

/\* We continue with our second part of the bankruptcy code, which is the first part of Chapter 3. For anyone who is confused the bankruptcy code skips even numbers except for chapter 12, so, as the index points out:

The proper order is Chapter 1, 3, 5, 7, 9, 11, 12, 13 \*/

## CHAPTER 3

### Case Administration

#### SUBCHAPTER I

##### Commencement of a Case

###### SECTION 301(11 U.S.C. 301)

301. Voluntary cases. A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

/\* No action by the Court is necessary to begin the automatic stay. The acceptance of the petition begins the case. \*/

###### SECTION 302 (11 U.S.C. 302)

###### 302. Joint cases.

(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

###### SECTION 303 (11 U.S.C. 303)

###### 303. Involuntary cases.

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title-

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute, or an indenture trustee representing such a holder, if such claims aggregate at least \$5,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$5,000 of such claims;

(3) if such person is a partnership -

(A) by fewer than all of the general partners in such partnership; or

(B) if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership;  
or

(4) by a foreign representative of the estate in a foreign proceeding concerning such person.

(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this

section.

(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor.

Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if-

(1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute; or

/\* There are two definitions of insolvency within the law- the

legal and the equitable test. The legal test is a balance sheet test; the equitable test is stated above. Accordingly, balance sheet insolvency is not a determining factor in determining whether or not to grant relief. \*/

(2) within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment --

(1) against the petitioners and in favor of the debtor for-

(A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith, for-

(A) any damages proximately caused by such filing; or

(B) punitive damages.

(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section-

(1) on the motion of a petitioner;

(2) on consent of all petitioners and the debtor; or

(3) for want of prosecution,

(k) Notwithstanding subsection (a) of this section, an involuntary case may be commenced against a foreign bank that is not engaged in such business in the United States only under chapter 7 of this title and only if a foreign proceeding concerning such bank is pending.

SECTION 304 (11 U.S.C. 304)

304. Cases ancillary to foreign proceedings.

(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative,

(b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may-

(1) enjoin the commencement or continuation of-

(A) any action against a debtor with respect to property involved in such foreign proceeding; or in such property; or

(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

(2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

(3) order other appropriate relief.

(c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with-

(1) just treatment of all holders of claims against or interests in such estate

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of such estate;

(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

(5) comity; and

(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

SECTION 305 (11 U.S.C. 305)

305. Abstention.

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if-

(1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or

(2) (A) there is pending a foreign proceeding; and

(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.

(b) A foreign representative may seek dismissal or suspension under subsection (a) (2) of this section.

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title [sic] or by the Supreme Court of the United States under section 1254 of this title [sic].

/\* There are several miscitations in this section due to typographical errors by the statutory folks. In addition, the absention section, similarly to the rules related to U.S. District Court, allows the Court to abstain without review. \*/

SECTION 306 (11 U.S.C. 306)

306. Limited appearance. An appearance in a bankruptcy court by a foreign representative in connection with a petition or request under section 303, 304, or 305 of this title does not submit such foreign representative to the jurisdiction of any court in the United States for any other purpose, but the bankruptcy court may condition any order under section 303, 304, or 305 of this title on compliance by such foreign representative with the orders of such bankruptcy court.

SECTION 307 (11 U.S.C. 307)

307. United States trustee. The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(o) of this title.

SUBCHAPTER II

Officers

SECTION 321 (11 U.S.C. 321)

321. Eligibility to serve as trustee.

(a) A person may serve as trustee in a case under this title only if such person is-

(1) an individual that is competent to perform the duties of trustee and, in a case under chapter 7, 12, or 13 of this title, resides or has an office in the judicial district within which the case is pending, or in any judicial district adjacent to such district; or

(2) a corporation authorized by such corporation's charter or bylaws to act as trustee, and, in a case under chapter 7, 12, or 13 of this title, having an office in at least one of such districts.

(b) A person that has served as an examiner in the case may not serve as trustee in the case.

(c) The United States trustee for the judicial district in which the case is pending is eligible to serve as trustee in the case if necessary.

SECTION 322 (11 U.S.C. 322)

322. Qualification of trustee.

(a) Except as provided in subsection (b) (1), a person selected under section 701, 702, 703, 1104, 1163, 1302, or 1202 of this title to serve as trustee in a case under this title qualifies if before five days after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties.

(b) (1) The United States trustee qualifies wherever such trustee serves as trustee in a case under this title.

(2) The United States trustee shall determine

(A) the amount of a bond required to be filed under subsection (a) of this section; and

(B) the sufficiency of the surety on such bond.

