

PUBLICATION UPDATE

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Collier on Bankruptcy

Publication 219 Release 112 December 2009

HIGHLIGHTS

Sixteenth Edition Volumes 4 & 7.

- Release 112 includes volumes 4 and 7 of the Sixteenth Edition. Volume 4 covers subchapters I and II of Bankruptcy Code chapter 5; volume 7 covers subchapters I and II of Code chapter 11.

2009 Amendments to the Federal Rules of Bankruptcy Procedure.

- Effective December 1, 2009, numerous rules have been amended, and new Rule 7058 has been promulgated.

Bankruptcy Taxation

- Volume 15 features updated discussion of the tax aspects of bankruptcy practice.

State Exemptions.

- Updated state exemptions are found in volumes 14 and 14A.

Sixteenth Edition—Volumes 4 and 7.
The publication of the Sixteenth Edition continues with the issuance of volumes 4 and 7. These volumes replace the corresponding volumes of the Fifteenth Edition Revised. Please archive volumes 4 and 7 of

the Fifteenth Edition Revised.

Volume 4 comprises analysis of subchapters I and II of Bankruptcy Code chapter 5, “Creditors, the Debtor, and the Estate.” Subchapter I, “Creditors and Claims,” contains Code sections 501 through 511; subchapter II, “Debtor’s Duties and Benefits,” contains Code sections 521 through 528. The *Collier* material analyzing these Code sections has been revised and updated as part of the Sixteenth Edition. For instance, revised Chapter 503 includes an expanded discussion of the provisions added by the 2005 amendments, including the section 503(b)(1)(A)(ii) priority for certain WARN Act claims, the section 503(b)(7) limitations on administrative expense liability for leases assumed and later rejected, the section 503(b)(9) priority for goods received within 20 days of filing and the section 503(c) limitations on employee retention plans and severance payments. The revised chapter also includes substantial revisions and additions to the sections addressing environmental claims, executory contracts and leases, and tax claims

Volume 7 comprises analysis of sub-

chapters I and II of Bankruptcy Code chapter 11, "Reorganization," as well as a general overview of chapter 11. Subchapter I, "Officers and Administration," contains Code sections 1101 through 1116; subchapter II, "The Plan," contains sections 1121 through 1129. As with volume 4, all of this material has been revised and updated as part of the Sixteenth Edition. For instance, Chapter 1108, on the trustee's or debtor in possession's authority to operate the business, has been thoroughly revised to include expanded discussion on the fiduciary duties of officers and directors when a corporation is insolvent. Looking in particular at seminal Delaware decisions, new ¶ 1108.10 addresses the derivative nature of creditors' claims, the rise and fall of the deepening insolvency cause of action, determinations of insolvency, the scope of fiduciary duties upon the filing of the chapter 11 petition and the reconciling of competing interests.

Bankruptcy Rule Amendments. The 2009 amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009, made changes to Rules 4008, 7052 and 9021, and added a new Bankruptcy Rule 7058. The amendment to Rule 4008 added a requirement that the Official Form of a reaffirmation cover sheet be filed along with the reaffirmation agreement. Rule 7052 was amended to clarify that entry of a judgment in an adversary proceeding means the entry of a judgment or order under the Bankruptcy Rules rather than the Federal Rules of Civil Procedure. Rule 7058 makes Rule 58 of the Federal Rules of Civil Procedure applicable in adversary proceedings, and Rule 9021 was amended in connection with the addition of Rule 7058. In addition, amendments to Rules 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019,

3020, 4001, 4002, 4004, 6003, 6004, 6006, 6007, 7004, 7012, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9027 and 9033 were adopted as part of time-computation amendments to all of the federal procedural rules. For most periods that are fewer than 30 days, the deadlines under the rules are multiples of seven days. Thus, five-day periods become seven-day periods, 10-day periods become 14-day periods, 15-day periods become 21-day periods, 20-day periods become 28-day periods and 25-day periods become 35-day periods.

The text of the amended and new rules, along with the Advisory Committee Notes, is reprinted in the chapters covering those rules. The Judicial Conference materials relating to the history of the amendments are reprinted in Appendix Part 2(b) (volume A). Appendix Part 2(c) contains the amended text of the Bankruptcy Rules in their entirety.

Statutory Time-Periods Technical Amendments Act of 2009. Pub. L. No. 111-16, effective December 1, 2009, replaced the five-day periods in the following Code sections with seven-day periods: 11 U.S.C. §§ 109(h)(3)(A)(ii), 322(a), 332(a), 342(e)(2), 521(e)(3)(B), 521(i)(2), 704(b)(1)(B), 749(b), 764(b). The chapters analyzing these Code sections have been revised to reflect the change.

New Authors. With the publication of the Sixteenth Edition and releases 111 and 112, *Collier* welcomes a number of new contributing authors: Mark A. Broude (Latham & Watkins, NEW YORK); Hon. Colleen A. Brown (Bankr. D. Vt.); Hon. Allan L. Gropper (Bankr. S.D.N.Y.); Gary Kaplan (Fried, Frank, Harris, Shriver & Jacobson, NEW YORK); Hon. Duncan W. Keir (Bankr. D. Md.); Hon. Margaret A. Mahoney (Bankr. S.D. Ala.); Hon. Robert A. Mark (Bankr. S.D. Fla.); Hon. Brendan

Linehan Shannon (Bankr. D. Del.); Edwin E. Smith (Bingham McCutchen, NEW YORK & BOSTON). Biographical information for these contributors is found in the front of volume 1, following the volume 1 table of contents.

Commercial Bankruptcy Forms — Appendix Part 20, Sample Plans and Disclosure Statements. Except with respect to the Small Business Plan at App. Pt. 20.01 (and the accompanying Official Forms for a Small Business Chapter 11 Case at App. 20.02), the sample chapter 11 plans of reorganization and disclosure statements previously contained in Appendix Part 20 have been removed. Two *new* forms of plans and disclosure statements have been added and additional plans and disclosure statements will be added in future releases.

Consumer Bankruptcy Forms — Exemption of Homestead, Motion to Redeem Exempt Property. A new section, § CS17.16, “Exemption of Homestead Acquired by Debtor Within 1215 Days Prior to Petition,” has been added to volume 13A, along with two new forms—Form No. CS17.16-1, “Objection to Exemption of Homestead Acquired by Debtor Within 1215 Days Prior to Petition; 11 U.S.C. § 522(p)” and Form No. CS17.16-2, “Response to Objection to Exemption of Homestead Acquired by Debtor Within 1215 Days Prior to Petition; 11 U.S.C. § 522(p).” In addition, new Form No. CS21.03-3, entitled “Request for Admissions in Connection with Motion to Redeem Exempt Property; 11 U.S.C. § 722; Fed. R. Bankr. P. 7036,” has been added to § CS21.03, “Redeeming Exempt Property.”

Bankruptcy Taxation. Among other changes, Chapter TX9, on debt-for-debt exchanges, has been updated with discussion of new Rev. Proc. 2009–37 (2009

TNT 157-4), which was issued on August 18, 2009, to provide rules and procedures for making an election under new I.R.C. § 108(i), enacted by Pub. L. No. 111-5 (2009). Chapter TX3, on tax-reporting requirements, has been updated with discussion on the new FBAR (Report of Foreign Bank and Financial Account) filing requirements for bankruptcy estates with foreign bank accounts.

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