

**SYNOPSIS**  
**OF**  
**Bankruptcy Abuse Prevention and**  
**Consumer Protection Act**  
**of 2005**

PREPARED BY  
 THOMAS J. YERBICH, ESQ.  
 ANCHORAGE, ALASKA

Does not include provisions on  
 Stockbroker Liquidation  
 Commodity Broker Liquidation  
 Ancillary and other Cross-Border Cases [New Chapter 15]  
 or  
 Title 15 United States Code [Commerce and Trade]

Except as otherwise specifically provided, the amendments made by this Act are effective 180 days after enactment. Section 1001 of the Act permanently reenacts Chapter 12, as amended, effective July 1, 2005

TABLE OF AMENDMENTS EFFECTIVE UPON ENACTMENT					
Section	Page	Section	Page	Section	Page
28 U.S.C. §1334	39	§507(a)(4)	24	§522(o), (p), (q)	22
§548(a)(1)	28	§548(e)	28	§727(a)(12)	3
§1104(e)	5	§1114(l)	5	§1141(d)(5)(C)	5
§1222(a)(2)	8	§1228(d)	9	§1328(h)	12

CONTENTS

Chapter 7 ..... 1  
Dismissal or Conversion ..... 1  
Presumption of Abuse (“Means Test”) ..... 1  
U.S. Trustee Review ..... 1  
Presumption of Abuse Notice ..... 1  
Current Monthly Income ..... 1  
Allowable Expenses ..... 2  
Rebuttal of Presumption ..... 2  
Exceptions to Presumption ..... 2  
Median Family Income ..... 2  
Standing to Bring Motion to Dismiss ..... 3  
Distributions ..... 3  
Discharge ..... 3  
Discharge Delayed ..... 3

Chapter 11 — General ..... 3  
Creditors’ Meeting ..... 3  
Committee Membership ..... 3  
Committee Duties ..... 4  
Property of Estate ..... 4  
Plan ..... 4  
Plan Confirmation ..... 4  
Disclosure Statement ..... 4  
Modification of Plan ..... 4  
Appointment of Trustee/Examiner ..... 4  
Appointment of Trustee/Examiner (CEO/CFO Fraud) ..... 5  
Conversion/Dismissal ..... 5  
Retiree Benefits ..... 5  
Impaired Claims ..... 5  
Discharge (Individual) ..... 5  
Discharge Delayed (Individual) ..... 5  
Discharge (Corporation) ..... 5

Chapter 11 — Small Business ..... 6  
Defined ..... 6  
Duties of Small Business DIP ..... 6  
Duties of U.S. trustee ..... 6  
Reporting Requirements ..... 7  
Plan ..... 7  
Disclosure Statement ..... 7

Chapter 12 ..... 7  
Family Farmer ..... 7  
Family Fisherman ..... 8  
Dismissal ..... 8  
Plan ..... 8  
Plan Confirmation ..... 8

Plan Modification .....	8
Discharge .....	8
Discharge Delayed .....	9
Chapter 13 .....	9
Conversion or Dismissal .....	9
Assigned Domestic Support Claims .....	9
Interest on Nondischargeable Claims .....	9
Commitment Period .....	9
Repayment of Pension Plan Loans .....	9
Confirmation Hearing .....	9
Secured Claims .....	10
Cure Arrearage on Secured Debt .....	10
Effect of Conversion .....	10
Unsecured Claims .....	10
Other Confirmation Requirements .....	10
Disposable Income .....	11
Debtor's Payments .....	11
Discharge .....	12
Discharge Delayed .....	12
Filing Prepetition Tax Returns .....	12
Tax Claims (Chapter 13) .....	12
Postconfirmation Modification .....	13
Postpetition Reports .....	13
Debtor's Duties .....	13
Prepetition Credit Counseling .....	13
Statement of Financial Affairs .....	14
Perform Intentions .....	14
PMSI in Personal Property .....	14
As ERISA Administrator .....	14
Education Accounts .....	14
Provide Tax Returns .....	15
Establish Identity .....	15
Dismissal for Failure to Provide Information .....	15
Debtors' Counsel .....	16
Signature as Certification .....	16
Sanctions .....	16
Debt Relief Agency .....	16
Restriction on Debt Relief Agencies .....	16
Debt Relief Agency Disclosures .....	17
Debt Relief Agency Requirements .....	17
Nonprofit Credit Counseling Agencies .....	18
Approval/Listing .....	18
Requirements for Credit Counseling .....	18
Requirements for Instructional Courses .....	18