(c) A trustee is not liable personally or on such trustee's bond in favor of the United States for any penalty or forfeiture incurred by the debtor.

(d) A proceeding on a trustee's bond may not be commenced after two years after the date on which such trustee was discharged.

SECTION 323 (11 U.S.C. 323)

323. Role and capacity of trustee.

(a) The trustee in a case under this title is the representative of the estate.

(b) The trustee in a case under this title has capacity to sue and be sued.

/\* Cross referencing definitions, the debtor in possession in Chapter 11 is the trustee unless an outside trustee is appointed. \*/

SECTION 324 (11 U.S.C. 324)

324. Removal of trustee or examiner.

(a) The court, after notice and a hearing, may remove a trustee, other than the United States trustee, or an examiner, for cause.

(b) Whenever the court removes a trustee or examiner under subsection (a) in a case under this title, such trustee or examiner shall thereby be removed in all other cases under this title in which such trustee or examiner is then serving unless the court orders otherwise.

SECTION 325 (11 U.S.C. 325)

325. Effect of vacancy. A vacancy in the office of trustee during a case does not abate any pending action or proceeding, and the successor trustee shall be substituted as a party in such action or proceeding.

SECTION 326 (11 U.S.C. 326)

326. Limitation on compensation of trustee.

(a) in a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed fifteen percent on the first \$1,000 or less, six percent on any amount in excess of \$1,000 but not in excess of \$3,000, and three percent on any amount in excess of \$3,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

/\* In a practical sense these maximums are also the minimum in most districts. \*/

(b) in a case under chapter 12 or 13 of this title, the court may not allow compensation for services or reimbursement of expenses of the United States trustee or of a standing trustee appointed under section 586(b) of title 28, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1202(a) or 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan.

(c) if more than one person serves as trustee in the case, the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee by subsection (a) or (b) of this section, as the case may be.

(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title.

SECTION 327 (11 U.S.C. 327)

327. Employment of professional persons.

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

(b) If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business.

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

(d) The court may authorize the trustee to act as attorney or accountant for the estate if such authorization is in the best interest of the estate.

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

(f) The trustee may not employ a person that has served as an examiner in the case.

#### SECTION 328 (11 U.S.C. 328)

328. Limitation on compensation of professional persons.

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section

327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms

and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

/\* The "we never meant to pay you 10% of the sales price as a real estate commission" rule. \*/

(b) If the court has authorized a trustee to serve as an attorney or accountant for the estate under section 327(d) of this title, the court may allow compensation for the trustee's services as such attorney or accountant only to the extent that the trustee performed services as attorney or accountant for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney or accountant for the estate.

(c) Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title, such professional person is not a disinterested person or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

#### SECTION 329 (11 U.S.C. 329)

##### 329. Debtor's transactions with attorneys.

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to-

(1) the estate, if the property transferred-

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11 12, or 13 of this title; or

(2) the entity that made such payment.

SECTION 330 (11 U.S.C. 330)

330. Compensation of officers.

(a) After notice to any parties in interest and to the United States trustee and a hearing, and subject to sections 326, 328, and 329 of this title, the court may award to a trustee, to an examiner, to a professional person employed under section 327 or 1103 of this title, or to the debtor's attorney

(1) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney, as the case may be, and by any paraprofessional persons employed by such trustee, professional person, or attorney, as the case may be, based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title; and

(2) reimbursement for actual, necessary expenses.

(b) There shall be paid from the filing fee in a case under chapter 7 of this title \$45 to the trustee serving in such case, after such trustee's services are rendered.

(c) Unless the court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the trustee serving in the case shall not be less than \$5 per month from any distribution under the plan during the administration of the plan.

(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.

SECTION 331(11 U.S.C. 331)

331. Interim compensation.

A trustee, an examiner, a debtor's attorney, or any professional person employee under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

SUBCHAPTER III

Administration

SECTION 341 (11 U.S.C. 341)

341. Meetings of creditors and equity security holders.

(a) Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors.

(b) The United States trustee may convene a meeting of any equity security holders.

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

/\* Part of the concept behind the bankruptcy code was the removal of the Court from administrative duties. This section is part of that. \*/

SECTION 342 (11 U.S.C. 342)

342. Notice.

(a) There shall be given such notice as is appropriate, including notice to any holder of a community claim, of all orders for relief in a case under this title.

(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.

