

TABLE OF CONTENTS

<i>Chapters and Authors</i>	iii
<i>About the Editor and Authors</i>	vii
<i>In Memoriam</i>	xxvii
<i>Acknowledgments</i>	xxix
<i>Preface</i>	xxxii
<i>Electronic Forms: Instructions and Table</i>	xxxiii

Volume 1

CHAPTER 1: OVERVIEW OF BANKRUPTCY LAW

1.1	INTRODUCTION	1
1.2	HISTORY OF BANKRUPTCY	2
1.201	Colonial United States	2
1.202	The Bankruptcy Act of 1898	3
1.203	The Chandler Act	4
1.204	The Bankruptcy Reform Act of 1978	4
1.205	The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986.....	6
1.206	The Bankruptcy Abuse Prevention and Consumer Protection Act	6
1.207	The Coronavirus Aid, Relief, and Economic Security Act	7
1.208	The Consolidated Appropriations Act.....	7
1.3	STRUCTURE OF THE CODE AND BANKRUPTCY PARTICIPANTS	8
1.301	Organization of Title 11	8
1.302	The Trustee	9
1.303	The United States Trustee.....	10
1.304	The Judge	11
1.305	The Debtor.....	12
1.306	The Creditor	13
1.4	TYPES OF RELIEF	14
1.401	Chapter 7.....	14
1.402	Chapter 11.....	15

TABLE OF CONTENTS

1.403	Chapter 12	17
1.404	Chapter 13	18
1.405	Chapter 15	19
1.5	BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005	19
1.6	GLOSSARY OF FREQUENTLY USED TERMS AND SUMMARIES OF RELATED CASE LAW	20
1.601	Adequate Protection	20
1.602	Applicable Commitment Period.....	21
1.603	Automatic Stay	22
1.604	Claim.....	25
1.605	Confirmation.....	26
1.606	Conversion	29
1.607	Core Proceeding	31
1.608	Cramdown.....	34
1.609	Cure and Maintain	36
1.610	Current Monthly Income	40
1.611	Discharge	41
1.612	Disposable Income	42
1.613	Domestic Support Obligation	44
1.614	Executory Contracts	46
1.615	Exemptions	47
1.616	Fee Application	49
1.617	Lien Avoidance.....	52
1.618	Means Test.....	56
1.619	Plan Modification.....	59
1.620	Reaffirmation.....	61
1.621	Serial Filers	63
1.622	“Till Rate”	67
1.623	Trustee (and Debtor-in-Possession)	69

CHAPTER 2: COMMENCEMENT OF A CASE

2.1	ADMISSION TO PRACTICE IN BANKRUPTCY COURT	75
2.101	In General	75
2.102	Requirements for Admission	75
2.103	Practice by Attorneys Not Licensed in Virginia.....	77
2.104	Application and Certification Forms	80
2.105	Non-Attorney Representatives	81
2.106	Attorneys’ Ethical Obligations	83

TABLE OF CONTENTS

2.2	INITIAL PLEADINGS	86
2.201	Petition	86
2.202	Matrix of Creditors.....	91
2.203	Creditor's Address	92
2.204	Filing Fees.....	92
2.205	Amendment of Pleadings	93
2.206	Electronic Case Filing.....	93
2.3	SCHEDULES AND STATEMENTS	94
2.301	In General.....	94
2.302	Schedules A-J	95
2.303	Statements	96
2.304	Redaction of Personal Information	98
2.4	OTHER NECESSARY PLEADINGS AND PAPERS	99
2.401	Homestead Deed.....	99
2.402	Corporate Resolution.....	99
2.403	Additional Papers for Chapter 11 Cases	99
2.404	Chapter 12 Repayment Plan.....	99
2.405	Chapter 13 Repayment Plan.....	100
2.406	Most Recent Tax Return	100
2.407	Interest in Education IRA.....	100
2.408	Proof of Identity.....	101
2.409	Statement Disclosing Postpetition Change in Income	101
2.5	SUBSTANTIVE CONSOLIDATION AND JOINT ADMINISTRATION	101
2.501	In General.....	101
2.502	Substantive Consolidation	102
2.503	Joint Administration.....	102
2.6	ELIGIBILITY OF DEBTOR.....	103
2.601	In General.....	103
2.602	Briefing with Budget and Credit Counseling Entity.....	104
2.603	Section 109(g) Limitations on Eligibility	105
2.604	Chapter 7.....	105
2.605	Chapter 9.....	106
2.606	Chapter 11.....	107
2.607	Chapter 12.....	107
2.608	Chapter 13.....	109

TABLE OF CONTENTS

2.7	TYPES OF PROCEEDINGS.....	109
2.701	“Adversary Proceedings” and “Contested Matters” Distinguished.....	109
2.702	Caption of the Pleadings.....	110
2.8	ADVERSARY PROCEEDINGS	110
2.801	Specific Actions Deemed Adversary Proceedings.....	110
2.802	Applicable Bankruptcy Rules: Part VII	115
2.803	Initial Pleadings	116
2.804	Service of Summons and Complaint	117
2.805	Discovery Conference and Required Disclosures	121
2.806	Pretrial Conference.....	121
2.807	Additional Forms Available at Eastern District Website.....	122
2.9	CONTESTED MATTERS	122
2.901	Initiation by Motion.....	122
2.902	Matters Commenced by Objection to Motion	124
2.903	Rules Applicable to Contested Matters	124
2.904	Form of Pleading.....	126
2.905	Filing Pleadings After Case Closed	127
2.906	Service.....	128
2.907	Response to a Motion.....	129
2.908	Local Rules.....	130

