for individual Chapter 11 debtors).

[144] *See infra* "Chapter 13 Consumer Cases""Chapter 13 Consumer Cases.".

[145] *See* Anne Lawton, *The Individual Chapter 11 Debtor Pre- and Post-BAPCPA*, 89 AM. BANKR. L.J. 455, 468 (2015) (explaining that some (though not all) "individual chapter 11 debtors file for chapter 11, rather than chapter 13, because chapter 13's debt limits pose a barrier to entry"). *See also* 11 U.S.C. § 109(e) (disqualifying any individual who owes a total amount of debt that exceeds specified statutory limits from "be[ing] a debtor under chapter 13").

[146] Maloy, *supra* note 91, at 10.

[147] *E.g.*, Tamir v. U.S. Trustee, 566 B.R. 278, 283 (D. Me. 2016).

[148] *E.g.*, Tung, *supra* note 136, at 1690.

[149] *In re* Nylon Net Co., 225 B.R. 404, 406 (Bankr. W.D. Tenn. 1998). *Accord, e.g.*, 11 U.S.C. § 1141(a).

[150] *E.g.*, Midway Airlines, Inc. v. Nw. Airlines, Inc. (*In re* Midway Airlines, Inc.), 154 B.R. 248, 256-257 (N.D. Ill. 1993); 11 U.S.C. § 704(a)(1).

[151] *In re* Marvel Entm't Grp., Inc., 140 F.3d 463, 471 (3d Cir. 1998).

[152] Lazzo v. Rose Hill Bank (*In re* Schupbach Invs., L.L.C.), 808 F.3d 1215, 1223 (10th Cir. 2015) (quoting Bowers v. Atlanta Motor Speedway, Inc. (*In re* SE Hotel Props., Ltd. P'ship), 99 F.3d 151, 152 n.1 (4th Cir. 1996)).

Nevertheless, under certain circumstances, including (but not limited to) "fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management," the bankruptcy court may order the appointment of a trustee to administer the debtor's Chapter 11 case. 11 U.S.C. § 1104(a). "'The appointment of a trustee divests the management of the debtor of authority to execute its former role as head of the debtor,' and the debtor acts through the trustee's authority." *E.g.*, South Edge LLC v. JPMorgan Chase Bank, N.A., Nos. 2:11-CV-00240-PMP-RJJ, 2:11-CV-00301-PMP-RJJ, 2011 WL 1626567, at *3 (D. Nev. Apr. 28, 2011) (quoting Kranzdorf v. Alter (*In re* Fid. Am. Fin. Corp.), 63 B.R. 995, 998 (Bankr. E.D. Pa. 1986)).

[153] *Marvel*, 140 F.3d at 471 (quoting *In re* V. Savino Oil & Heating Co., 99 B.R. 518, 524 (Bankr. E.D.N.Y. 1989)).

[154] *See* 11 U.S.C. §§ 1107-1108.

firm as a debtor-in-possession, whereas Chapter 7, by requiring appointment of a trustee, does not."[155]

With some exceptions,[156] the debtor-in-possession may generally enter into transactions and use estate property in the ordinary course of business without first obtaining the bankruptcy court's approval.[157] However, any action the debtor-in-possession takes *outside* the ordinary course of business typically "requires notice, hearing and court approval" in advance.[158] An action "outside the ordinary course of business" includes any transaction "that might be considered unusual, controversial, or questionable for the debtor to undertake during its Chapter 11 case,"[159] like a sale of "substantially all the debtor's assets."[160] The "ordinary course of business" standard provides the debtor-in-possession "the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary."[161]

The Chapter 11 Plan

As noted above, "the primary goal of Chapter 11" is "to formulate a comprehensive reorganization plan that will ultimately rehabilitate financially distressed debtors."[162] Ideally, a Chapter 11 plan is a product of negotiation between the debtor and its key stakeholders[163] that adjusts "the rights and obligations among the debtor and its debt- and equityholders . . . so as to render the reorganized debtor a viable economic entity."[164]

The debtor may file a proposed Chapter 11 plan at any time.[165] Although an interested party to the bankruptcy case, such as a creditor, may potentially file a proposed Chapter 11 plan of its own, the Bankruptcy Code circumscribes a non-debtor's ability to propose a Chapter 11 plan in several respects.[166] To name but one example, the Bankruptcy Code establishes an initial exclusivity period during which "only the debtor may file a plan."[167]

Among other requirements,[168] a proposed plan must

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[155] Lucian Arye Bebchuk & Jesse M. Fried, *A New Approach to Valuing Secured Claims in Bankruptcy*, 114 HARV. L. REV. 2386, 2402 n.56 (2001).

[156] *See, e.g.*, 11 U.S.C. § 363(c)(2) (special rules governing the use and sale of "cash collateral").

[157] *E.g.*, *In re* Telesphere Commc'ns, Inc., 148 B.R. 525, 530 (Bankr. N.D. Ill. 1992); 11 U.S.C. §§ 363(c)(1), 364(a).

[158] Morris v. Family Motors, Inc. (*In re* Dooley's Rainwater Conditioning, Inc.), Bankr. No. 10-14145, Adv. No. 12-5063, 2012 WL 6737501, at *3 (Bankr. D. Kan. Dec. 27, 2012). *Accord, e.g.*, 11 U.S.C. §§ 363(b)(1), 364(b).

[159] *E.g.*, *In re* Husting Land & Dev., Inc., 255 B.R. 772, 778-79 (Bankr. D. Utah 2000).

[160] *See, e.g.*, *In re* Med. Software Sols., 286 B.R. 431, 439-40 (Bankr. D. Utah 2002).

[161] *E.g.*, *In re* Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992).

[162] *E.g.*, Tamir v. U.S. Trustee, 566 B.R. 278, 283 (D. Me. 2016).

[163] *E.g.*, *In re* AG Consultants Grain Div., Inc., 77 B.R. 665, 671 (N.D. Ind. 1987) ("Chapter 11 is essentially, or should be, a negotiated process; a system to induce compromise."); Harry D. Lewis, *Enjoining Regulatory Action Against Chapter 11 Debtors*, 96 COM. L.J. 335, 351 (1991) ("The Chapter 11 process contemplates that all interested parties participate to negotiate a Chapter 11 plan which will . . . reorganize . . . the Chapter 11 debtor in an orderly fashion.").

[164] *E.g.*, Tung, *supra* note 136, at 1690.

[165] 11 U.S.C. § 1121(a).

[166] *See generally id*. § 1121(b)-(e).

[167] *Id*. § 1121(b). The bankruptcy court "may for cause reduce or increase the" exclusivity period so long as the period does not extend beyond certain statutorily defined limits. *See id*. § 1121(d). Small business cases under Chapter 11 are governed by slightly different exclusivity requirements. *See id*. § 1121(e).

[168] *See generally id*. § 1123(a).

- divide similarly situated debt-holders and equity-holders into separate "classes."[169]
- identify which classes will have their claims "impaired" by the plan.[170] "A class is impaired if there is 'any alteration of a creditor's rights, no matter how minor.'"[171]
- specify how the plan will alter the claims belonging to the impaired classes.[172]
- treat every entity in a given class the same as other class members (unless a particular claimant agrees to less favorable treatment).[173]
- provide adequate means for the plan's implementation,[174] such as by allowing the debtor to retain certain property;[175] selling or transferring the debtor's property;[176] satisfying or modifying liens;[177] curing or waiving a default by the debtor;[178] and so forth.[179]

After a party proposes a plan, creditors who are adversely affected by the plan[180] may then vote in favor of or against it.[181] Generally,[182] in order to facilitate the voting process, "a proponent of a plan must also submit a disclosure statement"[183] that gives parties potentially affected by the plan "information sufficient to enable" them "to make an informed judgment . . . as to whether they should vote in favor of the plan."[184] The bankruptcy court will then "fix a time within which"

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[169] *Id*. § 1123(a)(1) (requiring the plan to "designate . . . classes of claims"); *id*. § 1122 (providing, with certain exceptions, that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class").

