

# TABLE OF CONTENTS

## CHAPTER 1

### Introduction

§ 1.01	Out-of-Court Procedures . . . . .	1-1
§ 1.02	The Bankruptcy Reform Act of 1978 . . . . .	1-5
	[1] An Introduction to the Bankruptcy Code . . . . .	1-5
	[2] The History of Chapter 11 . . . . .	1-6
	[3] Amendments to the Bankruptcy Reform Act of 1978 . . . . .	1-9
§ 1.03	The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") . . . . .	1-10
§ 1.04	The Small Business Reorganization Act of 2019 . . . . .	1-11

## CHAPTER 2

### The Case Begins: Petitions and Jurisdiction

§ 2.01	Voluntary Petitions . . . . .	2-2
	[1] "Persons" Eligible to Seek Voluntary Relief . . . . .	2-4
	[2] Other Prerequisites to Voluntary Relief . . . . .	2-8
	[3] Special Requirements Applicable to Corporations and Partnerships . . . . .	2-9
	[4] Prebankruptcy Planning . . . . .	2-11
§ 2.02	Involuntary Petitions . . . . .	2-12.1
	[1] Eligible Debtors . . . . .	2-12.1

## CHAPTER 11 REORGANIZATIONS

	[2]	Who May File an Involuntary Petition . . .	2-13
		[a] Creditors . . . . .	2-13
		[i] The Number of Required Creditors . . . . .	2-14
		[ii] The Claims of Petitioning Creditors Can Be Neither Contingent Nor Disputed . . . . .	2-16
		[iii] Requirement that Creditors Act in Good Faith . . . . .	2-20
		[b] Others . . . . .	2-21
	[3]	Answers to Involuntary Petitions . . . . .	2-21
	[4]	The “Involuntary Gap” . . . . .	2-22
	[5]	Grounds for Relief . . . . .	2-23
	[6]	Award of Fees and Damages to Alleged Debtor . . . . .	2-25
§ 2.03	[Reserved]	. . . . .	2-27
§ 2.04		Jurisdiction of the District Courts and Bankruptcy Courts . . . . .	2-28
	[1]	<i>Northern Pipeline Construction Co. v.     Marathon Pipe Line Co.     and Stern v. Marshall</i> . . . . .	2-28
	[2]	Jurisdiction of the District Courts . . . . .	2-34
		[a] Title 11 Cases . . . . .	2-34
		[b] Civil Proceedings . . . . .	2-34
		[i] Civil Proceedings “Arising under Title 11” . . . . .	2-35
		[ii] Civil Proceedings “Related to Cases Under Title 11” . . . . .	2-36
		[iii] Civil Proceedings “Arising in Cases under Title 11” . . . . .	2-41
		[c] The Effect of Sovereign Immunity on District Court Jurisdiction . . . . .	2-42
		[d] Property . . . . .	2-46
	[3]	Jurisdiction of the Bankruptcy Courts . . . . .	2-47
		[a] The Bankruptcy Courts . . . . .	2-47
		[b] Referral from District Court . . . . .	2-47
		[c] Core Proceedings . . . . .	2-48
		[d] Determining Jurisdiction . . . . .	2-53
		[e] The Texas Two-Step . . . . .	2-54
		[f] Jurisdiction Over Non-Core Proceedings . . . . .	2-55

**TABLE OF CONTENTS**

[4] Withdrawal of the Reference. . . . . 2-58

[5] Abstention. . . . . 2-60

    [a] Permissive Abstention . . . . . 2-60

    [b] Mandatory Abstention . . . . . 2-61

    [c] Appeals of Abstention Orders . . . . . 2-63

    [d] Abstention and the  
        Automatic Stay. . . . . 2-64

    [e] Exceptions to Abstention:  
        Personal Injury Tort and  
        Wrongful Death Claims. . . . . 2-64

**CHAPTER 3**

**The Principal Players in a Chapter 11 Case**

§ 3.01 The Debtor in Possession . . . . . 3-2

    [1] In General. . . . . 3-2

    [2] Fiduciary Duties of a Debtor  
        in Possession . . . . . 3-6

    [3] Corporate Governance . . . . . 3-10

§ 3.02 Committees . . . . . 3-16.1

    [1] Selection and Changes in Composition  
        of Committees . . . . . 3-16.1