CHAPTER 3: AUTOMATIC STAY

3.1	INTRODUCTION.....	131
3.101	The Statute	132
3.102	Purpose and Effect of the Automatic Stay	135
3.103	Voidness or Voidability of Actions in Violation of the Automatic Stay	136
3.104	Prepetition Claims	137
3.105	Property Interests Subject to Automatic Stay	138
3.106	Property Exempt from the Automatic Stay	139
3.107	Actions Excluded from the Automatic Stay	143
3.108	Codebtor Stay.....	145
3.109	Violations of the Automatic Stay.....	147
3.110	Duration of the Stay	149

TABLE OF CONTENTS

3.2	RELIEF FROM THE AUTOMATIC STAY	150
3.201	The Statute.....	150
3.202	Bankruptcy Rule 4001	152
3.203	Stay Pending Appeal.....	155
3.204	Local Rules	155
3.205	Grounds for Relief from the Automatic Stay	155
3.206	Motion for Relief.....	170
3.207	Form of Motion	170
3.208	Ex Parte Relief	171
3.209	Notice.....	171
3.210	Notice to Adverse Parties.....	172
3.211	Expert Testimony	172
3.212	Non-Expert Opinion	173
3.213	Trial	173
3.214	Relief.....	175
3.215	“Comfort Orders”	177

CHAPTER 4: PROPERTY OF THE BANKRUPTCY ESTATE

4.1	INTERESTS IN PROPERTY	179
4.101	Concepts	179
4.102	Property Owned with Another	183
4.103	Interests in Personal Property.....	187
4.2	INTERESTS IN REAL PROPERTY	201
4.201	Life Estates.....	201
4.202	Equity or Rights of Redemption.....	201
4.203	Leases and Contracts for Sale.....	202
4.204	Partition	202
4.205	Quiet Title	203
4.3	INTERESTS IN PROPERTY FROM A DIVORCE.....	203
4.301	Debtor’s Entitlement to the Asset.....	203
4.302	Necessity of Court Order or Property Settlement Agreement	203
4.303	Future Spousal Support.....	203
4.304	Vested Equitable Rights of Non-Debtor Spouse.....	204
4.4	INTERESTS ARISING UPON THE DEATH OF A NON-DEBTOR	204
4.401	In General.....	204
4.402	Death Occurring Before the Bankruptcy Filing	205
4.403	Death Occurring After the Bankruptcy Filing	206

TABLE OF CONTENTS

4.404	Life Insurance Policies or Death Benefit Plans	206
4.405	Non-Retirement Spendthrift Trusts.....	207
4.5	PROPERTY INTERESTS PRESERVED FOR THE BENEFIT OF THE ESTATE.....	208
4.501	In General	208
4.502	Liens Securing Subordinated Claims.....	209
4.503	Miscellaneous Avoidable Transfers.....	209
4.504	Liens Securing Disallowed Claims	210
4.505	Effect of Avoidance	211
4.6	PROPERTY GENERATED POSTPETITION	211
4.601	In General	211
4.602	Proceeds	212
4.603	Rents	213
4.7	POSTPETITION ACQUISITIONS	214
4.701	In General	214
4.702	Bankruptcy Trustee Contracts	214
4.8	CONVERSIONS.....	214
4.801	Proceeding Converted from Chapter 11 to Chapter 7.....	214
4.802	Proceeding Converted from Chapter 13 to Chapter 7.....	215
4.9	INTERESTS IN PROPERTY RECOVERED BY TRUSTEE OR DEBTOR-IN-POSSESSION	216
4.901	In General	216
4.902	Property Recovered from a Custodian.....	216
4.903	Property Recovered Under the Trustee's Strong Arm Powers.....	217
4.904	Recovered Preferences	217
4.905	Fraudulent and Voluntary Conveyances	218
4.906	Postpetition Transfers	218
4.907	Setoffs.....	218
4.908	Recoveries by Partnership Trustee	218
4.909	Attorney Fees.....	219
4.910	Recovery from a Colluding Buyer.....	219
4.10	POWERS EXERCISABLE FOR THE BENEFIT OF A NON- DEBTOR.....	219
4.1001	Powers of Appointment.....	219
4.1002	Corporate Powers.....	220
4.1003	Failed Trusts.....	220

TABLE OF CONTENTS

4.11	EXPIRED AND EXPIRING LEASES	220
4.1101	Commercial Leases	220
4.1102	Residential or Personal Property Leases.....	221
4.12	PROTECTION FOR INSOLVENT DEBTOR'S PROPERTY RIGHTS	221

CHAPTER 5: USE AND SALE OF PROPERTY

5.1	THE TRUSTEE IN CASE ADMINISTRATION.....	223
5.101	Role of United States Trustee in Appointment and Supervision of Trustees.....	223
5.102	Election of Trustee at Meeting of Creditors	224
5.103	Administration by Debtor-in-Possession	226
5.104	Duties of a Trustee.....	226
5.105	Attorney-Client Privilege.....	227
5.106	Conduct of Section 341 Hearing.....	228
5.107	Scrutiny of Debtor's Financial Affairs	228
5.108	Employment of Professionals.....	228
5.109	Distribution of Liquidated Estate.....	229
5.2	USE, SALE, OR LEASE OF ASSETS OR PROPERTY—SECTION 363	229
5.201	Statutory Authority and Trustee's Powers.....	229
5.202	Use, Sale, or Lease in Ordinary Course of Business	230
5.203	Use, Sale, or Lease Outside Ordinary Course of Business.....	230
5.204	Sales Free and Clear of Interests	232
5.205	Sale of Interests of Co-owners.....	233
5.206	Credit Bids by Secured Parties	234
5.207	Effect of Law or Contract Provisions Prohibiting Use, Sale, or Lease of Property of the Estate	235
5.208	Effect of Reversal or Modification upon Appeal	235
5.209	Prohibition Against Collusive Bidding	235
5.210	Bidding Procedures and Buyer Protection Devices	236
5.3	EXECUTORY CONTRACTS AND UNEXPIRED LEASES—SECTION 365	238
5.301	Introduction.....	238
5.302	Definitions	239
5.303	Assumption or Rejection	240
5.304	Time Periods to Assume or Reject	241