[170] *Id*. § 1123(a)(2) (requiring the plan to "specify any class of claims or interests that is not impaired under the plan"); *id*. § 1123(a)(3) (requiring the plan to "specify the treatment of any class of claims or interests that is impaired under the plan"); *id*. § 1124 (defining "impaired"); *id*. § 1123(b)(1) ("A plan may . . . impair or leave unimpaired any class of claims . . . or of interests.").

[171] *In re* Woodbrook Assocs., 19 F.3d 312, 321 n.10 (7th Cir. 1994) (quoting *In re* Windsor on the River Assocs., Ltd., 7 F.3d 127, 130 (8th Cir. 1993)). *Accord, e.g., In re* Armstrong World Indus., Inc., 432 F.3d 507, 511 n.2 (3d Cir. 2005) ("A class is impaired if its legal, equitable, or contractual rights are altered under the reorganization plan.").

[172] 11 U.S.C. § 1123(a)(3).

[173] *Id*. § 1123(a)(4).

[174] *Id*. § 1123(a)(5).

[175] *Id*. § 1123(a)(5)(A).

[176] *Id*. § 1123(a)(5)(B), (D).

[177] *Id*. § 1123(a)(5)(E).

[178] *Id*. § 1123(a)(5)(G). *See also id*. § 1123(d) ("If it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.").

[179] *See generally id*. § 1123(a)(5).

[180] Only impaired classes may vote on a proposed Chapter 11 plan; classes that are not impaired under the plan are conclusively deemed to have accepted the plan and are therefore not entitled to vote on whether to accept or reject it. *See id*. § 1126(f) ("A class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required."); *In re* Edgefield Inn, LLC, 521 B.R. 116, 121 (Bankr. D.S.C. 2014) ("Unimpaired classes . . . have no vote in the reorganization process.").

[181] 11 U.S.C. § 1126(a).

[182] *But see id*. § 1125(f) (providing for alternate procedures in small business cases).

[183] *In re* Del. & Hudson Ry. Co., 124 B.R. 169, 174 (D. Del. 1991). *See also* 11 U.S.C. § 1125; FED. R. BANKR. P. 3016.

[184] *In re* Huggins, No. BK12-42692-T, 2013 WL 4502825, at *2 (Bankr. D. Neb. Aug. 22, 2013). *Accord, e.g.*, 11 U.S.C. § 1125; FED. R. BANKR. P. 3016.

creditors may vote on the plan.[185] Voting creditors must submit their votes in writing to the plan proponent's attorney prior to the deadline established by the court.[186] A class of creditors has accepted—that is, voted in favor of—a proposed plan if "creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class" have voted in favor of the plan.[187]

After the voting deadline expires, the court must hold a hearing to decide whether the plan shall become effective—that is, whether to "**confirm**" the plan.[188] A bankruptcy court cannot confirm a proposed Chapter 11 plan unless it satisfies not only the criteria enumerated in the bullet points above,[189] but also several additional prerequisites established by the Bankruptcy Code,[190] the most notable of which are discussed in the subsections that follow.

Best Interests of Creditors

For one, "a Chapter 11 reorganization plan may not be confirmed unless it satisfies the 'best interests of creditors' test."[191] "This test requires that each holder of an impaired claim or interest either accept the plan or receive under the plan not less than it would receive in a Chapter 7 liquidation."[192] "This means that, absent consent, a creditor must receive property that has a present value equal to that participant's hypothetical chapter 7 distribution if the debtor were liquidated instead of reorganized on the plan's effective date."[193] As a result, because having, for example, a dollar in hand today is typically more valuable than receiving that same dollar several years from now, "a Chapter 11 plan does not satisfy the best-interests-of-creditors test if the debtor, rather than paying a creditor the amount it would receive in a Chapter 7 liquidation in full on the effective date of the plan, proposes instead to pay that same amount over time."[194] Where, by contrast, impaired creditors would receive nothing in a hypothetical Chapter 7 liquidation, the

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[185] FED. R. BANKR. P. 3017(c). *Accord* FED. R. BANKR. P. 3018(a) ("A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017.").

[186] FED. R. BANKR. P. 3018(a), (c); Official Bankruptcy Forms B 314 (form ballot for accepting or rejecting plan of reorganization, which specifies that the creditor should return the completed ballot to the "proponent's attorney" or another "appropriate address").

[187] 11 U.S.C. § 1126(c). *But see id*. § 1126(c), (e) (authorizing the court to disregard the vote of any creditor "whose acceptance or rejection of" a proposed "plan was not in good faith").

[188] *Id*. § 1128(a).

[189] *See id*. § 1129(a)(1) ("The court shall confirm a plan only if . . . the plan complies with the applicable provisions of this title."); *id*. § 1123(a) (listing criteria that "a plan shall" satisfy).

[190] *See generally id*. § 1129 (listing the requirements a proposed plan must satisfy). *Accord, e.g.*, *In re* Chadda, No. 07-12665bif, 2007 WL 3407375, at *3 (Bankr. E.D. Pa. Nov. 9, 2007) ("Confirmation of a chapter 11 plan requires that the plan proponent meet all the requirements of section 1129(a) [of the Bankruptcy Code], except that of 1129(a)(8) . . . If all the provisions of section 1129(a) are established, save that of section 1129(a)(8), then the plan proponent can seek confirmation under section 1129(b).").

[191] ReGen Capital I, Inc. v. Halperin (*In re* U.S. Wireless Data, Inc.), 547 F.3d 484, 495 (2d Cir. 2008). *Accord, e.g.*, 11 U.S.C. § 1129(a)(7).

[192] *Regen*, 547 F.3d at 495. *Accord, e.g.*, *In re* Monticello Realty Invs., LLC, 526 B.R. 902, 914 (Bankr. M.D. Fla. 2015) ("The plan proponent must prove that each rejecting claimant in an impaired class will receive no less in the Chapter 11 than the claimant would have received if the debtor were liquidated in Chapter 7."); 11 U.S.C. § 1129(a)(7).

[193] *In re* SAI Holdings Ltd., No. 06-33227, 2007 WL 927936, at *7 (Bankr. N.D. Ohio Mar. 26, 2007) (quoting 7 ALAN N. RESNICK ET AL., COLLIER ON BANKRUPTCY ¶ 1129.03[7][b] (15th ed. 2004)).