        [a] Creation of Committees. . . . . 3-17

        [b] Disbanding Committees and  
            Changing Committee  
            Membership . . . . . 3-18

    [2] Who May Serve on Committees . . . . . 3-19

    [3] Reimbursement of Expenses of  
        Committee Members . . . . . 3-21

    [4] Duties of a Committee. . . . . 3-22

    [4A] Attorney-Client Privilege; Duty to  
        Share Information . . . . . 3-28

    [5] Suits Against Committee Members. . . . . 3-30

    [6] Committee Professionals . . . . . 3-31

§ 3.03 Trustees . . . . . 3-33

    [1] Legislative History . . . . . 3-33

    [2] The Process of Electing or  
        Appointing a Trustee. . . . . 3-34

    [2A] Cause for the Appointment or  
        Election of a Trustee. . . . . 3-36

    [3] Who May Serve as a Trustee . . . . . 3-41

    [4] The Trustee’s Duties . . . . . 3-42

**CHAPTER 11 REORGANIZATIONS**

	[5] Suits Against a Trustee . . . . .	3-45
	[6] Appointment of Trustee in Cases of Suspected Fraud. . . . .	3-47
§ 3.04	Examiners . . . . .	3-48
§ 3.05	The United States Trustee . . . . .	3-52
	[1] The History of the United States Trustee System. . . . .	3-52
	[2] The Role of the United States Trustee. . .	3-53
	[3] Financing the United States Trustee System. . . . .	3-56
§ 3.06	Professionals . . . . .	3-59
	[1] Employment of Professionals . . . . .	3-59
	[2] Compensation of Professionals . . . . .	3-66
§ 3.07	Party in Interest. . . . .	3-71

**CHAPTER 4****The Automatic Stay**

§ 4.01	The Automatic Stay . . . . .	4-2
	[1] In General. . . . .	4-2
	[2] Judicial and Administrative Proceedings . . . . .	4-4
	[3] Enforcement of Judgments . . . . .	4-6
	[4] Acts to Obtain Possession of or Exercise Control Over Property of the Estate. . . . .	4-6
	[5] Acts Respecting Liens on Property of the Estate. . . . .	4-12
	[6] Acts Regarding Property of the Debtor . . . . .	4-12.1
	[7] Acts to Collect Prepetition Debts . . . . .	4-13
	[8] Setoff and Recoupment . . . . .	4-14
	[9] Tax Court Proceedings . . . . .	4-17
	[10] Scope of the Stay. . . . .	4-17
	[a] Statutory Redemption; Cure Periods. . . . .	4-17
	[b] Letters of Credit; <i>Supersedeas</i> Bonds . . . . .	4-19
	[c] Other Issues . . . . .	4-19
§ 4.02	Applicability of the Stay to Third Persons . . . .	4-23
§ 4.03	Exceptions to the Automatic Stay . . . . .	4-28.1
	[1] General . . . . .	4-28.1
	[2] Postpetition Perfection of Interests	

## TABLE OF CONTENTS

vii

	in Property . . . . .	4-28.1
[3]	Governmental Units . . . . .	4-31
	[a] The Statutory Language . . . . .	4-31
	[b] Limits of the Exception: Regulatory Powers vs. Pecuniary Interests . . . . .	4-31
	[c] The Environmental Cases . . . . .	4-39
	[d] Impact on Assets of the Estate . . . . .	4-43
	[e] Discriminatory Treatment of Debtors: The Applicability of Section 525 . . . . .	4-45
	[4] Lessors of Real Property . . . . .	4-47
	[5] Property Tax Liens . . . . .	4-48
	[6] Other Exceptions . . . . .	4-49
§ 4.04	Duration of the Automatic Stay . . . . .	4-50
§ 4.05	Terminating the Automatic Stay . . . . .	4-52
	[1] Grounds for Relief . . . . .	4-52
	[2] Single Asset Real Estate . . . . .	4-56
	[2A] Abusive Filings . . . . .	4-59
	[3] Prepetition Agreements . . . . .	4-59
	[4] Procedure . . . . .	4-61
§ 4.06	Adequate Protection . . . . .	4-66.1
	[1] History of Adequate Protection . . . . .	4-66.1
	[2] Development of Adequate Protection Under the Code . . . . .	4-70
	[3] The Undersecured Creditor . . . . .	4-73
	[a] Interest on the Value of the Creditor's Collateral . . . . .	4-73
	[b] Treatment of Adequate Protection Payments . . . . .	4-75
	[4] Valuing the Collateral . . . . .	4-80
	[5] Stipulations . . . . .	4-82
§ 4.07	Appealability of Orders Regarding the Automatic Stay . . . . .	4-84
§ 4.08	Violating the Automatic Stay . . . . .	4-85