TABLE OF CONTENTS

5.305	Trustee's Duties or Obligations Pending Assumption or Rejection	243
5.306	Effect of Rejection	244
5.307	Assignment	245
5.308	Forfeiture Clauses	246
5.4	CASH COLLATERAL AND POSTPETITION FINANCING	247
5.401	Cash Collateral—Section 363.....	247
5.402	Postpetition Financing—Section 364	250
5.5	CONVERSION AND DISMISSAL OF CASES	255
5.501	In General	255
5.502	Conversion and Dismissal by Chapter	255
5.503	Bad Faith Dismissal—Section 109(g).....	263
5.504	Effect of Conversion.....	263
5.505	Effect of Dismissal	264
5.506	Rules and Procedures for Dismissal or Conversion— Rule 1017	265
5.507	Other Grounds for Dismissal or Transfer	265
 CHAPTER 6: DISCHARGE AND DISCHARGEABILITY		
6.1	DISCHARGE IN BANKRUPTCY GENERALLY	267
6.101	In General	267
6.102	Procedures for Objecting to Discharge	267
6.103	Time Limitations	267
6.104	Burden of Proof.....	269
6.2	CHAPTER 7 DISCHARGE	269
6.201	In General	269
6.202	Grounds for Objecting to Discharge	269
6.203	Revocation of Chapter 7 Discharge	275
6.3	CHAPTER 13 DISCHARGE	277
6.301	In General	277
6.302	Hardship Discharge	278
6.303	Limitation on Chapter 13 Discharge.....	279
6.304	Discharge of Postpetition Debts	280
6.305	Revocation of Chapter 13 Discharge	280

TABLE OF CONTENTS

6.4	CHAPTER 11 DISCHARGE.....	281
6.401	In General.....	281
6.402	Not Granted in Liquidation	281
6.403	Subchapter V of Chapter 11—Consensual Plan.....	281
6.404	Subchapter V of Chapter 11—Nonconsensual Plan	282
6.5	CHAPTER 12 DISCHARGE.....	282
6.501	In General.....	282
6.502	Hardship Discharge	283
6.503	Denial of Discharge	283
6.504	Revocation of Discharge	283
6.6	EFFECT OF DISCHARGE.....	284
6.601	In General.....	284
6.602	Enjoins Creditor Action.....	284
6.603	Release from Liability	284
6.604	Some Liens Still Enforceable	286
6.605	Liability of Codebtors or Makers	286
6.7	OBJECTIONS TO DISCHARGEABILITY OF SPECIFIC DEBTS	287
6.701	Objection to Discharge Versus Objection to Dischargeability of a Debt.....	287
6.702	Nondischargeable Debts	288
6.703	Procedures for Objecting to Dischargeability of a Debt	289
6.704	Time for Filing.....	289
6.705	Extensions of Time	289
6.706	Timing of Other Objections	290
6.707	Exceptions to the Dischargeability of Debts.....	290

CHAPTER 7: AVOIDANCE OF PRE- AND POSTPETITION TRANSFERS

7.1	INTRODUCTION	307
7.2	SECTION 544: STRONG-ARM POWERS	307
7.201	Trustee as Judicial Lien Creditor	309
7.202	Trustee as Execution Lien Creditor.....	310
7.203	Trustee as Bona Fide Purchaser of Real Property	310

TABLE OF CONTENTS

7.3	SECTION 545: STATUTORY LIENS.....	313
7.301	Insolvency Liens—Section 545(1).....	314
7.302	Unperfected/Unenforceable Liens—Section 545(2)	315
7.303	Landlords’ Liens—Section 545(3) and (4)	316
7.304	Avoidance Powers Subject to Sellers’ Reclamation Rights	316
7.4	SECTION 547: PREFERENCES.....	316
7.401	In General	316
7.402	Elements	316
7.403	Transfer of an Interest in Property	317
7.404	When Does a Transfer Occur?	318
7.405	Antecedent Debt	318
7.406	Transfer Made While Debtor Is Insolvent	319
7.407	Creditor Receives More Than if the Case Had Been a Chapter 7 Proceeding	320
7.408	Transfers to Insiders.....	321
7.409	Burden of Proof.....	323
7.410	Affirmative Defenses	323
7.5	SECTION 548: FRAUDULENT TRANSFERS	326
7.501	Actual Intent to Hinder, Delay, or Defraud	326
7.502	Transfers for Less Than Reasonably Equivalent Value	328
7.503	Reasonably Equivalent Value	328
7.504	Insolvency	330
7.505	Undercapitalization	330
7.506	Inability to Pay Debts.....	330
7.507	Transfer to Insider Under Employment Contract	331
7.508	Charitable Transfers	331
7.509	Protection of Good Faith Transferees.....	331
7.6	SECTION 549: POSTPETITION TRANSFERS.....	331
7.601	Transfers Made in the Ordinary Course of Business	332
7.602	Involuntary Transfers	333
7.603	Transfers to Good Faith Purchasers	333
7.604	Statute of Limitations.....	333
7.605	Jury Trial	333
7.7	SECTION 550: LIABILITY OF TRANSFEREE OF AVOIDED TRANSFER	334
7.701	In General	334
7.702	Limitations on Recovery	335