[194] *In re* River Glen Land P'ship, Case No. 14-32732, 2015 WL 588696, at *8 (Bankr. E.D. Tenn. Feb. 11, 2015) (quoting *In re* Hockenberry, 457 B.R. 646, 653-54 (Bankr. S.D. Ohio 2011)).

plan will likely satisfy the best interests of creditors test because a Chapter 11 plan mathematically cannot pay creditors less than zero.[195]

Feasibility

Additionally, "to be confirmed, every chapter 11 plan must be 'feasible.'"[196] This means that the plan proponent must show that "confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor . . . unless such liquidation or reorganization is proposed in the plan."[197] "The purpose of this feasibility requirement is to prevent confirmation of unrealistic plans which promise creditors and equity security holders more than the debtor can likely attain after confirmation."[198] A plan is infeasible, for example, if it proposes to "keep creditors 'on hold' without receipt of payments while the debtor seeks to sell real estate which it has been unable to sell in years past," as "such plans are nothing more than speculative ventures which place all the risk on the . . . creditors."[199]

Cramdown

Nor may a bankruptcy court confirm a proposed Chapter 11 plan unless it either (1) satisfies a requirement codified at Section 1129(a)(8) of the Bankruptcy Code that all classes of impaired creditors accept the proposed plan; or (2) satisfies what are called the "**cramdown**" requirements of Section 1129(b).[200]

"Section 1129(a)(8) can be satisfied only if each class" of creditors "under a proposed plan either has accepted the plan or is not impaired under the plan."[201] Section 1129(a)(8) thereby requires that a proposed plan "be consensual, with unanimous acceptance by all of the impaired classes."[202]

Nevertheless, "the failure to comply with § 1129(a)(8) is not fatal."[203] "A plan that does not satisfy [§] 1129(a)(8) nonetheless can be confirmed"[204] pursuant to Section 1129(b) if the plan "does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan."[205] In order for the court to deem a plan "fair and equitable" for cramdown purposes, the plan must satisfy the "absolute priority rule."[206] "That rule requires that, if a class of senior claim-holders will not receive the full value

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[195] *See, e.g.*, *In re* Friedman, No. 4:07-bk-02135-JMM, 2012 WL 5409194, at *5 (Bankr. D. Ariz. Nov. 5, 2012) (confirming Chapter 11 plan where the estimated recovery for unsecured creditors in a hypothetical liquidation was "zero").

[196] *E.g.*, *In re* Chadda, No. 07-12665bif, 2007 WL 3407375, at *3 (Bankr. E.D. Pa. Nov. 9, 2007).

[197] 11 U.S.C. § 1129(a)(11).

[198] *E.g.*, *In re* Renegade Holdings, Inc., Nos. 09-50140C-11W, 09-50141C-11W, 09-50143C-11W, 2013 WL 2353940, at *8 (Bankr. M.D.N.C. May 29, 2013).

[199] *In re* S. Canaan Cellular Invs., Inc., 427 B.R. 44, 63 (Bankr. E.D. Pa. 2010) (quoting *In re* Calvanese, 169 B.R. 104, 107-08 (Bankr. E.D. Pa. 1994)).

[200] *E.g.*, *In re* Smith, 357 B.R. 60, 68 (Bankr. M.D.N.C. 2006); 11 U.S.C. § 1129(a)(8), (b).

[201] *E.g.*, *Smith*, 357 B.R. at 68.

[202] *E.g.*, *In re* Armstrong World Indus., Inc., 432 F.3d 507, 511 (3d Cir. 2005).

[203] *E.g.*, *In re* Frascella Enters., Inc., 360 B.R. 435, 452 (Bankr. E.D. Pa. 2007).

[204] *Smith*, 357 B.R. at 68.

[205] 11 U.S.C. § 1129(b)(1).

[206] *See id*. § 1129(b)(2)(A)-(B) (defining "fair and equitable"); DISH Network Corp. v. DBSD N. Am., Inc. (*In re* DBSD N. Am., Inc.), 634 F.3d 79, 86 (2d Cir. 2011) (referring to 11 U.S.C. § 1129(b)(2)(B) as "the absolute priority

of their claims under the plan and the class does not accept the plan, no junior [claim-holder] may receive 'any property' 'under the plan on account of such junior claim or interest.'"[207] A senior claim-holder is defined as a creditor holding a claim that is entitled to payment before other claims in the hierarchy of distribution to creditors, whereas a junior claim-holder holds a claim that is ranked lower in the hierarchy.[208]

Obtaining confirmation of a plan over the objection of impaired creditors in accordance with Section 1129(b) is known as a "cramdown."[209] Many (though not all) commentators agree that plan proponents utilize the Bankruptcy Code's cramdown provisions relatively infrequently.[210]

The Effect of Confirmation

A confirmed Chapter 11 plan binds the debtor, the creditors (including creditors who did not vote in favor of the plan), and other parties.[211] "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."[212] Additionally, the confirmation of a Chapter 11 plan "generally discharges the debtor from its pre-confirmation debt and substitutes the obligations of the plan for the debtor's prior indebtedness."[213] This discharge operates as an injunction that, with some exceptions, prohibits creditors from "commenc[ing] or continu[ing] an action, employ[ing] process, or act[ing], to collect, recover, or offset any debt that was subject to discharge."[214] A creditor who violates the discharge injunction is potentially subject to civil contempt proceedings.[215]

"A confirmed plan creates a new contract between the debtor and interested parties, which replaces pre-petition obligations with a new contractual obligation in accordance with the creditor's treatment under the confirmed plan."[216] Thus, "where a debtor fails to make payments

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rule").

[207] *DISH*, 634 F.3d at 86 (quoting 11 U.S.C. § 1129(b)(2)(B)).

[208] *See In re* Allied Consol. Indus., Inc., 569 B.R. 284, 295 (Bankr. N.D. Ohio 2017) (explaining that the absolute priority rule requires "that the values represented by the higher-ranking claims are fully satisfied by the values distributed under the [p]lan").

[209] *E.g.*, *In re* Bryant, 439 B.R. 724, 740 (Bankr. E.D. Ark. 2010).

[210] *See* Richard M. Hynes, *Reorganization as Redemption*, 6 VA. L. & BUS. REV. 183, 220 (2011) (noting the "observation of empirical researchers that cramdown is extremely rare"); Adam J. Levitin, *Bankruptcy Markets: Making Sense of Claims Trading*, 4 BROOK J. CORP. FIN. & COM. L. 67, 106 (2009) ("Cramdown plans, where a broad negotiated deal could not be reached, continue to remain relatively rare."). *But see* Scott Alberino *et al.*, *Corporate Bankruptcy Panel Hot Chapter 11 Plan Issues*, 28 EMORY BANKR. DEV. J. 283, 297 (2012) ("Most plans have to rely upon the cramdown mechanism . . . to get confirmed.").

[211] 11 U.S.C. § 1141(a).

[212] *Id.* § 1141(b).

[213] Lacy v. Stinky Love, Inc. (*In re* Lacy), 304 B.R. 439, 443-44 (D. Colo. 2004). *Accord*, *e.g.*, 11 U.S.C. § 1141(c), (d)(1).

[214] *In re* Bahary, 528 B.R. 763, 767-68, 769, 772-73 (Bankr. N.D. Ill. 2015). *See also*, *e.g.*, 11 U.S.C. § 524(a)(2). *But see* 11 U.S.C. § 1141(d)(2)-(3) (establishing certain exceptions to discharge in Chapter 11 cases); Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3d Cir. 1995) ("Inadequate notice is a defect which precludes discharge of a claim in bankruptcy.").

[215] *E.g.*, *Bahary*, 528 B.R. at 767-68.