## CHAPTER 5

### The Secured Creditor

§ 5.01	Use of Collateral . . . . .	5-1
	[1] In General . . . . .	5-1
	[2] Adequate Protection . . . . .	5-4
	[3] Rents . . . . .	5-8

**CHAPTER 11 REORGANIZATIONS**

	[a] The Role of State Law . . . . .	5-8
	[b] Treatment of Rents and Hotel Revenues . . . . .	5-10
	[4] Procedure . . . . .	5-12.1
	[5] Unauthorized Use of Cash Collateral . . . . .	5-15
§ 5.02	Secured Creditor's Interest in Postpetition Property . . . . .	5-15
§ 5.03	Turnover . . . . .	5-28
§ 5.04	The Secured Creditor's Right to Postpetition Interest, Attorneys' Fees, and Other Charges . . . . .	5-31
§ 5.05	Determining the Amount of the Secured Claim. . . . .	5-37
§ 5.06	Surcharging the Secured Creditor . . . . .	5-42

**CHAPTER 6****Managing and Operating the Debtor and Its Business**

§ 6.01	Operating the Debtor's Business . . . . .	6-3
	[1] Generally; First Day Orders . . . . .	6-3
	[1A] 28 U.S.C. § 959 . . . . .	6-6
	[2] Paying Prepetition Creditors . . . . .	6-7
	[a] "Critical Vendor" Orders . . . . .	6-7
	[b] Reclamation . . . . .	6-13
	[c] Prepetition Vendors . . . . .	6-14
	[3] Dealing with Employees . . . . .	6-16
	[a] Keeping Employees . . . . .	6-16
	[i] Prepetition Payroll . . . . .	6-16
	[ii] Retention Plans . . . . .	6-18
	[b] Severance Pay . . . . .	6-22
	[4] Operations in the Ordinary Course of Business . . . . .	6-24.1
	[4A] Maintaining Utility Service . . . . .	6-24.5
§ 6.02	Obtaining Credit . . . . .	6-24.7
	[1] The Administrative Priority; Unsecured Credit . . . . .	6-24.7
	[a] During the Involuntary Gap . . . . .	6-24.7
	[b] After the Order for Relief . . . . .	6-24.9
	[2] Secured Borrowing . . . . .	6-24.10
	[3] Priming Prior Liens . . . . .	6-24.11
	[4] Appeals of Borrowing Orders . . . . .	6-24.14
§ 6.03	Procedures for Financing the Debtor in Possession . . . . .	6-26