Bankruptcy Petition Preparers (“BPP”) . . . . .	19
Non-Individual BPP . . . . .	19
Notice to Debtor . . . . .	19
Fees . . . . .	19
Sanctions . . . . .	19
Fines . . . . .	20
Exclusions from Estate . . . . .	20
Education Account . . . . .	20
Tuition Credit Account . . . . .	20
Contributions to Qualified Benefit Plans . . . . .	20
Pawned Property . . . . .	21
Tax Exempt Organizations . . . . .	21
Exemptions . . . . .	21
General Domiciliary Requirements . . . . .	21
Retirement Funds . . . . .	21
Lien Avoidance on Exempt Property . . . . .	21
State Homestead Exemptions . . . . .	22
Claims . . . . .	22
International Fuel Tax . . . . .	22
Domestic Support Obligation . . . . .	22
Trustee’s Notice (Domestic Support Claims) . . . . .	23
Secured Valuation . . . . .	23
Reduction of Claim (Unsecured Consumer Credit) . . . . .	23
Administrative Expenses . . . . .	23
Back Pay Awards . . . . .	23
Taxes . . . . .	23
Nonresidential Real Property Lease . . . . .	23
Health Care Closing Costs . . . . .	24
Reclamation Claims . . . . .	24
Limitations on Insider Claims . . . . .	24
Claims Entitled to Priority . . . . .	24
General Note . . . . .	24
Wage Claims . . . . .	24
Employee Benefits . . . . .	24
Taxes . . . . .	24
DUI Claims . . . . .	25
Nondischargeable Debts . . . . .	25
Taxes . . . . .	25
Consumer Debts . . . . .	25
Domestic Support Obligations . . . . .	25
Student Loans . . . . .	25
Incurred to Pay Taxes . . . . .	25
Incurred to Pay Election Law Fines . . . . .	25

Non-Support Marital Debts . . . . .	25
Condo Dues . . . . .	25
Prisoner's Fees . . . . .	25
Pension Plan Loans . . . . .	26
Reaffirmation/Redemption . . . . .	26
Disclosures by Creditor . . . . .	26
Debtor's Affirmations . . . . .	26
Attorney's Certification . . . . .	26
Creditor Payments . . . . .	26
Presumption of Undue Hardship . . . . .	27
Redemption Payment . . . . .	27
Trustee Avoidance/Preferences/Fraudulent Transfers . . . . .	27
Statutory Liens . . . . .	27
Reclamation Rights . . . . .	27
Warehouseman's Lien . . . . .	27
Ordinary Course of Business Exception . . . . .	27
De Minimis Exception . . . . .	27
Time of Transfer . . . . .	28
Alternate Repayment Plan . . . . .	28
Insider Employment Contracts . . . . .	28
"Look back" Period . . . . .	28
Self-Settled Asset Protection Trusts . . . . .	28
Automatic Stay — Exceptions . . . . .	28
Tax Court Proceedings . . . . .	28
Domestic Relations . . . . .	29
Pension Plan Obligations . . . . .	29
Eviction Judgment (Residential) . . . . .	29
Residential Lease Eviction (Drugs) . . . . .	30
Non-avoidable Transfers . . . . .	30
Securities Investigations . . . . .	30
Tax Refunds . . . . .	30
Medicare Programs . . . . .	30
Automatic Stay — Termination . . . . .	31
Prior Case Dismissed . . . . .	31
More than One Prior Case Dismissed . . . . .	31
Real Property ( <i>In Rem</i> ) . . . . .	32
Time for Ruling on Motion (Individuals) . . . . .	32
Personal Property (Individual Debtors) . . . . .	32
Sanctions . . . . .	32
Small Business Cases . . . . .	33
Order Confirming Termination . . . . .	33