[216] Little v. Clay (*In re* Clay), Bankr. No. 09-80909-TRC, Adv. No. 09-8039, 2010 WL 547165, at *2 (Bankr. E.D. Okla. Feb. 10, 2010). *Accord*, *e.g.*, Murdock v. Holquin, 323 B.R. 275, 282 (N.D. Cal. 2005) ("A Chapter 11 plan of reorganization constitutes a new contract between a debtor and his or her creditors."); 11 U.S.C. § 1141.

or act in accordance with a confirmed plan, a creditor's remedy may be for breach of contract or suit to enforce the debtor's obligation."[217]

Chapter 13 Consumer Cases

"Chapter 13 of the Bankruptcy Code is titled 'Adjustment of Debts of an Individual With Regular Income' and is essentially a reorganization that allows the debtor to 'deal comprehensively with'" his debts.[218] "The purpose of Chapter 13 is to enable an individual, under court supervision and protection, to develop and perform under a plan for the repayment of his debts"[219] "in installments over time."[220] "In some cases, the plan will call for full repayment. In others, it may offer creditors a percentage of their claims in full settlement."[221]

A debtor may not file bankruptcy under Chapter 13 unless she is an "individual with regular income" who owes a total amount of debt that does not exceed a maximum debt threshold established by statute.[222] Thus, a non-individual debtor, such as a corporation or limited liability company, may not file for bankruptcy under Chapter 13.[223]

Notably, "in a Chapter 13 case, unlike a Chapter 7 case, the debtor remains in possession of the property of the estate."[224] "Unlike Chapter 7 proceedings, where a debtor's nonexempt assets are sold to pay creditors, Chapter 13 permits debtors to keep assets such as their home and car so long as they . . . comply with their obligations under their confirmed plan of reorganization."[225] "The right to remain in possession of all property of the estate is a major advantage of chapter 13 debtors who would be required to turn over nonexempt property to the trustee in a chapter 7 case."[226] Chapter 13 thereby potentially permits a debtor "to save his or her home from foreclosure by curing a mortgage default and, while continuing to pay the mortgage obligation as installments come due, curing" arrearages that the debtor incurred before he filed bankruptcy

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[217] *E.g.*, *Little*, 2010 WL 547165, at *2.

[218] *E.g.*, Branigan v. Bateman (*In re* Bateman), 515 F.3d 272, 275 n.2 (4th Cir. 2008) (quoting ALAN N. RESNICK & HENRY J. SOMMER, 8 COLLIER ON BANKRUPTCY ¶ 1300.01).

[219] *E.g.*, *In re* Pierre, 468 B.R. 419, 424-425 (Bankr. M.D. Fla. 2012) (quoting H.R. REP. NO. 95-595, 95th Cong., 1st Sess. 118 (1977)).

[220] *E.g.*, Batac v. Boyajian, 532 B.R. 440, 442 (D.R.I. 2015).

[221] *E.g.*, *Pierre*, 468 B.R. at 424-425.

[222] 11 U.S.C. § 109(e) ("Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725 and noncontingent, liquidated, secured debts of less than $1,184,200, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than $394,725 and noncontingent, liquidated, secured debts of less than $1,184,200 may be a debtor under chapter 13."). These dollar figures adjust automatically every three years "to reflect the change in the Consumer Price Index for All Urban Consumers[] published by the Department of Labor." *Id*. § 104(a).

See also id. § 101(30) ("The term 'individual with regular income' means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 . . . other than a stockbroker or commodity broker."); *id*. § 109(g)-(h) (establishing additional eligibility requirements for individual debtors).

[223] *See*, *e.g.*, *In re* JAC Family Found., 356 B.R. 554, 557 (Bankr. N.D. Ga. 2006).

[224] Smith v. Rockett, 522 F.3d 1080, 1081 (10th Cir. 2008). *Accord*, *e.g.*, 11 U.S.C. § 1306(b) ("Except as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.").

[225] *E.g.*, *In re* Blendheim, 803 F.3d 477, 485 (9th Cir. 2015).

[226] *E.g.*, *In re* Diaz Esteras, No. 11-01141 (ESL), 2011 WL 5953483, at *4 (Bankr. D.P.R. Nov. 22, 2011) (quoting ALAN N. RESNICK & HENRY J. SOMMER, 8 COLLIER ON BANKRUPTCY ¶ 1306.01 (16th ed. 2011)).

"over time."[227] For that reason, debtors who own homes may prefer filing under Chapter 13 (assuming they are eligible to do so) instead of filing under Chapter 7.[228]

Notwithstanding the differences between Chapter 13 and Chapter 7, Chapter 13 cases are similar to Chapter 7 cases to the extent that a case trustee administers both types of proceedings. In many judicial districts, the U.S. Trustee[229] appoints "standing Chapter 13 trustees" who "oversee all Chapter 13 cases filed in" their respective districts.[230] Among other duties,[231] the Chapter 13 trustee

- ensures "that the debtor commences making timely payments" that will be distributed to creditors;[232]
- "Receive[s] monthly payments made by debtors and" distributes "the proceeds to creditors";[233] and
- investigates the debtor's financial affairs.[234]

Chapter 13 cases are also similar to Chapter 11 cases to the limited extent that both ideally result in the confirmation of a plan that alters the debtor's relationships with his creditors.[235] Among other requirements,[236] a Chapter 13 plan must propose "to use future income to repay a portion (or in the rare case all) of" the debtor's "debts over the next three to five years."[237] Only the debtor may file a proposed plan under Chapter 13.[238] "Unlike Chapter 11, creditors in a Chapter 13 case are not allowed to vote on a proposed plan,"[239] though the Chapter 13 trustee or certain parties with a pecuniary interest in the Chapter 13 case may object to a proposed plan that does

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[227] *E.g.*, *In re* McKinney, 344 B.R. 1, 3-4 (Bankr. D. Me. 2006) (analyzing 11 U.S.C. § 1322(b)-(c)).

[228] Katherine Porter, *Life After Debt: Understanding the Credit Restraint of Bankruptcy Debtors*, 18 AM. BANKR. INST. L. REV. 1, 9 n.32 (2010).

[229] 28 U.S.C. § 586(b) ("If the number of cases under chapter . . . 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may . . . appoint one or more individuals to serve as standing trustee."); 11 U.S.C. § 1302(a) ("If the United States trustee appoints an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter . . . then such individual shall serve as trustee in the case.").

[230] *E.g.*, Austin, *supra* note 23, at 1093.

[231] *See generally* 11 U.S.C. § 1302.

[232] *Id*. § 1302(b)(5).

[233] Austin, *supra* note 23, at 1093. *Accord*, *e.g.*, 11 U.S.C. § 1326(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.").

[234] 11 U.S.C. §§ 1302(b)(1), 704(a)(4).

[235] *See*, *e.g.*, *In re* Childs, 466 B.R. 924, 926 (Bankr. S.D. Tex. 2012) ("Chapter 13 cases are similar to Chapter 11 cases—at least insofar as plans are confirmed and thereafter implemented."). *But see In re* Fielding, Case No. 13-43212-DML-13, 2015 WL 1676877, at *4 (Bankr. N.D. Tex. Apr. 10, 2015) (noting "inherent differences between a plan proposed under chapter 11 as opposed to one proposed under chapter 13").

[236] *See generally* 11 U.S.C. §§ 1322(a), 1325; FED. R. BANKR. P. 3015(c). *See also In re* Blendheim, 803 F.3d 477, 485-86 (9th Cir. 2015) (discussing "mandatory provisions which all Chapter 13 plans must contain in order to qualify for confirmation").

[237] Bullard v. Blue Hills Bank, 135 S. Ct. 1686, 1690 (2015). *See also*, *e.g.*, 11 U.S.C. § 1322(a)(1) ("The plan . . . shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan."); *id*. § 1322(d) (governing the permissible length of a Chapter 13 plan).