**TABLE OF CONTENTS**

ix

	[1] Procedural Alternatives . . . . .	6-26
	[2] Cross-Collateralization . . . . .	6-27
	[3] Contents of Borrowing Order . . . . .	6-28
§ 6.04	Sale, Use or Lease of Assets . . . . .	6-31
	[1] Sale, Use or Lease in Ordinary Course of Business . . . . .	6-31
	[2] Sale, Use or Lease Out of the Ordinary Course of Business . . . . .	6-32
	[3] Sales Free and Clear of Liens and Other Interests . . . . .	6-35
	[4] Sales of All or Substantially All of the Estate's Assets . . . . .	6-40.2
	[a] In General . . . . .	6-40.2
	[b] <i>Sub Rosa</i> Plans . . . . .	6-43
	[c] <i>Lehman Brothers, Chrysler and         General Motors</i> . . . . .	6-47
	[5] Appeal of Sale Orders . . . . .	6-52
§ 6.05	Executory Contracts and Unexpired Leases . . .	6-56
	[1] Executory Contracts and Unexpired Leases as Part of the Bankruptcy Estate . . . . .	6-56
	[2] Definition of Executory Contract . . . . .	6-57
	[3] <i>Ipsa Facto</i> Clauses . . . . .	6-64
	[4] Executory Contracts and Unexpired Leases Before Assumption or Rejection; Administrative Rent . . . . .	6-64.1
	[a] Generally . . . . .	6-64.1
	[b] Leases of Nonresidential Real Property . . . . .	6-67
	[i] Treatment of the Landlord's Claim . . . . .	6-67
	[ii] Computing the Landlord's Claim . . . . .	6-68
	[iii] Failure to Comply with Section 365(d)(3) . . . . .	6-71
	[iv] Paying the Administrative Rent . . . . .	6-71
	[c] Leases of Personal Property . . . . .	6-72
	[5] Time for Assumption or Rejection . . . . .	6-72.3
	[a] Generally . . . . .	6-72.3
	[b] Leases of Nonresidential Real Property . . . . .	6-72.5
	[6] Assumption . . . . .	6-72.7
	[a] Determining the Motion to Assume . . . . .	6-72.7

**CHAPTER 11 REORGANIZATIONS**

	[b]	The “Business Judgment” Rule . . . .	6-72.10
	[c]	Prerequisites to Assumption . . . . .	6-72.11
	[d]	Contracts That May Not Be Assumed . . . . .	6-72.14
[7]		Assignment . . . . .	6-72.18
[8]		Rejection . . . . .	6-72.21
	[a]	Generally . . . . .	6-72.21
	[b]	Effect of Rejection When the Contract or Lease Has Not Been Assumed . . . . .	6-72.23
	[c]	Effect of Rejection When the Contract or Lease Has Been Assumed . . . . .	6-72.26
	[d]	The Non-Debtor’s Claim When the Contract or Lease Has Not Been Assumed . . . . .	6-72.26
	[e]	The Non-Debtor’s Claim When the Contract or Lease Has Been Assumed . . . . .	6-72.28
§ 6.06		Labor Contracts . . . . .	6-72.29
§ 6.07		Retiree Benefits . . . . .	6-81
§ 6.08		Intellectual Property . . . . .	6-87
§ 6.09		Aircraft Equipment and Vessels . . . . .	6-90.1

**CHAPTER 6A****Claims**

§ 6A.01		Definition of Claim . . . . .	6A-2
§ 6A.02		Prepetition Claims . . . . .	6A-6
	[1]	General . . . . .	6A-6
	[2]	Secured Claims . . . . .	6A-9
	[3]	Priority Claims . . . . .	6A-10
	[4]	General Unsecured Claims . . . . .	6A-15
	[5]	Attorneys’ Fees as Part of Unsecured Claims . . . . .	6A-16
	[6]	Prepayment Premiums and Other Make-Whole Provisions . . . . .	6A-17
§ 6A.03		Administrative Claims . . . . .	6A-23
	[1]	Claims That Are Entitled to Administrative Status . . . . .	6A-23
	[a]	Benefit to the Estate . . . . .	6A-23
	[b]	When Did the Claim Arise . . . . .	6A-25
	[c]	When Are Administrative Expenses Paid . . . . .	6A-28



