

PUBLICATION UPDATE

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Collier on Bankruptcy

Publication 219 Release 174

June 2025

HIGHLIGHTS

Important Caselaw Updates: Confirmation of Plan; Effect of Confirmation; Preferences; Dismissal of a Case or Conversion to a Case under Chapter 11 or 13.

- Release 174 contains important caselaw updates to chapters covering the following topics: who may be a debtor, property of the estate, preferences, dismissal of a case or conversion to a case under chapter 11 or 13, effect of confirmation, and confirmation of plan, among others.

New & Revised Commercial Forms: Automatic Stay, Committees in Chapter 11 Cases, and Using, Selling or Leasing Property of the Estate; Updated Official Forms and Director's Forms.

- Chapters Pt. 4, 9, and 28 [Volumes 14 and 17] contain new and revised commercial forms. Additionally, Release

174 contains updated Official and Director's Forms, that take into account the April 1 dollar amount changes [Vols. 14-19].

Who May Be A Debtor. Chapter 109 [Vol. 2] discusses eligibility criteria for debtors, including court cases that address the right to dismiss a chapter 13 case, recognition of proceedings for foreign banks, and contingent debts. Newly-added caselaw includes: *TICO Constr. Co. v. Van Meter (In re Powell)* (the Court of Appeals for the Ninth Circuit held that a debtor had the right to dismiss a chapter 13 case under section 1307(b)); *In re Silicon Valley Bank (Cayman Islands Branch)* (denying Chapter 15 recognition of a proceeding for a Cayman Islands bank that was a branch of a domestic FDIC-insured bank; and *In re Ramus* (eligibility determination should not be decided based on later claims allowance process).

Property of the Estate. Chapter 541 [Vol. 5] covers what constitutes property of the estate, including easements, causes of action based on pre- and post-petition conduct, insurance proceeds held in escrow, and title to vehicles under state law. Newly-added caselaw includes: *In re Williamsburg Boutique LLC* (state law applied to determine that an easement is property of the estate); *Bercy v. City of Phoenix* (a cause of action based upon the continuing conduct of the defendant both pre- and post-petition may constitute property of the estate 7); *In re Gwg Holdings* (payments out of escrow cannot be preferential because the escrowed funds were not property of the debtor); *TitleMax of Ala. v. Hambright (In re Hambright)* (title to the vehicle passed to the pledgee when the debtor failed to redeem within the statutory period; and *Cafferty v. Fix (In re Fix)* (section 544 powers prevail over resulting trust).

Preferences. Chapter 547 [Vol. 5] discusses preference claims and the central policy of the Bankruptcy Code for equality of distribution among creditors. Newly-added caselaw and discussion includes: *Avery v. Gia Phu Garment Fashion Co. (In re Kody Branch of Cal., Inc.)* (a preference claim promotes a central policy of the Bankruptcy Code for equality of distribution among creditors); *Moyer v. Rogers (In re Wedgewood Props., LLC)* (garnishment lien attached when the writ of garnishment was served); *Lester v. Edgewood Food Mart, Inc. (In re Edgewood Food Mart, Inc.)* (a creditor

that filed a complaint seeking to recover a preference without having obtained derivative standing was sanctioned); and *Briar Cap. Working Fund Cap., L.L.C. v. Remmert (In re South Coast Supply Co.)* (avoiding power actions are property of the estate and may be sold).

Dismissal of a Case or Conversion to a Case under Chapter 11 or 13. Chapter 707 [Vol. 6] covers the criteria for dismissing or converting a case under Chapter 11 or 13. Newly-added caselaw includes: *In re Callaway* (denying motion to dismiss where trustee might sell interests in LLCs engaged in marijuana business); *In re Robles* (absent dismissal, debtor would lose car that was only means of transportation for debtor and disabled wife); *Gallagher v. Cohen* (dismissal is mandatory if abuse is found); *In re Folkerts* (rejecting argument that nondebtor spouse must reduce expenses to those permitted by means test); *In re Szczepanski* (debtor had not shown that there was danger of loss of property due to tax liens); and *Teter v. Baumgart (In re Teter)* (Court of Appeals for the Sixth Circuit held that debtor may not seek attorney's fees under the Equal Access to Justice Act because a motion within a bankruptcy case is not a "civil action").

Effect of Confirmation. Chapter 1141 [Vol. 8] discusses the effect of confirmation of a Chapter 11 plan. Caselaw and discussion that has been added to this chapter includes: *Harrington v. Purdue Pharma L.P.* (Supreme Court held that the current

Bankruptcy Code does not authorize non-consensual third-party releases without the consent of affected claimants); *In re Robertshaw US Holding Corp.* (concluded that an opt-out mechanism is a sufficient means of registering creditor consent for third-party releases); *In re Smallhold, Inc.* (held that an opt-out mechanism is not sufficient to demonstrate consent to third-party releases); and *In re Highland Capital Management, L.P.* (required that exculpation provisions be limited to the debtor, the creditors' committee and its members, and the trustees, for conduct within the scope of their duties).