Executory Contracts/Leases . . . . .	33
Nonmonetary Defaults . . . . .	33
Nonresidential Real Property . . . . .	33
Personal Property Leases . . . . .	33
Special Tax Provisions . . . . .	34
State & Local Taxes . . . . .	34
Interest on Tax Claims . . . . .	34
Subordination of Tax Liens . . . . .	34
Dismissal for Failure to File Tax Returns . . . . .	34
Determination of Liability . . . . .	34
Tax Liability – Estate . . . . .	35
Health Care Business . . . . .	35
Defined . . . . .	35
Patient Care Ombudsman . . . . .	35
Disposal of Patient Records . . . . .	35
Transfer of Patients . . . . .	36
Personal Privacy . . . . .	36
Taxpayer Identification Numbers . . . . .	36
Personally Identifiable Information . . . . .	36
Sale of Consumer Information . . . . .	36
Consumer Privacy Ombudsman . . . . .	37
Miscellaneous . . . . .	37
Names of Minors . . . . .	37
Involuntary Petitioners . . . . .	37
False or Fictitious Involuntary Petitions . . . . .	37
Professional Compensation . . . . .	37
Sharing Compensation . . . . .	37
Estate Professionals . . . . .	37
Trustee Compensation . . . . .	38
Appearances at Creditors' Meetings . . . . .	38
Creditor Addresses . . . . .	38
Sale or Lease by Trustee . . . . .	38
Purchase of Consumer Credit Interests . . . . .	38
Utility Service . . . . .	39
Trustee Surcharges . . . . .	39
Discharge Injunction . . . . .	39
Disinterested Person . . . . .	39
Definition of Transfer . . . . .	39
Adjustment of Dollar Amounts . . . . .	39
Jurisdiction . . . . .	39
Venue . . . . .	39
Appeals . . . . .	40
Bankruptcy Fraud . . . . .	40
Investigation of Fraud . . . . .	40

CHAPTER 7	
Dismissal or Conversion §707(b)(1), (b)(3), (c)	<p>In a consumer case, the court may dismiss or, with consent of the debtor, convert a case to a case under chapter 11 or 13 for abuse.</p> <ul style="list-style-type: none"> <li>▶ In making this determination, the court may not take into consideration contributions a debtor has made or continues to make to a qualified religious or charitable organization, to the extent it does not exceed 15% of the debtor's gross annual income</li> </ul> <p>May dismiss if petition filed in bad faith or totality of circumstances demonstrates abuse</p> <p>May dismiss on motion of the victim of person convicted of a crime of violence or drug trafficking crime if in best interests of the victim</p> <ul style="list-style-type: none"> <li>▶ may not dismiss if filing a case necessary to satisfy a claim for a domestic support obligation</li> </ul>
Presumption of Abuse ("Means Test") §707(b)(2)	<p>Abuse is presumed if the amount of debtor's current monthly income exceeds allowable expenses multiplied by 60 exceeds <i>the lesser of</i>—</p> <ul style="list-style-type: none"> <li>▶ \$10,000 or</li> <li>▶ <i>the greater of</i> 25% of unsecured nonpriority claims or \$6,000</li> </ul>
U.S. Trustee Review §704(b)(1)	<p>The U.S. trustee must review all materials submitted by the debtor, and</p> <ul style="list-style-type: none"> <li>▶ NLT than 10 days after the meeting of creditors submit a report as to whether abuse should be presumed, and</li> <li>▶ NLT than 30 days thereafter either file <ul style="list-style-type: none"> <li>▶ a motion to dismiss or convert, with a statement that debtor's currently monthly income X 12 is not less than the median family income in the state for a family of comparable or smaller size, or</li> <li>▶ a statement as to why a motion is not appropriate</li> </ul> </li> </ul>
Presumption of Abuse Notice §342(d) §704(b)(1)(B)	<p>Clerk must give notice that a presumption of abuse has arisen to all creditors—</p> <ul style="list-style-type: none"> <li>▶ if revealed in the petition filed by the debtor, within 10 days of the date the petition is filed, or</li> <li>▶ within 5 days of the date the U.S. trustee files the report under §704(b)(1)(A)</li> </ul>
Current Monthly Income §101(10A)	<p>Average monthly received by debtor (and spouse if filing jointly) from all sources during preceding 6 months ending on the last day of the calendar month preceding the filing date</p> <p>Includes amounts regularly paid by others for household expenses</p> <p>Excludes—</p> <ul style="list-style-type: none"> <li>▶ social security payments</li> <li>▶ payments received by victims of war crimes, crimes against humanity, or terrorism</li> </ul>