**TABLE OF CONTENTS**

[2] Seeking Payment of Administrative Expenses . . . . . 6A-31

§ 6A.04 Filing Proofs of Claim . . . . . 6A-32

[1] In General . . . . . 6A-32

[2] Bar Dates and Notice Thereof . . . . . 6A-34

§ 6A.05 Objections to Claims . . . . . 6A-36

[1] Procedure . . . . . 6A-36

[a] In General . . . . . 6A-36

[b] Omnibus Objections to Claims . . . . . 6A-38

[2] Claim Determined as of Petition Date . . . . . 6A-38

[3] Grounds for Objection . . . . . 6A-39

[a] Claims That Are Unenforceable or Are for Unmatured Interest . . . . . 6A-40

[b] Claims of Landlords and Employees . . . . . 6A-43

[c] Late-Filed Claims . . . . . 6A-46

[4] Withdrawing the Proof of Claim . . . . . 6A-47

§ 6A.06 Estimation of Claims . . . . . 6A-49

§ 6A.07 Subordination of Claims . . . . . 6A-53

[1] Subordination Agreements . . . . . 6A-53

[2] Securities Claims . . . . . 6A-55

[3] Equitable Subordination . . . . . 6A-57

[4] Recharacterizing Debt as Equity . . . . . 6A-62

§ 6A.08 Interests . . . . . 6A-65

**CHAPTER 7**

**Dismissal and Conversion of a Chapter 11 Case**

§ 7.01 Converting a Case from Chapter 7 to Chapter 11 . . . . . 7-2

§ 7.02 Dismissing or Suspending a Chapter 11 Case Under Section 305 . . . . . 7-4

§ 7.03 Converting a Chapter 11 Case at the Request of the Debtor . . . . . 7-7

§ 7.04 Converting or Dismissing a Chapter 11 Case at the Request of a Party in Interest . . . . . 7-9

[1] In General . . . . . 7-9

[2] Cause for Converting or Dismissing a Chapter 11 Case . . . . . 7-10

[3] Circumstances in Which, Even if Cause Is Shown, the Chapter 11 Case Need Not Be Converted or Dismissed . . . . . 7-16

**CHAPTER 11 REORGANIZATIONS**

	[4] Dismissal Because of Lack of Good Faith . . . . .	7-17
	[5] Conversion Versus Dismissal . . . . .	7-26.1
	[6] Timetable for Resolving Motions to Convert or Dismiss . . . . .	7-26.2
§ 7.05	Appointment of a Trustee or Examiner in Lieu of Converting or Dismissing. . . . .	7-27
§ 7.06	<i>Sua Sponte</i> Conversion or Dismissal. . . . .	7-28
§ 7.07	Restraints on Conversion or Dismissal . . . . .	7-31
§ 7.08	Effect of Conversion or Dismissal; “Structured” Dismissal . . . . .	7-33

**CHAPTER 8****Plan Exclusivity: Who May File a Plan**

§ 8.01	Introduction . . . . .	8-1
§ 8.02	Pre-Code Law . . . . .	8-2
§ 8.03	Plan Exclusivity and How It May Be Lost. . . . .	8-4
§ 8.04	Who May File a Chapter 11 Plan . . . . .	8-11
§ 8.05	Appeal of Orders Regarding Exclusivity. . . . .	8-14

**CHAPTER 9****Plans of Reorganization: Contents and Classification**

§ 9.01	Introduction; Preemption of Nonbankruptcy Law . . . . .	9-2
§ 9.02	Mandatory Plan Provisions: Classification of Claims and Interests. . . . .	9-8
	[1] Secured Claims. . . . .	9-10
	[2] Unsecured Claims . . . . .	9-12
	[3] Subordinated Claims . . . . .	9-16
	[4] Bankruptcy Rule 3013 . . . . .	9-19
	[5] Objections to Classification. . . . .	9-20
§ 9.03	Classification of Small Claims. . . . .	9-21
§ 9.04	Exclusions from Classification. . . . .	9-24
§ 9.05	Mandatory Plan Provisions: Specification of Non-Impaired Classes. . . . .	9-25
§ 9.06	Mandatory Plan Provisions: Treatment of Impaired Classes. . . . .	9-26
§ 9.07	Mandatory Plan Provisions: Treatment of Class Members . . . . .	9-26.1

## TABLE OF CONTENTS

xiii

§ 9.08	Mandatory Plan Provisions: Adequate Means for the Execution of the Plan . . . . .	9-29
	[1] Introduction . . . . .	9-29
	[2] Retaining Property of the Estate . . . . .	9-30
	[3] Sale of Property; Mergers . . . . .	9-30
	[4] Other Means of Implementing the Plan . . . . .	9-31
	[5] Issuance of Securities . . . . .	9-32
§ 9.09	Mandatory Plan Provisions: Modification of the Debtor's Charter . . . . .	9-33
§ 9.10	Mandatory Plan Provisions: The Public Interest. . . . .	9-35
§ 9.10A	Mandatory Plan Provisions: Retiree Benefits. . . . .	9-36
§ 9.11	Permissive Plan Provisions. . . . .	9-36.1
	[1] In General. . . . .	9-36.1
	[2] Dealing with Classes of Claims and Interests. . . . .	9-36.1
§ 9.12	Permissive Plan Provisions: Executory Contracts and Unexpired Leases . . . . .	9-37
§ 9.13	Permissive Plan Provisions: Dealing with Assets of the Estate . . . . .	9-39
	[1] Claims and Interests. . . . .	9-39
	[2] Sale of Property . . . . .	9-42
§ 9.13A	Permissive Plan Provisions: The Debtor's Principal Residence . . . . .	9-43
§ 9.14	Permissive Plan Provisions: Other Appropriate Provisions . . . . .	9-45
§ 9.15	Cases Concerning Individuals . . . . .	9-47
§ 9.16	Determining Amount Necessary to Cure a Default . . . . .	9-48