SECTION 343 (11 U.S.C. 343)

343. Examination of the debtor. The debtor shall appear and submit to examination under oath at the meeting of creditors under section 34i(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

SECTION 344 (11 U.S.C. 344)

344. Self-incrimination; immunity. Immunity for persons required to submit to examination, to testify, or to provide information in a case under this title may be granted under part V of title 18.

SECTION 345 (11 U.S.C. 345)

345. Money of estates.

(a) A trustee in a case under this title may make such deposit or investment of the money of the estate for which such trustee serves as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.

(b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested --

(1) a bond-

(A) in favor of the United States;

(B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and

(C) conditioned on-

a proper accounting for all money so deposited or invested and for any return on such money; (ii) prompt repayment of such money and return; and (iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 9303 of title 31

(c) An entity with which such moneys are deposited or invested is authorized to deposit or invest such moneys as may be required under this section.

#### SECTION

346 (11 U.S.C. 346)

346. Special tax provisions.

(a) Except to the extent otherwise provided in this section, subsections (b), (c), (d), (e), (g), (h), (i), and (j) of this section apply notwithstanding any State or local law imposing a tax, but subject to the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)

(b) (1) In a case under chapter 7, 12, or 11 of this title concerning an individual the income of the estate may be taxed under a state or local law imposing a tax on or measured by income only to the estate, and may not be taxed to such individual. Except as provided in section 728 of this title, if such individual is a partner in a partnership, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of income, gain, loss, deduction, or credit of such individual that is distributed, or considered distributed, from such partnership, after the commencement of the case is gain, loss, income, deduction, or credit, as the case may be, of the estate.

(2) Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such a case, and any state or local tax on or measured by such income,

shall be computed in the same manner as the income and the tax of an estate.

(3) The estate in such a case shall use the same accounting method as the debtor used immediately before the commencement of the case.

(c) (1) The commencement of a case under this title concerning a corporation or a partnership does not effect a change in the status of such corporation or partnership for the purposes of any State or local law imposing a tax on or measured by income. Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such case may be taxed only as though such case had not been commenced.

(2) In such a case, except as provided in section 728 of this title, the trustee shall make any tax return otherwise required by State or local law to be filed by or on behalf of such corporation or partnership in the same manner and form as such corporation or partnership, as the case may be, is required to make such return.

(d) In a case under chapter 13 of this title, any income of the estate or the debtor may be taxed under a State or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

(e) A claim allowed under section 502(f) or 503 of this title, other than a claim for a tax that is not otherwise deductible or a capital expenditure that is not otherwise deductible, is deductible by the entity to which income of the estate is taxed unless such claim was deducted by another entity, and a deduction for such a claim is deemed to be a deduction attributable to a business.

(f) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld was paid.

(g) (1) Neither gain nor loss shall be recognized on a transfer-

(A) by operation of law, of property to the estate;

(B) other than a sale, of property from the estate to the debtor; or

(C) in a case under chapter 11 or 12 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1954 (26 U.S.C. 371).

(2) The transferee of a transfer of a kind specified in this subsection shall take the property transferred with the same character, and with the transferor's basis, as adjusted under subsection (i) (5) of this section, and holding period.  
/\* The general rule of bankruptcy is that the tax attributes of the property follow with the case. \*/

(h) Notwithstanding sections 728(a) and 1146(a) of this title, for the purpose of determining the number of taxable periods during which the debtor or the estate may use a loss carryover or a loss carryback, the taxable period of the debtor during which the case is commenced is deemed not to have been terminated by such commencement.

(i) (1) In a case under chapter 7, 12, or 11 of this title concerning an individual, the estate shall succeed to the debtor's tax attributes, including

(A) any investment credit carryover;

(B) any recovery exclusion

(C) any loss carryover;

(D) any foreign tax credit carryover;

(E) any capital loss carryover; and

(F) any claim of right.

(2) After such a case is closed or dismissed, the debtor shall

succeed to any tax attribute to which the estate succeeded under paragraph (1) of this subsection but that was not utilized by the estate. The debtor may utilize such tax attributes as though any applicable time limitations on such utilization by the debtor were suspended during the time during which the case was pending.

(3) In such a case, the estate may carry back any loss of the estate to a taxable period of the debtor that ended before the order for relief under such chapter the same as the debtor could have carried back such loss had the debtor incurred such loss and the case under this title had not been commenced, but the debtor may not carry back any loss of the debtor from a taxable period that ends after such order to any taxable period of the debtor that ended before such order until after the case is closed.

(j)(1) Except as otherwise provided in this subsection, income is not realized by the estate, the debtor, or a successor to the debtor by reason of forgiveness or discharge of indebtedness in a case under this title.