TABLE OF CONTENTS

7.8	SECTION 551: AUTOMATIC PRESERVATION OF AVOIDED TRANSFER.....	336
7.9	LIMITATIONS ON AVOIDANCE POWERS.....	336
7.901	In General.....	336
7.902	Seller's Right of Reclamation.....	337
7.903	Certain Transfers Not Avoidable.....	339
 CHAPTER 8: DEBTOR EXEMPTIONS AND AVOIDANCE ACTIONS		
8.1	EXEMPTION SYSTEM.....	341
8.2	METHOD OF CLAIMING EXEMPTIONS.....	342
8.201	Schedule C of the Bankruptcy Schedules	342
8.202	State Law Perfection.....	344
8.3	AVAILABLE EXEMPTIONS	345
8.301	Homestead Exemption	345
8.302	Poor Debtor's Exemption	350
8.303	Other Exemptions	355
8.4	PROPERTY HELD AS TENANTS BY THE ENTIRETY.....	359
8.401	In General.....	359
8.402	Grant Must Be Specific	360
8.403	Real and Personal Property Coverage.....	360
8.404	Impact on Joint Bankruptcy Cases.....	360
8.405	Entireties Property Is Not Immune from Tax Liens.....	361
8.5	EXEMPTION PLANNING AND DEBTOR AVOIDANCE ACTIONS.....	361
8.501	In General.....	361
8.502	Trustee's Ability to Retain or Offset Exempt Property	363
8.6	OBJECTIONS TO EXEMPTIONS.....	364
8.601	Deadlines for Objections	364
8.602	Deadlines for Objections to Amended Exemptions	364
8.603	Inappropriate or Frivolous Exemptions	365
8.604	Objection Period in Converted Cases.....	366
8.605	Basis for Objections.....	366
8.606	Basis for Attorney Fee Award for Litigation of Allowed Exemption	366

TABLE OF CONTENTS

APPENDIX 8-1: HOMESTEAD DEED FOR REAL PROPERTY	369
APPENDIX 8-2: HOMESTEAD DEED FOR PERSONAL PROPERTY	371
APPENDIX 8-3: OBJECTION TO EXEMPTIONS.....	373
APPENDIX 8-4: COMMONLY USED EXEMPTION STATUTES	375
 CHAPTER 9: CHAPTER 7: LIQUIDATION PLAN	
9.1 INTRODUCTION.....	377
9.101 Source of Law.....	377
9.102 Overview of the Process.....	378
9.103 Nature of the Discharge	385
9.104 Automatic Dismissal.....	385
9.2 PRE-INTERVIEW INFORMATION.....	386
9.201 Providing Advance Information	386
9.202 Alternatives to Bankruptcy	386
9.203 Pre-Consultation Questionnaire.....	388
9.204 Obtaining Client Credit Reports	389
9.205 Information and Materials	390
9.206 Prior Bankruptcies	390
9.207 Prior Homestead Deeds	391
9.3 INITIAL MEETING WITH CLIENTS	392
9.301 Explaining the Process	392
9.302 Relevant Factors.....	392
9.303 Choice of Chapter.....	392
9.304 Full Disclosure	393
9.305 Effect on Future Credit.....	394
9.306 Timing the Filing.....	394
9.307 Where to File.....	396
9.308 Client Communication.....	396
9.309 Handling Creditor Contacts	396
9.310 Continued Use of Credit Cards	397
9.311 Redemption	398
9.312 Reaffirmation.....	399
9.313 Engagement Agreement	402
9.314 Recovery of Property	403
9.315 Protecting Cash Accounts.....	404
9.316 Pension or Retirement Accounts	405

TABLE OF CONTENTS

9.317	Codebtors or Guarantors.....	405
9.318	Nondischargeable Debts	405
9.319	Tax Debts.....	406
9.320	Fraud and Other Problems	406
9.321	United States Trustee's Office	407
9.322	Action List	408
9.4	PREPARATION OF SCHEDULES.....	410
9.401	Office Procedures.....	410
9.402	Encouraging Client Compliance	410
9.403	Attorney and Client Review.....	410
9.5	TITLE SEARCH ON REAL ESTATE	410
9.501	Reasons for the Search.....	410
9.502	Timing of the Title Search	411
9.503	Malpractice Concerns.....	411
9.6	VALUATION ISSUES.....	411
9.601	Verification of Payoff and Value	411
9.602	Perfection Issues	411
9.7	FILING THE BANKRUPTCY PETITION.....	412
9.701	General Information.....	412
9.702	Schedules of Debts	413
9.703	Schedules of Assets	414
9.704	Monthly Budget.....	415
9.705	Statement of Financial Affairs.....	416
9.706	Statement of Intention.....	416
9.8	AFTER THE PETITION IS FILED	417
9.801	Debtor's Duties	417
9.802	Creditors' Meeting.....	418
9.803	Subsequent Hearings	419
9.804	Working with the Trustee	419
9.805	Discharge.....	420
9.9	POSTPETITION CREDITOR ACTION	421
9.10	DISCRIMINATORY TREATMENT	422
9.1001	In General.....	422
9.1002	By Governmental Units	422
9.1003	By Private Employers	422

TABLE OF CONTENTS

9.11	LEGAL AND ETHICAL ISSUES	422
9.1101	In General	422
9.1102	Protecting Assets	423
APPENDIX 9-1: CHECKLIST.....		425
APPENDIX 9-2: INITIAL CLIENT QUESTIONNAIRE		435
APPENDIX 9-3: COVER LETTER ACCOMPANYING BANKRUPTCY SCHEDULES		443
APPENDIX 9-4: LETTER TO CLIENT		445
 CHAPTER 10: CHAPTER 13: WAGE EARNER PLAN		
10.1	INTRODUCTION.....	449
10.2	NATURE OF A CHAPTER 13 CASE	449
10.201	In General	449
10.202	Choice of Chapters	450
10.3	INITIATING A CHAPTER 13 CASE.....	450
10.301	Chapter 13 Petition	450
10.302	Automatic Dismissal.....	452
10.303	Getting the Documents Together	454
10.304	Practice Pointers.....	454
10.4	FORMULATING AND FILING A CHAPTER 13 PLAN	457
10.401	In General	457
10.402	Form Chapter 13 Plan for Virginia	458
10.403	Drafting the Plan.....	458
10.404	Postpetition, Pre-Confirmation Motions and Orders.....	475
10.405	Section 341 Meeting of Creditors	478
10.406	From 341 Meeting to the Confirmation Hearing	480
10.5	CONFIRMATION OF THE PLAN	481
10.501	The Confirmation Hearing	481
10.502	Confirmation Criteria	482
10.503	Proving Confirmation over an Objection: Carrying the Burden of Proof.....	484
10.504	The Effect of Plan Confirmation.....	488
10.505	Effect of Plan Confirmation on Property of the Estate.....	490