[238] *See*, *e.g.*, 11 U.S.C. § 1321 ("The debtor shall file a plan."); *In re* Ellsworth, 455 B.R. 904, 916 (B.A.P. 9th Cir. 2011) ("A chapter 13 debtor . . . unlike a chapter 11 debtor, is the only entity that may file a plan.").

[239] *In re* Mason, 456 B.R. 245, 249 (Bankr. N.D. W.Va. 2011). *Accord*, *e.g.*, *In re* Brisco, 502 B.R. 212, 218 (Bankr. N.D. Ill. 2013) ("Chapter 13 creditors do not vote on a chapter 13 plan.").

not comply with certain requirements established by the Bankruptcy Code.[240] "If an unsecured creditor or the bankruptcy trustee objects to confirmation" of the proposed plan, Chapter 13 "requires the debtor either to pay unsecured creditors in full or pay all 'projected disposable income' to be received by the debtor over the duration of the plan"; otherwise, the "bankruptcy court may not approve the plan."[241] If the proposed plan complies with Chapter 13's requirements, "the court shall confirm" it.[242] "The provisions of a confirmed plan" under Chapter 13 "bind the debtor and each creditor."[243]

Generally speaking, "all payments to creditors must be made through the Chapter 13 trustee."[244] That is, "the Chapter 13 Trustee must collect payments as provided in the plan" from the debtor "and must distribute those payments" to creditors "as provided in the plan."[245] "During the repayment period, creditors may not harass the [d]ebtor or seek to collect their debts. They must receive payments only under the plan."[246]

"With certain exceptions . . . when a chapter 13 debtor completes all payments under a chapter 13 plan, the Court must grant the debtor a discharge of all debts provided for by the plan."[247] Thus, "unlike the chapter 7 discharge, which is typically granted relatively quickly, the chapter 13 debtor must, in most situations, successfully complete all plan payments before they may be granted a discharge."[248]

If, however, the "debtor fails to make timely payments under his plan," the Chapter 13 trustee may (1) ask the court to either (i) dismiss the case or (ii) convert it to a Chapter 7 liquidation; or (2) seek modification of the plan.[249] Dismissal of a Chapter 13 case usually "provide[s] no relief

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[240] *See, e.g.*, 11 U.S.C. § 1324 ("A party in interest may object to confirmation of [a proposed Chapter 13] plan."); *In re* Lilienthal, No. BK09-80928-TLS, 2009 WL 3103735, at *1 (Bankr. D. Neb. Sept. 23, 2009) (sustaining Chapter 13 trustee's objection that debtors' proposed plan violated 11 U.S.C. § 1325(a)(3)); *In re* Shelton, 428 B.R. 457, 461 (Bankr. N.D. Ohio 2010) ("Where a creditor finds its treatment in a debtor's proposed plan to be improper, the Code contemplates that the creditor bring the matter to the Court's attention by filing an objection."); *In re* McDonald, 508 B.R. 187, 198 (Bankr. D. Colo. 2014) (holding that "anyone who has an interest in the property to be administered and distributed under the Chapter 13 plan" is a "party in interest" who may object to a proposed plan under 11 U.S.C. § 1324) (quoting Davis v. Mather (*In re* Davis), 239 B.R. 573, 579 (B.A.P. 10th Cir. 1999)).

[241] Hamilton v. Lanning, 560 U.S. 505, 508-09 (2010) (quoting 11 U.S.C. § 1325(b)(1)).

[242] 11 U.S.C. § 1325(a). *Accord, e.g.*, *In re* Colcord, Case No. 15-46941, 2015 WL 5461543, at *1 (Bankr. E.D. Mich. Sept. 16, 2015) ("A bankruptcy court must confirm a plan that complies with the applicable provisions of Chapter 13.").

[243] 11 U.S.C. § 1327(a).

[244] *E.g.*, *In re* Curran, No. 09-27858-svk, 2009 WL 2591640, at *1 (Bankr. E.D. Wis. Aug. 20, 2009).

[245] *E.g.*, *In re* Idlett, No. 09-60169, 2009 WL 4756260, at *1 (Bankr. S.D. Tex. Dec. 8, 2009).

[246] *E.g.*, Schwindler v. Screen (*In re* Screen), No. 04-40615, 2004 WL 6044672, at *1 (Bankr. S.D. Ga. May 20, 2004) (quoting H.R. REP. NO. 95-595, at 118 (1977)).

[247] *In re* Hornstra, No. 03-40528, 2007 WL 1428737, at *1 (Bankr. D.S.D. May 11, 2007). *Accord, e.g.*, 11 U.S.C. § 1328 (providing, with certain exceptions, that "the court shall grant the debtor a discharge of" many types of debts "as soon as practicable after completion by the debtor of all payments under the plan").

Notably, the discharge in Chapter 13 affords the debtor relief from a wider variety of debts than a Chapter 7 discharge would cover. *E.g.*, *In re* Self, No. 06-40228, 2009 WL 2969489, at *7 (Bankr. D. Kan. Sept. 11, 2009) ("There are distinct advantages in filing a Chapter 13 proceeding over a Chapter 7 proceeding, such as obtaining a broader discharge of debts."). *Compare* 11 U.S.C. § 1328 (delineating the scope of a Chapter 13 discharge), *with id.* § 727(b) (delineating the scope of a Chapter 7 discharge).

[248] *In re* Okosisi, 451 B.R. 90, 94 (Bankr. D. Nev. 2011). *Accord, e.g.*, 11 U.S.C. § 1328.

[249] Ferrell v. Countryman, 398 B.R. 857, 868 (E.D. Tex. 2009) (quoting Jutila v. Rodgers (*In re* Jutila), 111 B.R. 621, 624 (W.D. Mich. 1989)). *Accord, e.g.*, 11 U.S.C. § 1307 (authorizing the court to "convert a case under [Chapter 13] to a case under chapter 7" or dismiss the case); *id.* § 1329(a) ("At any time after confirmation of the plan but before the

for the debtor, as it generally restores the debtor to the status quo ante."[250] When the court dismisses a debtor's Chapter 13 case, the automatic stay "terminate[s] by operation of law," and the debtor's creditors may once again attempt to collect their outstanding debts to the extent they have not already been paid through the plan.[251]

"Because Chapter 7 provides a quicker discharge of the debtor's obligations" than Chapter 13, many debtors would "typically prefer" to file under Chapter 7 rather than Chapter 13,[252] especially debtors who do not own a home that Chapter 13 could protect.[253] Debtors may also "prefer to file chapter 7 when their debts overwhelmingly outweigh their assets," as Chapter 7 allows debtors to discharge debts without pledging their future income to creditors.[254]

On the other hand, however, "unsecured creditors often receive more money under successful Chapter 13 plans than they would under a Chapter 7 liquidation bankruptcy,"[255] and some "policymakers prefer Chapter 13 to Chapter 7 because it includes an acknowledgement by filers to pay as much of their debts as they can, whereas Chapter 7 filers are asking to be relieved of the burden of paying anything towards the debts they have incurred."[256] For those reasons, "an individual debtor . . . whose debts are primarily consumer debts" is ineligible for Chapter 7 relief if his current monthly income, reduced by certain allowable expenses, exceeds statutory thresholds established by the Bankruptcy Code.[257] As mentioned above,[258] this eligibility provision is called the "means test,"[259] and it is "designed to force some debtors into chapter 13 when they would prefer chapter 7."[260]

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completion of payments under such plan, the plan may be modified, upon request of . . . the trustee.").