## CHAPTER 10

### Impairment

§ 10.01	Introduction; History of Section 1124 . . . . .	10-1
§ 10.02	Claims . . . . .	10-3
	[1] Leaving Claims Unaltered . . . . .	10-3
	[2] Reinstatement . . . . .	10-6
§ 10.03	Interests . . . . .	10-11
§ 10.04	Relationship of Section 1124 to Section 1126(f) . . . . .	10-13

## CHAPTER 11 REORGANIZATIONS

## CHAPTER 11

## Disclosure and Solicitation

§ 11.01	The Disclosure Statement . . . . .	11-2
	[1] Legislative History . . . . .	11-3
	[2] Function of Disclosure Statement . . . . .	11-3
	[3] “Adequate Information” . . . . .	11-4
	[4] Contents of a Disclosure Statement . . . . .	11-8
	[5] Disclosure Statements Filed by Third Parties . . . . .	11-12
	[6] Circumstances Not Requiring a Disclosure Statement . . . . .	11-12.1
	[7] When to File a Disclosure Statement . . . . .	11-13
	[8] Disclosure by Non-Proponents . . . . .	11-14
	[9] “Lock-Up” Agreements . . . . .	11-19
§ 11.02	The Disclosure Statement Hearing . . . . .	11-22
§ 11.03	Applicability of Securities Laws . . . . .	11-24
§ 11.04	Solicitation of Votes . . . . .	11-27
	[1] Transmitting the Plan Documents . . . . .	11-27
	[a] In General . . . . .	11-27
	[b] When Securities Are Held in Street Name . . . . .	11-27
	[2] Fixing the Date of Record . . . . .	11-28
	[3] When the Ballot Must Be Returned . . . . .	11-28
§ 11.05	Acceptance of the Plan . . . . .	11-29
	[1] Acceptance Requirements . . . . .	11-29
	[2] “Designating” an Acceptance or Rejection . . . . .	11-30
	[3] Temporary Allowance for Voting Purposes . . . . .	11-32.2
	[4] Unimpaired Classes . . . . .	11-33
	[5] Classes Receiving No Property Under the Plan . . . . .	11-34
	[6] Changing Votes . . . . .	11-34
	[7] Assigning the Right to Vote . . . . .	11-34.1
§ 11.06	Workouts; Prepackaged Plans . . . . .	11-35

## CHAPTER 12

## Plans of Reorganization: Modification and Confirmation

§ 12.01	Modification of a Plan Prior to Confirmation . . . . .	12-2
§ 12.02	The Confirmation Hearing: Objections to Confirmation . . . . .	12-5

## TABLE OF CONTENTS

xv

§ 12.03	The Confirmation Standards: In General . . . . .	12-8
§ 12.04	Plan Compliance with Title 11 . . . . .	12-9
§ 12.05	Proponent Compliance with Title 11 . . . . .	12-10
§ 12.06	Good Faith . . . . .	12-11
§ 12.07	Proponent Payments . . . . .	12-15
§ 12.08	Disclosure of Post-Confirmation Management . . . . .	12-17
§ 12.09	Regulatory Approval . . . . .	12-19
§ 12.10	Best Interests of Creditors . . . . .	12-20
§ 12.11	Class Acceptance . . . . .	12-23
§ 12.12	Priority Claims . . . . .	12-24
	[1] Administrative Expenses and Involuntary Gap Claims . . . . .	12-24
	[2] Other Priority Non-Tax Claims . . . . .	12-25
	[3] Unsecured Tax Claims . . . . .	12-26
	[4] Late-Filed Priority Claims . . . . .	12-28
§ 12.13	Minimum Acceptance . . . . .	12-30
§ 12.14	Feasibility . . . . .	12-33
§ 12.15	Payment of Fees . . . . .	12-35
§ 12.16	Retiree Benefits . . . . .	12-36
§ 12.16A	“Special Interest” Confirmation Standards . . . . .	12-37
§ 12.17	Acceptance of More than One Plan . . . . .	12-38
§ 12.18	Improper Motives . . . . .	12-40