TABLE OF CONTENTS

10.6	POSTCONFIRMATION PRACTICE: WHAT CAN HAPPEN AFTER THE PLAN IS CONFIRMED.....	491
10.601	In General.....	491
10.602	Debtor Education	491
10.603	Claims Review	491
10.604	Postconfirmation Plan Modification	492
10.605	Postconfirmation Motions	493
10.7	COMPLETION AND DISCHARGE.....	497
10.701	Discharge Requirements.....	497
10.702	Debts that May Be Discharged	498
10.703	Hardship Discharge	499
10.704	Eligibility for Discharge in Future Case.....	499
10.705	Retention of Records and Reestablishment of Credit.....	499
10.706	When the Debtor Dies	500
	APPENDIX 10-1: STATEMENT OF CURRENT MONTHLY INCOME.....	501

CHAPTER 11: CHAPTER 11: REORGANIZATION

11.1	INTRODUCTION.....	517
11.101	In General.....	517
11.102	Planning Stage	518
11.103	Early Days.....	519
11.104	Business Stabilization.....	519
11.105	Plan Process	519
11.106	Creditor Perspective.....	520
11.2	DEBTOR-IN-POSSESSION.....	521
11.3	UNSECURED CREDITORS' COMMITTEES	522
11.4	OPERATING ISSUES.....	524
11.5	TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS.....	524
11.6	TRANSACTIONS OUTSIDE THE ORDINARY COURSE OF BUSINESS.....	525
11.7	EXAMINER-TRUSTEE.....	526

TABLE OF CONTENTS

11.8	EXCLUSIVITY	527
11.801	Extension of Exclusivity	528
11.802	Termination of Exclusivity	531
11.9	ELEMENTS OF A CHAPTER 11 PLAN	533
11.10	DISCLOSURE STATEMENT	535
11.11	CONFIRMATION OF THE PLAN	537
11.12	EFFECT OF CONFIRMATION.....	541
11.13	POSTCONFIRMATION ISSUES	543
	INDEX	I-1

Volume 2

**CHAPTER 12: SUBCHAPTER V: SMALL BUSINESS
REORGANIZATION**

12.1	INTRODUCTION.....	545
12.101	In General	545
12.102	Subchapter V Cases Are Chapter 11 Cases	546
12.2	PROCEEDING UNDER SUBCHAPTER V.....	546
12.201	Election of Subchapter V	546
12.202	Eligibility	548
12.3	DEBTOR-IN-POSSESSION	551
12.301	In General	551
12.302	Requirements and Duties	552
12.303	Removal of the Debtor-in-Possession	552
12.4	PROPERTY OF THE ESTATE.....	553
12.401	In General	553
12.402	Postpetition Acquired Property	553
12.403	Vesting of Property of the Estate	554
12.5	CASE ADMINISTRATION.....	555
12.501	In General	555
12.502	Additional Petition Requirements.....	555

TABLE OF CONTENTS

12.503	No Committee of Unsecured Creditors	555
12.504	Required Status Conference and Report from Debtor	555
12.505	Who May File the Plan	556
12.506	Time for Filing the Plan.....	556
12.507	No Disclosure Statement	556
12.508	No United States Trustee Fees	557
12.509	Disinterestedness	557
12.510	Local Rules	557
12.6	ROLE OF THE SUBCHAPTER V TRUSTEE	558
12.601	In General.....	558
12.602	Duties of the Subchapter V Trustee	558
12.603	Compensation of Subchapter V Trustee	559
12.604	Deferral of Subchapter V Trustee Fees	560
12.605	Employment of Professionals.....	560
12.7	CONTENTS OF THE PLAN AND CONFIRMATION REQUIREMENTS	561
12.701	Contents of the Plan.....	561
12.702	Disposable Income.....	562
12.703	Balloting	563
12.704	Confirmation	563
12.8	DISCHARGE	564
12.801	In General.....	564
12.802	Consensual Plan and Exceptions.....	564
12.803	Cramdown Plan and Exceptions.....	565
12.804	<i>Cantell-Cleary Co. v. Cleary Packaging LLC (In re Cleary Packaging LLC)</i>	565
12.9	POSTCONFIRMATION ISSUES.....	567
12.901	In General.....	567
12.902	Trustee as Disbursing Agent	567
12.903	Postconfirmation Plan Modifications.....	567
12.904	Plan Default	568
12.905	Effective Dates of Subchapter V	570
 CHAPTER 13: CHAPTER 12: FAMILY FARMERS AND FISHERMEN		
13.1	INTRODUCTION	573
13.101	What Is Chapter 12 Bankruptcy?	573
13.102	Benefits for Family Farmers and Fishermen	573