[250] Hon. Alan M. Ahart, *Whether to Grant a Hardship Discharge in Chapter 13*, 87 AM. BANKR. L.J. 559, 559 (2013).

[251] *In re* McNair, No. 05-12064, 2007 WL 831824, at *1 (Bankr. M.D. Ala. Jan 12, 2007). *Accord, e.g.*, 11 U.S.C. § 362(c)(2)(B) (providing that the dismissal of a case terminates the automatic stay).

[252] Shaun Mulreed, In re Blair *Misses the Mark: An Alternative Interpretation of the BAPCPA's Homestead Exemption*, 43 SAN DIEGO L. REV. 1071, 1075 (2006).

[253] Porter, *supra* note 228, at 9 n.32 ("Fewer homeowners file chapter 7 bankruptcy; many prefer chapter 13 bankruptcy because it provides specific benefits to homeowners who may be in arrears on their mortgage loans.").

[254] Joseph W. Doherty, *One Client, Different Races: Estimating Racial Disparity in Chapter Choice Using Matched Pairs of Debtors*, 20 AM. BANKR. INST. L. REV. 651, 668 (2012).

[255] McDonald v. Master Fin., Inc. (*In re* McDonald), 205 F.3d 606, 614 (3d Cir. 2000).

[256] Robert J. Landry, III, *An Empirical Analysis of the Causes of Consumer Bankruptcy: Will Bankruptcy Reform Really Change Anything?*, 3 RUTGERS BUS. L.J. 2, 48 n.175 (2006).

[257] 11 U.S.C. § 707(b)(1)-(2). *Accord, e.g.*, *In re* Arndt, Case No. 17-30226, 2017 WL 5164141, at *3 (Bankr. N.D. Ohio Nov. 6, 2017); *In re* Ralston, 400 B.R. 854, 856 (Bankr. M.D. Fla. 2009). *See also* Official Bankruptcy Form 122A-2 (Chapter 7 Means Test Calculation form); 11 U.S.C. § 104(a) (providing that 11 U.S.C. § 707(b)'s dollar limits automatically adjust every three years "to reflect the change in the Consumer Price Index for All Urban Consumers[] published by the Department of Labor").

[258] See *supra* "Individual Debtors."

[259] *E.g.*, *In re* Fredman, 471 B.R. 540, 542 (Bankr. S.D. Ill. 2012) ("With the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 11 U.S.C. § 707(b) was amended to add a screening mechanism, known as the 'means test.' The purpose of the means test is to weed out chapter 7 debtors who are capable of funding a chapter 13 case.").

[260] William C. Whitford, *A History of the Automobile Lender Provisions of BAPCPA*, 2007 U. ILL. L. REV. 143, 156. *See also McDonald*, 205 F.3d at 614 ("Courts have repeatedly emphasized Congress's preference that individual debtors use Chapter 13 instead of Chapter 7.").

Chapter 12 Family Farmer/Family Fisherman Cases

Chapter 12 of the Bankruptcy Code[261] offers a form of bankruptcy relief that is "similar to that available" to individual consumers "under chapter 13,"[262] but is only available to family farmers and family fishermen with regular annual income.[263] Although Chapter 12 is infrequently utilized,[264] Chapter 12 exists "to give family farmers" and family fishermen "a chance to reorganize their debts and keep their farms while preserving the fair treatment of creditors."[265] To that end, "a Chapter 12 debtor has the right to continue to operate the farm [or fishing] business" during the pendency of the bankruptcy case.[266]

To qualify as a "family farmer" or "family fisherman" within the meaning of Chapter 12, the debtor must satisfy a complicated series of statutory prerequisites.[267] Among other requirements, the debtor's aggregate debt must not exceed certain statutory limits, and a statutorily defined percentage of the debtor's debts must arise out of a farming operation or commercial fishing operation.[268]

"Chapter 12 was modeled on chapter 13," and as a result "many of the provisions" of both Chapters "are identical."[269] Most pertinently, Chapter 12 debtors may "preserve existing assets subject to a 'court-approved plan under which they pay creditors out of their future income'" like Chapter 13 debtors.[270] Nevertheless, "there are significant differences between Chapter 12 and Chapter 13."[271] To name just one example, Chapter 13 "is substantially less permissive than Chapter 12 regarding the scope of allowed modifications of secured debt, particularly regarding modifications of claims secured by residences."[272]

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[261] 11 U.S.C. §§ 1201-1232.

[262] *E.g.*, First Brandon Nat'l Bank v. Kerwin (*In re* Kerwin), 996 F.2d 552, 559-560 (2d Cir. 1993).

[263] *See* 11 U.S.C. § 109(f) ("Only a family farmer or family fisherman with regular annual income may be a debtor under Chapter 12.").

[264] Katherine M. Porter, *Phantom Farmers: Chapter 12 of the Bankruptcy Code*, 79 AM. BANKR. L.J. 729, 740-47 (2005) (noting that "Chapter 12 has been rarely used" and positing reasons why Chapter 12 filings may be relatively infrequent).

[265] *E.g.*, *In re* Pertuset, 492 B.R. 232, 259 (Bankr. S.D. Ohio 2012).

[266] *In re* Eckberg, 446 B.R. 909, 918 (Bankr. C.D. Ill. 2011). *Accord*, *e.g.*, 11 U.S.C. § 1203 (granting the debtor the right to "operat[e] the debtor's farm or commercial fishing operation").

[267] *See* 11 U.S.C. § 101(18)-(19B).

[268] *Id.* § 101(18)(A), (18)(B)(ii), (19A)(A)(i), (19A)(B)(ii)(II).

[269] Hall v. United States, 566 U.S. 506, 516 (2012) (quoting HENRY J. SOMMER & RICHARD LEVIN, 8 COLLIER ON BANKRUPTCY ¶ 1200.01[5] (16th ed. 2011)). *See also In re* LaRosa Greenhouse, LLP, 565 B.R. 304, 309-310 (Bankr. D.N.J. 2017) (listing ways in which Chapters 12 and 13 are similar).

[270] *Hall*, 566 U.S. at 509 (quoting Hamilton v. Lanning, 560 U.S. 505, 508 (2010)). *See also*, *e.g.*, Baker v. Baker (*In re* Baker), Bankr. Case No. 10-70221-HDH-12, Civil Action No. 7:13-CV-00049-O, 2014 WL 1373471, at *2 (N.D. Tex. Apr. 8, 2014) ("Chapter 12 of the Bankruptcy Code allows farmer debtors with regular annual income to adjust their debts subject to a reorganization plan.").

[271] *E.g.*, Cohen v. Lopez (*In re* Lopez), 372 B.R. 40, 45-46 (B.A.P. 9th Cir. 2007).