## CHAPTER 13

### Cramdown

§ 13.01	Introduction . . . . .	13-1
	[1] The Absolute Priority Rule . . . . .	13-1
	[2] Valuing the Debtor . . . . .	13-4
§ 13.02	Nonrecourse Claims: The Section 1111(b) Election . . . . .	13-7
§ 13.03	Cramdown: In General . . . . .	13-15
§ 13.04	Cramdown of Secured Claims . . . . .	13-19
	[1] Introduction . . . . .	13-19
	[2] Retention of the Collateral . . . . .	13-19
	[3] Sale of the Collateral . . . . .	13-28
	[4] Indubitable Equivalence . . . . .	13-29
§ 13.05	Cramdown of Unsecured Claims . . . . .	13-30.2
	[1] Generally . . . . .	13-30.2
	[1A] “Gifting” . . . . .	13-32
	[2] The “New Value” Rule . . . . .	13-35
	[3] Cases Concerning Individuals . . . . .	13-40
§ 13.06	Cramdown of Interests . . . . .	13-41

**CHAPTER 11 REORGANIZATIONS****CHAPTER 13A****Cases Involving a “Small Business Debtor”**

§ 13A.01	Introduction . . . . .	13A-1
§ 13A.02	Definitions . . . . .	13A-3
§ 13A.03	Creditors’ Committees . . . . .	13A-5
§ 13A.04	Debtor’s Duties . . . . .	13A-7
§ 13A.05	Debtor’s Reporting Requirements . . . . .	13A-8
§ 13A.06	Duties of the United States Trustee . . . . .	13A-9
§ 13A.07	Special Provisions Regarding the Automatic Stay . . . . .	13A-10
§ 13A.08	Plan Exclusivity . . . . .	13A-11
§ 13A.09	The Plan Confirmation Process . . . . .	13A-13
	[1] Disclosure Statements . . . . .	13A-13
	[2] Confirmation . . . . .	13A-13

**CHAPTER 13B****Cases Filed Under the Small Business  
Reorganization Act of 2019**

§ 13B.01	Introduction . . . . .	13B-3
§ 13B.02	Inapplicability of Other Sections of the Bankruptcy Code . . . . .	13B-5
§ 13B.03	Definitions; Eligibility for Subchapter V . . . . .	13B-8
	[1] Definitions . . . . .	13B-8
	[a] Debtor . . . . .	13B-8
	[b] Debtor in Possession . . . . .	13B-8
	[2] Eligibility for Subchapter V . . . . .	13B-9
§ 13B.04	Trustees . . . . .	13B-12
	[1] Appointment of Trustee . . . . .	13B-12
	[2] Duties of Trustee . . . . .	13B-13
	[a] Duties of a Chapter 7 Trustee . . . . .	13B-13
	[b] Appearance at Status Conference and at Hearings . . . . .	13B-13
	[c] Other Duties Performed in Every Case . . . . .	13B-13
	[d] The Court May Order the Trustee to Perform Additional Duties . . . . .	13B-14
	[e] Duties of the Trustee if the Debtor Ceases to Be a Debtor in Possession . . . . .	13B-15
	[3] Termination of Trustee’s Service . . . . .	13B-15
	[4] Trustee’s Compensation . . . . .	13B-16