/\* The general rule of the Internal Revenue Code is that if a debtor settles a debt for less than the full amount, income tax is due on the amount forgiven. However, bankruptcy does not result in such a discharge of indebtedness. \*/

(2) For the purposes of any State or local law imposing a tax on or measured by income, a deduction with respect to a liability may not be allowed for any taxable period during or after which such liability is forgiven or discharged under this title. In this paragraph, a deduction with respect to a liability includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

(3) Except as provided in paragraph (4) of this subsection, for the purpose of any State or local law imposing a tax on or measured by income, any net operating loss of an individual or corporate debtor, including a net operating loss carryover to such debtor, shall be reduced by the amount of indebtedness forgiven or discharged in a case under this title, except to the extent that such forgiveness or discharge resulted in a disallowance under paragraph (2) of this subsection.

(4) A reduction of a net operating loss or a net operating loss carryover under paragraph (3) of this subsection or of basis under paragraph (5) of this subsection is not required to the extent that the indebtedness of an individual or corporate debtor forgiven or discharged

(A) consisted of items of a deductible nature that were not deducted by such debtor; or

(B) resulted in an expired net operating loss carryover or other deduction that -

(i) did not offset income for any taxable period; and

(ii) did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after which such indebtedness was discharged.

(5) For the purposes of a state or local law imposing a tax on or measured by income, the basis of the debtor's property or of property transferred to an entity required to use the debtor's basis in whole or in part shall be reduced by the lesser of -

(A) (i) the amount by which the indebtedness of the debtor has been forgiven or discharged in a case under this title; minus

(ii) the total amount of adjustments made under paragraphs (2) and (3) of this subsection; and

(B) the amount by which the total basis of the debtor's assets that were property of the estate before such forgiveness or discharge exceeds the debtor's total liabilities that were liabilities both before and after such forgiveness or discharge.

(6) Notwithstanding paragraph (5) of this subsection, basis is not required to be reduced to the extent that the debtor elects to treat as taxable income, of the taxable period in which indebtedness is forgiven or discharged, the amount of indebtedness forgiven or discharged that otherwise would be applied in reduction of basis under paragraph (5) of this subsection.

(7) For the purposes of this subsection, indebtedness with respect to which an equity security, other than an interest of a limited partner in a limited partnership, is issued to the creditor to whom such indebtedness was owed, or that is forgiven

as a contribution to capital by an equity security holder other than a limited partner in the debtor, is not forgiven or discharged in a case under this title-

(A) to any extent that such indebtedness did not consist of items of a deductible nature; or

(B) if the issuance of such equity security has the same consequences under a law imposing a tax on or measured by income to such creditor as a payment in cash to such creditor in an amount equal to the fair market value of such equity security, then to the lesser of -

(i) the extent that such issuance has the same such consequences; and

(ii) the extent of such fair market value.

#### SECTION 347 (11 U.S.C. 347)

##### 347. Unclaimed property.

(a) Ninety days after the final distribution under section 726, 1226, or 1326 of this title in a case under chapter 7, 12, or 13 of this title, as the case may be, the trustee shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

(b) Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9, 11, or 12 of this title for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any plan confirmed under section 943(b), 1129, 1173, or 1225 of this title, as the case may be, becomes the property of the debtor or of the entity acquiring the assets of the debtor under the plan, as the case may be.

#### SECTION 348 (11 U.S.C. 345)

##### 348. Effect of conversion.

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is

converted, but, except as provided in subsections (b) and (e) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10) 727(1)), 728(a), 728(b), 1102(a), 1100(a)(1), 1121(b), 1121(c), 1141(d)(4), 1146(a), 1146(b), 1301(a), 1305(a), 1201(a), 1221, and 1228(a) of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1307, or 1208 of this title means the conversion of such case in such chapter.

(c) Sections 342 and 365(d) of this title apply to a case that has been converted under section 706, 1112, 1307, or 1208 of this title, as if the conversion order were the order for relief.

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1307, or 1208 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, 1307, or 1208 of this title determines the fee of any trustee or examiner that is serving in the case before such conversion.

#### SECTION 349 (11 U.S.C. 349)

##### 349. Effect of dismissal.

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(f) of this title.

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title-

(1) reinstates

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in

which such property was vested immediately before the commencement of the case under this title.

/\* A general unwinding of the results of bankruptcy. \*/

SECTION 350 (11 U.S.C. 350)

350. Closing and reopening cases.

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.