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LENDER LIABILITY LAW AND LITIGATION

Publication 488 Release 73 April 2026

HIGHLIGHTS

Updated Chapters

- This release contains updates and revisions to provide the current status of the law, including developments in statutory, and regulatory law. The release includes discussion of several important recent developments and adds new and revised material on a number of significant topics.

Chapter 4—Good Faith and Fair Dealing in Commercial Lending Transactions. *Covenant of good faith.* Not all courts will find an implied duty of good faith and fair dealing in every contract. Recent cases include: *Wantou v. Walmart, Inc.*, 2025 U.S. Dist. LEXIS 199453 (W.D. Tex. Oct. 8, 2025); *Olson v. Microsoft Corp.*, 2025 U.S. Dist. LEXIS 182246 (N.D. Tex. Sep. 17, 2025); *Pinnacle Fuel, LLC v. Pure Aviation, LLC*, 2025 U.S. Dist. LEXIS 177938 (W.D. Tex. Sep. 11, 2025). See § 4.02[1].

Class members failed to demonstrate a concrete injury because there was no evidence that their appraisals were tainted or that appraisers were pressured to reach the borrowers' estimates. *Alig v. Rocket Mortg., LLC*, 126 F.4th 965 (4th Cir. 2025). See § 4.02[2].

Definition of good faith. If the allegations of a breach of good faith do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated. *Sacramento Cty. Employees' Ret. Sys. v.*

Telus Health US Ltd., 2025 U.S. Dist. LEXIS 33739 (E.D. Cal. Feb. 25, 2025). See § 4.03[4].

Breach of implied covenant as tort. Defendants must act with the purpose of injuring a plaintiff's expectancies for their conduct to be intentional. *Alarm Detection Sys., Inc. v. Vill. of Schaumburg*, 145 F.4th 675 (7th Cir. 2025). A person cannot intentionally interfere with his own contract and an agent acting within the contractual scope of employment shares its principal's legal identity and cannot be a "third-party" interferor. *Allegheny Constr. Co. v. Town of Christiansburg*, 2025 Va. App. LEXIS 760 (Va. App. Dec. 16, 2025). The implied covenant covers any promises that a reasonable promisee would understand to be included in a contract, even if those promises are not stated explicitly. *A & M Warshaw Plumbing & Heating, Inc. v. Mount Vernon Fire Ins. Co.*, 2025 U.S. Dist. LEXIS 5659 (S.D.N.Y. Jan. 10, 2025). See § 4.05[1].

Chapter 7—Federal Tax Liability and the Federal Tax Lien. *Criminal penalties.* IRC § 7201 does not require the fact-finder to determine the exact amount of taxes owed. A court generally will not grant summary judgment as to the precise amount of a tax deficiency on the basis of a conviction under § 7201. *Orrock v. Commissioner*, 2025 U.S. Tax Ct. LEXIS 31 (T.C. Jan. 7, 2025). The Tenth Circuit has noted that the government's evidence in tax evasion cases typically is circumstantial. *United States v. Cromar*, 2025 U.S. App. LEXIS 22468 (10th Cir. Sep. 2, 2025). See § 7.03[1].

Control of payment of wages. The Tax Court properly applied the presumption of correctness to the Commissioner's determinations regarding a taxpayer's wages and a New York refund. *Manente v. Commissioner*, 2025 U.S. App. LEXIS 8320 (3d Cir. Apr. 9, 2025). See § 7.03[3].

Failure to collect trust fund taxes. If an employer willfully fails to collect or remit trust fund taxes that are credited to an employee, IRC § 6672 empowers the IRS to impose "a penalty equal to the total amount of the tax evaded" on "any person required to collect, truthfully account for, and pay over" trust fund taxes. *Warnement v. United States*, 177 Fed. Cl. 420 (2025). IRC § 6672 does not include a requirement that a responsible person exercised direct control over fiscal management of a business. *Comptroller of Md. v. Pedder*, 2024 Md. App. LEXIS 727 (Md. App. Sep. 18, 2024). See § 7.03[4][a].

Federal tax liens. When a person fails to pay any tax after the IRS demands payment, IRC § 6321 automatically imposes a tax lien on the taxpayer's property or property rights. Recent cases include: *Commissioner v. Zuch*, 605 U.S. 422 (2025); *Kellum Physician Partners, PA v. Commissioner*, 2025 U.S. Tax Ct. LEXIS 2043 (T.C. Aug. 27, 2025); *Julun v. Commissioner*, 2025 U.S. Tax Ct. LEXIS 2524 (T.C. Oct. 16, 2025); *Okoli v. Commissioner*, 2025 Tax Ct. Memo LEXIS 126

(T.C. Nov. 17, 2025). See § 7.08[1].

Chapter 12—Lender Environmental Liability Concerns. *Strict liability.* Section 113(j)(1) of CERCLA applies to any challenge to a CERCLA cleanup, including challenges brought under breach of contract claims that question the adequacy of a CERCLA cleanup. United States v. City of San Diego, 2025 U.S. Dist. LEXIS 159905 (S.D. Cal. Aug. 15, 2025). See § 12.03[1][a].

Secured creditor exemption. A party that was already subject to a judgment finding it liable for all response costs at a site could not proceed with a Section 107(a) claim for those costs. *Ga. Pacific Consumer Prods. LP v. NCR Corp.*, 136 F.4th 690 (6th Cir. 2025). See § 12.03[1][c].

Resource Conservation and Recovery Act. A plaintiff plausibly alleged procedural injury under National Environmental Policy Act that was fairly traceable to the Air Force's actions, as the Air Force might have chosen a different disposal method or location had it conducted the required environmental review. *Ritidian v. United States Dep't of the Airforce*, 128 F.4th 1089 (9th Cir. 2025). See § 12.04.

Successor liability. A corporate successor may be liable for its predecessor's actions under CERCLA. Browning-Ferris, Inc. v. Alban Tractor LLC, 2025 U.S. Dist. LEXIS 25797 (D. Md. Feb. 13, 2025) See § 12.05[1].

Chapter 14—Antitrust Aspects of Lender Liability. *Tying arrangements.* Tying product purchasers experience the harm of a tying arrangement to a greater extent than tied product purchasers and are therefore better positioned to enforce antitrust laws. See *N. Brevard Cty. Hosp. Dist. v. C.R. Bard, Inc.*, 2025 U.S. App. LEXIS 34009 (10th Cir. Dec. 31, 2025). There was no support for the proposition that requiring a release for past conduct as a condition of doing business constitutes anticompetitive conduct in violation of antitrust laws. *2311 Racing LLC v. NASCAR, LLC*, 139 F.4th 404 (4th Cir. 2025). See § 14.03[1].

Price fixing. Pricing and strategy changes and other policy and practice adjustments that align can all qualify as parallel behavior. *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 2025 U.S. Dist. LEXIS 123024 (D.D.C. June 24, 2025). See § 14.03[1].

Monopoly claims. To state an attempted monopolization claim, plaintiffs must plausibly allege that the defendant specifically intended to control prices or destroy competition in the market and has a dangerous probability of achieving monopoly power. *Costar Grp., Inc. v. Commer. Real Est. Exch., Inc.*, 141 F.4th 1075 (9th Cir. 2025). See § 14.03[2].

The Sixth Circuit affirmed a district court's dismissal of a federal antitrust claim at the pleading stage. *Acad. of Allergy & Asthma in Primary Care v. Amerigroup Tenn., Inc.*, 155 F.4th 795 (6th Cir. 2025). See

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