## TABLE OF CONTENTS

xvii

§ 13B.05	Creditors’ Committees . . . . .	13B-17
§ 13B.06	Special Provisions Regarding the Automatic Stay . . . . .	13B-18
§ 13B.07	Duties of the United States Trustee . . . . .	13B-19
§ 13B.08	Rights, Powers, and Duties of a Debtor in Possession . . . . .	13B-20
	[1] In General . . . . .	13B-20
	[2] Paycheck Protection Program (“PPP”) Loans . . . . .	13B-20
§ 13B.09	Removal and Reinstatement of the Debtor in Possession . . . . .	13B-22
	[1] Removal of the Debtor in Possession . . .	13B-22
	[2] Reinstatement of the Debtor in Possession . . . . .	13B-23
§ 13B.10	Duties and Reporting Requirements of Debtors . . . . .	13B-24
	[1] In General . . . . .	13B-24
	[2] The Status Conference Report . . . . .	13B-25
§ 13B.11	The Status Conference . . . . .	13B-26
§ 13B.12	The Plan Process . . . . .	13B-28
	[1] Plan Exclusivity . . . . .	13B-28
	[2] Deadline for Filing a Plan . . . . .	13B-28
§ 13B.13	Contents of a Subchapter V Plan . . . . .	13B-30
	[1] Chapter 11 Provisions that Apply to Subchapter V Plans . . . . .	13B-30
	[2] Mandatory Provisions Applicable Solely to Subchapter V Plans . . . . .	13B-30
	[3] Treatment of a Security Interest in the Principal Residence of the Debtor . . .	13B-32
§ 13B.14	Acceptance of a Plan . . . . .	13B-34
§ 13B.15	Modification of a Plan Before Confirmation . .	13B-35
§ 13B.16	Confirmation of a Consensual Plan . . . . .	13B-36
§ 13B.17	Confirmation of a Non-Consensual Plan: Cramdown . . . . .	13B-37
	[1] Conditions Precedent to Invoking the Subchapter V Cramdown Power . . . . .	13B-37
	[2] “Fair and Equitable” with Respect to a Class of Secured Claims . . . . .	13B-38
	[3] Other Classes: Elimination of the Absolute Priority Rule . . . . .	13B-38
	[4] “Disposable Income” . . . . .	13B-40
	[5] Payment of Certain Priority Claims . . . .	13B-41
	[6] Property of the Estate Following Confirmation . . . . .	13B-41
	[7] PPP Loans . . . . .	13B-42

**CHAPTER 11 REORGANIZATIONS**

§ 13B.18	The Discharge . . . . .	13B-44
	[1] The Discharge Following Confirmation of a Consensual Plan . . . . .	13B-44
	[2] The Discharge Following Confirmation of a Cramdown Plan . . . . .	13B-44
§ 13B.19	Payments Under a Plan . . . . .	13B-46
	[1] In General . . . . .	13B-46
	[2] Payment to Holder of Secured Claim Prior to Confirmation . . . . .	13B-46
§ 13B.20	Modification of a Plan Following Confirmation . . . . .	13B-47
	[1] Modification of a Plan Confirmed Under Section 1191(a) . . . . .	13B-47
	[2] Modification of a Plan Confirmed Under Section 1191(b) . . . . .	13B-48
§ 13B.21	Transactions with Professionals . . . . .	13B-49

**CHAPTER 14****Beyond Confirmation**

§ 14.01	The Effect of Confirmation . . . . .	14-1
	[1] Appeal of an Order of Confirmation; Equitable Mootness . . . . .	14-2
	[2] Plan Binding on All Parties . . . . .	14-12
	[3] Property of the Estate . . . . .	14-15
	[4] Discharge . . . . .	14-18
	[4A] Due Process Limit on Discharge . . . . .	14-21
	[5] The Permanent Stay . . . . .	14-26
	[6] Effect of Confirmation on Third Parties . . . . .	14-28
§ 14.02	Implementation of the Plan . . . . .	14-39
	[1] Carrying Out the Plan . . . . .	14-39
	[2] Post-Confirmation Jurisdiction of the Bankruptcy Court . . . . .	14-40
	[3] Distribution . . . . .	14-40.3
	[4] Exemption from Transfer Taxes . . . . .	14-40.4
§ 14.03	Revocation of Confirmation . . . . .	14-40.7
§ 14.04	Modification of a Confirmed Plan . . . . .	14-40.10
§ 14.05	Serial Filings; Conversion and Dismissal . . . . .	14-42
§ 14.06	Application of Securities Laws . . . . .	14-46