[272] *E.g.*, *id.*

Chapter 9 Municipality Cases

Chapter 9 of the Bankruptcy Code authorizes certain municipal debtors[273] to restructure their debts so that they may "provide adequate municipal services" to residents.[274] Because municipalities provide essential services to their residents, such as police protection, fire protection, garbage removal, and the like,[275] a "municipality cannot be liquidated, its assets sold, and the proceeds used to pay its creditors."[276] Chapter 9 therefore permits municipalities to adjust their debts pursuant to a confirmed adjustment plan,[277] "which fosters the continuance of municipalities rather than their dissolution."[278]

"The general policy considerations underlying the municipal debt adjustment plan of chapter 9 are the same as that of chapter 11 reorganization: to give the debtor a breathing spell from debt collection efforts and establish a repayment plan with creditors."[279] However, unlike Chapter 11, "the entire structure of chapter 9 has been influenced by th[e] pervasive concern to preserve the niceties of the state-federal relationship."[280] To that end, Chapter 9 restricts the bankruptcy court's ability to "interfere with the political or governmental powers of the petitioner, the property or revenue of the petition, or any income-producing powers" in order to preserve "the sovereignty of the states."[281] Additionally, to avoid further "encroaching on state sovereignty," there is little to no role for a case trustee in a Chapter 9 case.[282]

Although Chapter 9 bankruptcies are presently relatively infrequent, some commentators predict that municipal bankruptcies could potentially become more common in the future "as increasing

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[273] *See* 11 U.S.C. § 109(c) (establishing requirements a municipality must fulfill in order to declare bankruptcy under Chapter 9). Among other requirements, a municipality "may be a debtor under chapter 9" of the Bankruptcy Code "if and only if such entity . . . is specifically authorized . . . to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter." *Id*. § 109(c)(2). "Some states outright prohibit municipalities from availing themselves of chapter 9 protection; others provide express and unconditional or express but qualified authorization." Diane Lourdes Dick, *Bondholders v. Retirees in Municipal Bankruptcies: The Political Economy of Chapter 9*, 92 AM. BANKR. L.J. 73, 79 (2017).

[274] *E.g.*, *In re* City of Detroit, Mich., 524 B.R. 147, 256 (Bankr. E.D. Mich. 2014).

[275] *E.g.*, *In re* Addison Cmty. Hosp. Auth., 175 B.R. 646, 648 (Bankr. E.D. Mich. 1994).

[276] *E.g.*, Franklin High Yield Tax-Free Income Fund v. City of Stockton, Cal. (*In re* City of Stockton, Cal.), 542 B.R. 261, 284 (B.A.P. 9th Cir. 2015) (quoting ALAN N. RESNICK & HENRY J. SOMMER, 6 COLLIER ON BANKRUPTCY ¶ 943.03[7][a] (16th ed. 2011)).

[277] 11 U.S.C. §§ 941, 943.

[278] *E.g.*, *Addison*, 175 B.R. at 648.

Note also that the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) contains a subchapter that authorizes certain territorial entities to adjust their debts and resembles Chapter 9 of the Bankruptcy Code. *See* 48 U.S.C. §§ 2101-2241.

[279] *E.g.*, *Addison*, 175 B.R. at 649.

[280] *E.g.*, Ass'n of Retired Emps. of City of Stockton v. City of Stockton, Cal. (*In re* City of Stockton, Cal.), 478 B.R. 8, 20 (Bankr. E.D. Cal. 2012).

[281] *Addison*, 175 B.R. at 649 (quoting 121 CONG. REC. H39409-10 (1975) (statement of Rep. Edwards)). *See also*, *e.g.*, 11 U.S.C. § 903 (providing that Chapter 9 "does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise"); *id*. § 904 (limiting the court's jurisdiction and power in Chapter 9 cases).

[282] *Stockton*, 478 B.R. at 20. *Accord* 11 U.S.C. § 901(a) (providing that Chapter 11's provisions governing the appointment of a trustee do not apply in Chapter 9); *id*. § 926(a) (providing that "the court may appoint a trustee" in a Chapter 9 case only for the limited purpose of pursuing certain causes of action, and only "if the debtor refuses to pursue" those causes of action).

numbers of cities and towns face fiscal distress."[283] High-profile examples of municipalities that have filed bankruptcy under Chapter 9 include the City of Detroit, Michigan;[284] the City of San Bernardino, California;[285] and Jefferson County, Alabama.[286]

Chapter 15 Ancillary and Cross-Border Cases

Chapter 15 of the Bankruptcy Code[287] "was enacted by Congress . . . as a means to facilitate international cooperation in the administration of cross-border insolvencies"[288] and to "incorporate the Model Law on Cross-Border Insolvency . . . promulgated by the United States Commission on International Trade Law."[289] Chapter 15 "authorizes an 'ancillary' proceeding in a United States bankruptcy court that is largely designed to complement and assist a foreign insolvency proceeding by, among other things, 'bringing people and property beyond the foreign main proceeding's jurisdiction into the foreign main proceeding through the exercise of the United States' jurisdiction."[290] "Filings under Chapter 15" are "relatively infrequent."[291]

Conversion to Another Chapter

Under certain circumstances, a bankruptcy court may convert a case commenced under one Chapter of the Bankruptcy Code to a case under another Chapter.[292] For example, if a Chapter 11 debtor engages in "gross mismanagement of the estate,"[293] the bankruptcy court may convert the case to a Chapter 7 liquidation and thereby place the debtor's assets under the control of a Chapter 7 trustee to "liquidate the property so as to maximize distribution to creditors of the estate."[294] Similarly, "a chapter 13 debtor who is unable to complete plan payments may request that the case be converted to Chapter 7."[295]

Discharge

As noted above, most types of bankruptcy cases ideally culminate in a "**discharge**" of many of the debtor's preexisting debts.[296] Generally speaking, a discharge

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[283] Laura N. Coordes, *Gatekeepers Gone Wrong: Reforming the Chapter 9 Eligibility Rules*, 94 WASH. U. L. REV. 1191, 1195 (2017).

[284] *See* Lyda v. City of Detroit, Mich. (*In re* City of Detroit, Mich.), 841 F.3d 684, 688 (6th Cir. 2016).

[285] *See* City of San Bernardino, Cal., 499 B.R. 776, 778 (Bankr. C.D. Cal. 2013).

[286] *See In re* Jefferson Cty., Ala., 469 B.R. 92, 97 (Bankr. N.D. Ala. 2012).

[287] 11 U.S.C. §§ 1501-1532.

[288] *E.g.*, O'Sullivan v. Loy (*In re* Loy), 432 B.R. 551, 554-555 (E.D. Va. 2010).

[289] *In re* SPhinX, Ltd., 351 B.R. 103, 112 & n.11 (Bankr. S.D.N.Y. 2006) (quoting 11 U.S.C. § 1501(a)).

[290] Jaffe v. Samsung Elecs. Co., 737 F.3d 14, 24-25 (4th Cir. 2013) (quoting *In re* ABC Learning Ctrs. Ltd., 728 F.3d 301, 307 (3d Cir. 2013)).

[291] Andrew B. Dawson, *The Problem of Local Methods in Cross-Border Insolvencies*, 12 BERKELEY BUS. L.J. 45, 79 (2015).

[292] 11 U.S.C. §§ 706, 1112, 1208, 1307.

[293] *See id*. § 1112(b)(4).

[294] *See In re* Chao, No. 11-38131, 2011 WL 5855276, at *4, *6-7 (Bankr. S.D. Tex. Nov. 21, 2011).

[295] Ahart, *supra* note 250, at 576. *See also* 11 U.S.C. § 1307(a) ("The debtor may convert a case under [Chapter 13] to a case under chapter 7 of this title at any time.").

[296] *See, e.g.*, 11 U.S.C. §§ 524, 727, 1141(d), 1328.