TABLE OF CONTENTS

13.103	Eligibility to File	575
13.104	Practice Tips for a Potential Case and Pre-Filing Requests for Information	576
13.2	CHAPTER 12 PROCESS—FILING SEQUENCE OF EVENTS.....	579
13.201	In General	579
13.202	Initial Petition and Filing.....	580
13.203	Trustee	581
13.204	Reorganization Plan	582
13.205	Modification of the Plan.....	587
13.206	Feasibility of the Plan.....	587
13.207	Confirmation of the Plan	592
13.208	Discharge	594
13.3	DEBTOR’S ATTORNEY FEES.....	594
13.4	PRACTICE TIPS FOR COUNSEL	595
13.5	CREDITOR’S PERSPECTIVE.....	596
13.501	In General	596
13.502	Creditor’s Attention to Accounts	596
13.503	Actions to Be Taken Once a Bankruptcy Is Filed	597
13.504	341 Meeting of Creditors	597
13.505	Proofs of Claim.....	599
13.506	Automatic Stay Imposed by a Bankruptcy Filing.....	600
13.507	Seeking Relief from the Automatic Stay	601
13.508	Available Relief from Stay for “Cause”.....	603
13.509	What Is Adequate Protection?.....	603
13.510	Scheme to Delay, Hinder, and Defraud Creditors	605
13.511	Procedure for a Motion for Relief from Stay	606
13.512	Surrender of Collateral and Cramdown Plans.....	606
13.513	Objections to Confirmation of Debtor’s Proposed Plan.....	607
13.514	Dismissal “For Cause” Under 11 U.S.C. § 1208.....	608
APPENDIX 13-1: SAMPLE CHAPTER 12 PLAN AND RELATED MOTIONS		611
APPENDIX 13-2: SAMPLE AMENDED CHAPTER 12 PLAN		621
APPENDIX 13-3: SAMPLE AMENDED CHAPTER 12 PLAN AND RELATED MOTIONS.....		629
APPENDIX 13-4: SAMPLE AMENDED CHAPTER 12 PLAN		639

TABLE OF CONTENTS

APPENDIX 13-5: OFFICIAL FORM 410—PROOF OF CLAIM AND INSTRUCTIONS	655
--	-----

CHAPTER 14: JURISDICTIONAL ISSUES

14.1	BANKRUPTCY JURISDICTION.....	661
14.101	History	661
14.102	Background	661
14.103	Jurisdiction.....	663
14.104	Referral from the District Court	664
14.105	Core Proceedings	666
14.106	Withdrawal of Reference.....	667
14.107	Abstention	668
14.2	SOVEREIGN IMMUNITY	669
14.201	Statutory Framework.....	669
14.202	<i>Central Virginia Community College v. Katz</i>	670
14.203	Lower Court Decisions Interpreting <i>Katz</i>	671
14.204	United States Supreme Court Cases Prior to <i>Katz</i>	674
14.205	Section 106	676
14.3	STATE COURT JUDGMENTS	683
14.301	The <i>Rooker-Feldman</i> Doctrine	683
14.302	Collateral Estoppel and Res Judicata.....	687
14.4	JURY TRIALS	691
14.401	Right to a Jury Trial	691
14.402	Jury Trial Demand.....	693
14.403	28 U.S.C. § 1411	694
14.404	Jury Trials in Removed Actions.....	695
14.405	Withdrawal of Reference.....	695
14.406	Waiver of Right to Jury Trial.....	695
14.407	Manufactured Jurisdiction	697

CHAPTER 15: COMPENSATION FOR ATTORNEYS AND OTHER PROFESSIONALS

15.1	PAYMENT OF DEBTOR'S COUNSEL IN CHAPTER 7 CASES.....	699
15.101	Source of Payment.....	699
15.102	Timing of Payment.....	699

TABLE OF CONTENTS

15.103	Requirement for Disclosure	700
15.104	Court Review of Fees Charged by Debtor's Counsel.....	701
15.2	PAYMENT OF DEBTOR'S COUNSEL IN CHAPTER 13 CASES	702
15.201	Source of Payment	702
15.202	Standard for Approval	704
15.203	Procedure	706
15.204	Supplemental Fees	706
15.205	Opinions Concerning Chapter 13 Fees.....	708
15.3	PAYMENT OF ESTATE PROFESSIONALS	710
15.301	Standard for Approval	710
15.302	Opinions Concerning Fee Awards for Estate Professionals	712
15.4	APPLICATIONS TO EMPLOY PROFESSIONALS	713
15.401	Submission and Service of Application	713
15.402	Necessity for Court Approval of Employment.....	713
15.403	Retroactive Approval of Employment	713
15.404	Approval of Individual Extends to Whole Firm	714
15.405	In-House Professionals	714
15.406	Who Is a Professional?.....	714
15.407	Qualifications for Employment	715
15.408	Procedure	716
15.5	DISINTERESTEDNESS.....	718
15.501	"Disinterested Person" Defined	718
15.502	Grounds for Disqualification	719
15.503	Estate Professional Allowed to Retain Prepetition Claim.....	720
15.6	FIDUCIARY OBLIGATIONS OF PROFESSIONALS EMPLOYED BY THE ESTATE.....	720
15.601	Background	720
15.602	Fiduciary Obligation of Professionals	722
15.7	FEE APPLICATIONS.....	725
15.701	Statutory Framework	725
15.702	Bankruptcy Rules and Local Bankruptcy Rules.....	727
15.703	Sample Fee Application.....	729