Confirmation Plan. Chapter 1325 [Vol. 8] covers various aspects of confirming a chapter 13 plan. Newly-added caselaw and discussion includes: *Bledsoe v. Cook* (Fourth Circuit held that secured debt deductions are not limited by IRS standards); *TitleMax of Ala., Inc. v. Arnett* (District Court for the Middle District of Alabama applied the clearly erroneous test in affirming the decision that the plan was not proposed in bad faith where the debtor renewed a title pawn agreement shortly before filing the Chapter 13 case); *In re Lauber* (Bankruptcy Court for the Western District of Michigan found that failure to comply with a payment order was contempt and a violation of the automatic stay, entitling the debtor to attorney's fees under section 362(k)); *Iron Horse Welding, LLC v. Beach* (*In re Beach*) (District Court for the District of New Mexico discussed various aspects of plan confirmation); *In re Ritter* (Bankruptcy Court for the

Southern District of Illinois held that res judicata precludes objection to a modified plan that did not change the treatment of a secured creditor); *Smith v. Freedom Mortg. Corp.* (Third Circuit found that res judicata precludes objection to a modified plan that did not change the treatment of a secured creditor); *In re Echevarria* (Bankruptcy Appellate Panel for the First Circuit affirmed that a creditor could not claim additional interest was due when the plan was completed and the creditor had received the amount provided for in the plan); *Griego v. FGMS Holding, LLC* (*In re Griego*) (Bankruptcy Court for the Western District of Texas barred a creditor from seeking attorney's fees not disclosed or approved under Fed. R. Bankr. P. 2016); and *Blumsack v. Harrington* (Bankruptcy Appellate Panel for the First Circuit left open the possibility that a debtor employed in the cannabis industry could obtain confirmation of a plan funded with payments not derived from that industry).

New & Revised Commercial Forms: Automatic Stay, Committees in Chapter 11 Cases, and Using, Selling or Leasing Property of the Estate. Chapter Pt. 4 (Modifying, Maintaining and Enforcing the Automatic Stay) [Vol. 14] contains three completely revised forms in § 4.10 (Modification of Stay to Proceed with Action in Non-Bankruptcy Forum): Form No. 4.10-1 (Motion for Relief from the Automatic Stay to Resume State Court Proceedings); Form No. 4.10-2 (Order Granting Motion for Relief from the Automatic Stay to

Resume State Court Proceedings); and Form No. 4.10-3 (Debtors' Objection to Motion for Relief from the Automatic Stay to Resume State Court Proceedings). Chapter Pt. 9 (Committees in Chapter 11 Cases) [Vol. 14] has been updated in § 9.12 (By-laws for Official Unsecured Creditors' Committee) with one new form: BYLAWS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF [DEBTOR NAME]. Finally, Chapter Pt. 28 (Using, Selling or Leasing Property of the Estate) [Vol. 17] has been updated with three revised forms in § 28.03 (Using Cash Collateral for Operating Expenses and Providing Replacement Liens): Form No. 28.03-2 (Interim Order (I)(A) Authorizing Debtors to Use Cash Collateral; (B) Granting Adequate Protection to Prepetition Lenders; (C) Modifying the Automatic Stay; and (D) Scheduling a Further Interim Hearing and (II) Granting Related Relief); Form No. 28.33-4 (Debtors' Motion for Entry of Orders (I) (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of all or Substantially All of the Debtors' Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving Manner of Notice Thereof, and (D) Granting Related Relief; and (II) (A) Authorizing and Approving the Debtors' Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of all or Substantially all of the Debtors' Assets Free and Clear of

all Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief); and Form No. 28.33-8 (Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of all or Substantially all of the Debtors' Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving Manner of Notice Thereof, and (D) Granting Related Relief).

Updated Official Forms and Director's Forms. Release 174 contains updated Official and Director's Forms, that take into account the April 1 dollar amount changes [Vols. 14-19]. These forms are as follows: Official Form 106C (Schedule C: The Property You Claim as Exempt); Official Form 107 (Statement of Financial Affairs for Individuals Filing for Bankruptcy); Official Form 122A-2 (Chapter 7 Means Test Calculation); Official Form 122C-2 (Chapter 13 Calculation of Your Disposable Income); Official Form 201 (Voluntary Petition for Non-Individuals Filing for Bankruptcy); Official Form 207 (Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy); Official Form 410 (Proof of Claim); Director's Form 2000 (REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES); and Director's Form 2830 (CHAPTER 13 DEBTOR'S CERTIFICATIONS REGARDING DOMESTIC SUPPORT OBLIGATIONS AND SECTION 522(q)). Additionally, the re-

lease includes updated instructions must submit to the U.S. Bankruptcy
for completing selected forms that Court.
individuals filing for bankruptcy

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Publication 219 Release 174

June 2025

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- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

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