- "Voids any judgment . . . to the extent that such judgment is a determination of the personal liability of the debtor with respect to" the discharged debt;[297] and
- "Operates as an injunction against the commencement or continuation of" any "action" or "act to collect or recover" the discharged debt.[298]

A creditor who "attempt[s] to collect on a debt that has been discharged in a bankruptcy proceeding" may potentially be "punished by contempt of court."[299]

Exceptions and Limitations to Dischargeability

Although most debts that arise prior to the date on which the debtor filed his petition are typically dischargeable in bankruptcy,[300] "Congress has decided" that, in some circumstances, "public policy considerations override the need to provide the debtor with a fresh start."[301] The Bankruptcy Code accordingly specifies certain categories of debts that are presumptively or categorically nondischargeable in bankruptcy.[302] For instance:

- A debtor may not discharge a debt "for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance."[303]
- Nor may a debtor discharge "a domestic support obligation."[304]
- A Chapter 7 debtor may not discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity."[305]
- A debtor may not discharge a student loan "unless excepting such debt from discharge . . . would impose an undue hardship on the debtor and the debtor's dependents."[306]

Also, as a general matter, a discharge order does not discharge claims against the debtor that arise *after* the debtor filed his bankruptcy petition.[307] Furthermore, with some exceptions, liens against the debtor's property generally "continue in effect despite the entry of a bankruptcy discharge, which discharges only a debtor's personal liability on an unpaid debt."[308]

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[297] *Id*. § 524(a)(1).

[298] *Id*. § 524(a)(2)-(3). *But see id*. § 524(b) (specifying situations in which the discharge provision codified at 11 U.S.C. § 524(a)(3) does not apply).

[299] *E.g.*, Johnston v. Valley Credit Servs. (*In re* Johnston), Bankr. No. 05-6288, Adv. No. 06-180, 2007 WL 3166941, at *3 (Bankr. N.D. W. Va. Oct. 25, 2007).

[300] *E.g.*, Grable v. IRS (*In re* Grable), 188 B.R. 595, 595 (Bankr. W.D. Mo. 1995) ("Most pre-petition debts are dischargeable.").

[301] *E.g.*, *In re* Chambers, 348 F.3d 650, 653 (7th Cir. 2003).

[302] *See generally*, *e.g.*, 11 U.S.C. §§ 523, 727(b), 1141(d)(2), 1328(a)(2) & (c)(2).

[303] *Id*. § 523(a)(9).

[304] *Id*. § 523(a)(5).

[305] *Id*. § 523(a)(6). *But see id*. § 1328(a)(2) (providing that Section 523(a)(6) does not apply in Chapter 13 cases).

[306] Id. § 523(a)(8). See generally CRS Report R45113, *Bankruptcy and Student Loans*, by Kevin M. Lewis.

[307] *E.g.*, Wood v. Wood (*In re* Wood), 825 F.2d 90, 94 (5th Cir. 1987) ("Generally, post-petition claims are not dischargeable in bankruptcy."); 11 U.S.C. § 727(b) ("A discharge . . . discharges the debtor from all debts *that arose before the date of the order for relief under this chapter*." (emphasis added)).

[308] Guar. Co. of N. Am., USA v. Clark (*In re* Clark), Bankr. No. 09-27955-JS, Adv. No. 10-00063-JS, 2013 WL

Additionally, under certain circumstances, a bankruptcy court may deny a discharge to a debtor who might otherwise be eligible to receive one. For instance, a bankruptcy court may deny a discharge to certain debtors who commit misconduct during the bankruptcy case or otherwise fail to comply with certain requirements of the Bankruptcy Code.[309] A debtor who files bankruptcy a second time too soon after receiving a discharge in an earlier bankruptcy case may likewise be ineligible for a discharge.[310]

5429866, at *3 (Bankr. D. Md. 2013) (interpreting 11 U.S.C. § 506(d)).

[309] *See generally*, *e.g.*, 11 U.S.C. §§ 727(a)(2)-(7), (11), 1328(g)(1). *See also id*. §§ 727(d)-(e), 1144(2), 1328(e) (authorizing the revocation of a discharge previously granted by the bankruptcy court if the debtor has committed misconduct).

[310] *See generally*, *e.g.*, *id*. §§ 727(a)(8)-(9), 1328(f).

Appendix A. Glossary

Automatic Stay	A protection that the Bankruptcy Code provides the debtor against collection activities and many other actions by creditors.
Bankruptcy Code	A set of statutes codified at 11 U.S.C. §§ 101-1532 of the United States Code which govern bankruptcy cases.
Bankruptcy Judge	A judicial officer established under Article I of the Constitution who rules on issues in bankruptcy cases.
Case Trustee	The representative of the bankruptcy estate whose role and duties vary depending on which Chapter of the Bankruptcy Code the debtor has invoked. A case trustee appointed to administer a case under Chapter 7 of the Bankruptcy Code is known as the "Chapter 7 trustee"; a case trustee appointed under Chapter 13 is known as the "Chapter 13 trustee," and so forth. Not to be confused with the **United States Trustee**.
Collateral	Property that is pledged as security against a debt.
Confirmation	If a proposed plan satisfies the applicable provisions of the Bankruptcy Code, the bankruptcy judge may "confirm" it. Confirmation causes the plan to become effective and thereby bind interested parties.
Cramdown	Confirming a plan over the objection of certain creditors.
Creditor	One to whom the debtor owes money or who claims to be owed money by the debtor.
Debtor	An entity that owes debts to creditors and has filed a petition for relief under the Bankruptcy Code.
Discharge	Relief from some or all of a debtor's debts. A discharge generally consists of a legal right not to pay the discharged debts as well as safeguards against harassment by the creditor whose debt is discharged.
Estate	With certain exceptions, the estate consists of the debtor's property as of the commencement of the case. The estate is created upon the filing of a bankruptcy petition.
Exemption	Allows debtors to remove certain categories of assets from the property of the estate and thereby insulate those assets from the claims of creditors.
Plan	A proposal to adjust the relationships between (1) the debtor; (2) the debtor's creditors; and (3) other stakeholders. A **confirmed plan** becomes a binding contract between the debtor, its creditors, and other stakeholders, and governs their respective rights and obligations.
Secured Creditor	A creditor who has a legal right against specific property that the debtor has pledged as security against the debt in the event the debtor defaults. Compare to **Unsecured Creditor**.
United States Trustee	An officer of the U.S. Department of Justice who oversees bankruptcy cases in most jurisdictions. Not to be confused with the **Case Trustee**.
Unsecured Creditor	A creditor who takes no rights to any specific property of the debtor in exchange for extending the debtor credit. Compare to **secured creditor**.

Appendix B. Table Illustrating Differences Between Chapters of the Bankruptcy Code[311]

	Chapter 7	Chapter 9	Chapter 11	Chapter 12	Chapter 13
Who May File?	Certain individuals and non-individuals	Certain municipalities	Certain individuals and non-individuals	Certain family farmers and family fishermen with regular income	Certain individuals with regular income
End Goal	Liquidation of the debtor	Adjustment of the debtor's debts	Usually reorganization of the debtor, but occasionally liquidation	Adjustment of the debtor's debts	Adjustment of the debtor's debts
Ideally Results in a Confirmed Plan?	No	Yes	Yes	Yes	Yes
Case Trustee Appointed?	Yes	Almost never, and only for limited purposes	Rarely	Yes—usually a standing trustee	Yes—usually a standing trustee
Debtor Typically Retains Control of its Assets and Operations During Case?	No	Yes	Yes, unless trustee appointed	Yes	Yes

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[311] Because "a Chapter 15 case is" so "fundamentally different than one under other chapters of the Bankruptcy Code," Dawson, *supra* note 291, at 78, adding a column for Chapter 15 to this table would inhibit clarity. This table therefore only illustrates the most pertinent differences between Chapters 7, 9, 11, 12, and 13.

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