TABLE OF CONTENTS

15.8	UNITED STATES TRUSTEE GUIDELINES	729
15.801	Statutory Authority.....	729
15.802	The Guidelines	730
15.803	Guidelines for Larger Chapter 11 Cases	730
15.804	Assistance of Other Professionals.....	732
15.9	DISGORGEMENT IN THE ADMINISTRATIVELY INSOLVENT CASE.....	732
15.901	Applicable Bankruptcy Code Provisions.....	732
15.902	Whether Disgorgement of Fees Is Appropriate in Administrative Insolvency	733
15.10	ETHICAL ISSUES FOR ATTORNEYS	735
15.1001	Attorney's Duties to Client	735
15.1002	Special Issues in Bankruptcy.....	742
15.1003	Attorneys as Debt Relief Agencies	746
	APPENDIX 15-1: SAMPLE ENGAGEMENT AGREEMENT	751
	APPENDIX 15-2: CONSULTATION AGREEMENT WITH NOTIFICATIONS.....	759
	APPENDIX 15-3: LOCAL RULE 2016-1 (EASTERN DISTRICT)	773
	APPENDIX 15-4: STANDING ORDER NO. 25-1 (EASTERN DISTRICT).....	779
	APPENDIX 15-5: STANDING ORDER NO. 22-001 WITH AMENDED GUIDELINES (WESTERN DISTRICT)	783
	APPENDIX 15-6: APPLICATION FOR SUPPLEMENTAL COMPENSATION OF ATTORNEY FOR DEBTOR(S)	791
	APPENDIX 15-7: APPLICATION TO EMPLOY COUNSEL FOR A CHAPTER 11 DEBTOR-IN-POSSESSION	793
	APPENDIX 15-8: APPLICATION FOR APPROVAL OF COMPENSATION BY DEBTOR'S COUNSEL IN A CHAPTER 13 CASE	797
	APPENDIX 15-9: FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT.....	799

TABLE OF CONTENTS

APPENDIX 15-10: GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES.....	825
---	-----

CHAPTER 16: TAX AND ACCOUNTING ISSUES

16.1	INDIVIDUAL BANKRUPTCIES.....	835
16.101	Bankruptcy Estate a Separate Tax Entity.....	835
16.102	Initial Duties of Trustee	836
16.103	Trustee's Duty to File Tax Returns.....	839
16.104	Trustee's Liability for Estate Taxes	839
16.105	Computation of Tax	840
16.106	Administrative Expenses.....	844
16.107	Net Operating Losses	845
16.108	Property Taxes	845
16.109	Estimated Taxes	845
16.110	Abandonment of Property to the Debtor	846
16.2	CORPORATE BANKRUPTCIES.....	847
16.201	Taxable Entity	847
16.202	Tax Attributes.....	848
16.203	Filing Requirements	848
16.204	Subchapter S Corporations.....	849
16.3	PARTNERSHIP BANKRUPTCIES.....	850
16.301	Taxable Entity	850
16.302	Filing Requirements	851
16.303	Partnership Income	851
16.4	CANCELLATION OF DEBT	851
16.401	Cancellation of Debt (COD) Income Defined.....	851
16.402	Items That Do Not Constitute COD Income	854
16.403	COD Income That Is Excluded from Gross Income	856
16.404	Special Rules Relating to Partnerships and S Corporations	858
16.405	The Impact of Excluding COD Income.....	858
16.5	SECTION 505(B) 60-DAY CLEARANCE.....	861
16.501	Application for Determination of Unpaid Liability.....	861
16.502	Failure of IRS to Timely Respond	862
16.503	Expedited Audit	862
16.504	Audit When Income Insufficient to Require Return.....	862

TABLE OF CONTENTS

16.505	Partnerships, Certain S Corporations, and Grantor Trusts Created Pursuant to a Confirmed Chapter 11 Plan	862
16.506	Request for Determination of Refund	862
16.507	Chapter 13 Cases	863
16.6	FEDERAL FORM W-2 AND RELATED TAX FILINGS	863
16.601	Trustee's Responsibility for Wage-Related Tax Filings	863
16.602	Form W-2	866
16.7	FEDERAL FORM 1099	868
16.701	Trustee's Responsibility to File	868
16.702	Distributions for Which Filing Is Not Required	869
16.703	Obtaining Required Information	870
16.8	OTHER TAXES	870
16.801	Sales Tax	870
16.802	Transfer Taxes	870
16.9	PENALTIES	871
16.901	Failure to File Return	871
16.902	Failure to Pay Tax	871
16.903	Failure to File Correct Information Returns	872
16.904	Failure to Furnish Correct Payee Statements	872
16.905	Penalty for Noncompliance with Electronic Filing Requirements	872
16.906	Relief from Tax Penalties	873
16.10	FINANCIAL REPORTING	874
16.1001	Full Disclosure of Financial Information	874
16.1002	Bankruptcy Schedules	875
16.1003	Statement of Financial Affairs	882
16.1004	Monthly Operating Reports	883
16.1005	Access to the Official Forms	885
16.1006	Small Business Requirements	886
16.1007	Other Reporting Requirements	887
16.1008	Financial Reporting When Entities Emerge from Chapter 11	887
APPENDIX 16-1: CHAPTER 11 MONTHLY OPERATING REPORT FORM AND INSTRUCTIONS		893

TABLE OF CONTENTS

APPENDIX 16-2: MONTHLY OPERATING REPORT FOR SMALL BUSINESS UNDER CHAPTER 11 AND 2017 COMMITTEE NOTES—FORM 425C	911
APPENDIX 16-3: DEBTOR’S BALANCE SHEET—FRESH START ACCOUNTING.....	919
 CHAPTER 17: CLAIMS AGAINST THE BANKRUPTCY ESTATE	
17.1 INTRODUCTION.....	921
17.2 PROOFS OF CLAIM.....	921
17.201 In General	921
17.202 Definition of Claim	922
17.203 Bar Date.....	923
17.204 Secured Claims	923
17.205 Mechanics of Filing and Maintaining Claims	925
17.206 Common Mistakes	926
17.207 Allowance of Claims and Objections	927
17.208 Effect of Filing a Proof of Claim	929
 CHAPTER 18: BANKRUPTCY ETHICS VIOLATIONS, FRAUD, AND CRIME	
18.1 INTRODUCTION.....	931
18.2 ETHICS VIOLATIONS.....	932
18.201 In General	932
18.202 Attorney-Client Privilege and the Duty to Disclose.....	935
18.203 Violations of Federal Rule of Bankruptcy Procedure 9011	938
18.204 Duty to Disclose Adverse Authority	941
18.205 Ethical Issues with Electronic Case Filing	942
18.206 “Ghostwriting” in Bankruptcy Courts.....	943
18.207 Unauthorized Practice of Law in Bankruptcy Court	944
18.208 Flat Fees in Chapter 7 Cases	946
18.209 Courts’ Role in Enforcing Ethical Standards	948
18.3 BANKRUPTCY CRIMES.....	949
18.301 Criminal Intent.....	949
18.302 Concealment of Assets	950

TABLE OF CONTENTS

18.303	False Oath	954
18.304	False Claims	956
18.305	Bribery and Extortion	957
18.306	Fraudulent Transfers	958
18.307	Destruction, Concealment, or Withholding of Records	958
18.308	Embezzlement	959
18.309	Conflicts of Interest	960
18.310	Illegal Fee Agreements	961
18.311	Improper Petition Preparer Conduct	962
18.312	Bankruptcy Fraud	963
18.313	Statute of Limitations	964
18.314	Required Reference of Criminal Matters	964
18.4	RELATED CRIMES	965
18.401	Aiding and Abetting	965
18.402	Conspiracy	966
18.403	False Statements—Perjury	966
18.404	Fraud	967
18.405	Obstruction of Justice	967
18.406	Money Laundering	967
18.407	Racketeer Influenced and Corrupt Organizations (RICO)	967
18.5	PRACTICE CONSIDERATIONS	967
18.501	Pre-Bankruptcy Planning	967
18.502	Petition, Schedules, and Statements	969
18.503	Section 341 Meeting and the Debtor’s Duties	971
18.504	Attorney Fees: Agreements and Disclosure	974
18.505	Assets Sales	975
18.6	CONCLUSION	977

CHAPTER 19: BANKRUPTCY APPEALS

19.1	INTRODUCTION	979
19.101	In General	979
19.102	Jurisdiction	979
19.2	FORUM FOR BANKRUPTCY APPEALS	980
19.201	Appellate Options Generally	980
19.202	Appeals to the District Court	980

TABLE OF CONTENTS

19.203	Magistrate Review	981
19.204	Direct Appeals to the Circuit Court and Related Statutes and Rules.....	981
19.3	WHO MAY APPEAL: STANDING	984
19.301	Standing to Appeal	984
19.302	Party Bringing Appeal.....	985
19.4	BANKRUPTCY ORDERS THAT MAY BE APPEALED	986
19.401	In General	986
19.402	Differences Between Final and Interlocutory Orders.....	987
19.403	Collateral Order Doctrine	992
19.5	PROCESS FOR BANKRUPTCY APPEALS TO DISTRICT COURT	993
19.501	Notice of Appeal	993
19.502	Deadline for Filing a Notice of Appeal	993
19.503	Computing Time for the 14-Day Rule	994
19.504	Filing a Notice of Appeal by Another Party	994
19.505	Timely Filing of a Notice of Appeal Is Mandatory	995
19.506	Exceptions to the 14-Day Rule	995
19.507	Post-Judgment Motions and Tolling the Deadline to File a Notice of Appeal.....	997
19.508	Form of Notice of Appeal	999
19.509	Service of Notice of Appeal	999
19.510	Sending Notice of Appeal to District Court.....	999
19.511	Form of Notice of Appeal from Interlocutory Orders Must Be Accompanied by Motion for Leave to Appeal	999
19.512	Designating the Record and Statement of Issues on Appeal	1003
19.513	Corporate Disclosure Statement	1006
19.514	Ordering and Paying for Transcript of Proceedings	1008
19.515	Sealed Documents.....	1009
19.516	Briefs.....	1009
19.517	Oral Argument.....	1011
19.518	Filing Fees for Appeals in Local Rules of the Eastern District of Virginia.....	1012
19.519	Dismissal for Failure to Take Required Steps After Filing Notice of Appeal	1013
19.520	Voluntary Dismissal of Appeals	1014

TABLE OF CONTENTS

19.6	PROCESS FOR DIRECT APPEALS TO THE CIRCUIT COURT.....	1014
19.601	In General.....	1014
19.602	Effective Date of Certification.....	1014
19.603	Procedure for Certifying Direct Appeals to Circuit Court	1016
19.604	Duties After Certification	1018
19.7	STANDARD OF REVIEW APPLIED BY THE DISTRICT COURT.....	1018
19.701	In General.....	1018
19.702	Noncore Proceedings Where Parties Did Not Consent to Bankruptcy Court Jurisdiction.....	1019
19.703	Proposed Findings of Fact and Conclusions of Law	1019
19.704	Matters of Discretion.....	1020
19.8	STANDARD OF REVIEW APPLIED BY CIRCUIT COURT	1021
19.9	OPTIONS FOLLOWING DISTRICT COURT RULING ON BANKRUPTCY APPEAL	1021
19.901	In General.....	1021
19.902	File a Motion for Rehearing with District Court.....	1021
19.903	Appeal to Court of Appeals	1022
19.904	Staying District Court Judgment	1023
19.10	OBSTACLES TO SUCCESSFUL BANKRUPTCY APPEALS	1023
19.1001	Mootness.....	1023
19.1002	Stay Pending Appeal	1027
19.11	MISCELLANEOUS ISSUES IN BANKRUPTCY APPEALS	1029
19.1101	New Issues, Arguments, or Law	1029
19.1102	Costs	1030
19.1103	Frivolous Appeals.....	1031
19.1104	Suspension of Rules in Part VIII	1031
	TABLE OF AUTHORITIES.....	1033
	INDEX	I-1