<p>Allowable Expenses §707(b)(2)(A)(ii)–(iv)</p>	<p>Determined under the National and Local Standards and actual Other Necessary Expenses as provided in the Collection Financial Standards issued by the Internal Revenue Service without regard for debt payments</p> <p>Additional allowable expenses include—</p> <ul style="list-style-type: none"> <li>▶ necessary health insurance, disability insurance, and health savings plans</li> <li>▶ maintain safety under the Family Violence Prevention and Services Act</li> <li>▶ continuation of expenses paid for the care of an elderly, chronically ill, or disabled member of the household</li> <li>▶ if eligible for chapter 13, the actual administrative expenses not to exceed 10% of projected plan payments</li> <li>▶ up to \$1,500/year for expenses of dependent minor child to attend a private or public elementary or secondary school (documented and explained)</li> <li>▶ actual expenses for utilities in excess of allowance specified in Collection Financial Standards</li> <li>▶ an additional 5% of the National Standards for food and clothing if reasonable and necessary</li> </ul> <p>Payments on secured debt determined by dividing total payments on secured debts (including payments to cure any prepetition arrearage) to be made during the 60-month period following the date the petition is filed by 60</p> <p>Payments on priority debt determined by dividing total payments on priority debt to be made during the 60-month period following the date the petition is filed by 60</p>
<p>Rebuttal of Presumption §707(b)(2)(B)</p>	<p>Presumption may be rebutted only by establishing exceptional circumstances such as serious medical or call to active duty in armed forces</p> <p>Additional expenses must be</p> <ul style="list-style-type: none"> <li>▶ itemized and documented</li> <li>▶ necessary and reasonable</li> </ul>
<p>Exceptions to Presumption §707(b)(3)</p>	<p>Does not apply to disabled veteran whose indebtedness was incurred primarily during a period when—</p> <ul style="list-style-type: none"> <li>▶ on active duty, or</li> <li>▶ performing a homeland defense activity</li> </ul>
<p>Median Family Income §101(39A)</p>	<p>The median family income calculated and reported by the Bureau of Census for the most recent year</p> <p>If not calculated in the then current year, adjusted annually after the most recent year by the increase in the CPI for all Urban Consumers during the period occurring between the most recent and current year</p>



Standing to Bring Motion to Dismiss §707(b)(1), (6), (7)	<p>If current monthly income of debtor X 12 exceeds median family income of a family of the same or smaller size for the state, may be brought by any party in interest, U.S. trustee, or on court's own motion</p> <p>If current monthly income of debtor (and spouse in a joint case) X 12 is equal to or less than median family income of a family of equal or smaller size for the state, only court or U.S. trustee may bring motion</p> <p>If current monthly income of the debtor and debtor's spouse combined X 12 is equal to or less than the median family income of the same or smaller size, the motion may not be brought</p> <ul style="list-style-type: none"> <li>▶ Does not include income of spouse if living separate and apart</li> </ul>
Distributions §726	May pay tardily filed claims filed on before the earlier of the date the trustee commences final distribution or 10 days after the summary of the trustee's final report is mailed to creditors
Discharge §727(a)(8), (11), (d)(4)	<p>Time between chapter 7 filings extended to 8 years</p> <p>Must complete an instructional course in personal financial management</p> <ul style="list-style-type: none"> <li>▶ Excused if U.S. trustee determines approved instructional courses are not adequate to service the additional individuals required to complete the course</li> </ul> <p>Denied if debtor makes a material misstatement in an audit or fails to make necessary papers/records available for inspection in connection with an audit</p>
Discharge Delayed §727(a)(12)	<p>Entry may be delayed if there is an action pending in which the debtor may be found—</p> <ul style="list-style-type: none"> <li>▶ guilty of a felony, or</li> <li>▶ liable for a debt arising from <ul style="list-style-type: none"> <li>▶ violation of federal Securities Exchange Act or similar state law</li> <li>▶ criminal act, intentional tort, or willful or reckless misconduct causing serious physical injury or death to individual</li> </ul> </li> <li>▶ RICO civil penalty</li> </ul>

CHAPTER 11 — GENERAL	
Creditors' Meeting §341(e)	The court may dispense with the creditors' meeting in chapter 11 case in which a prepackaged plan has been approved prepetition
Committee Membership §1102(a)(4)	<p>At request of party in interest, the court may order the U.S. trustee to change membership of a committee</p> <ul style="list-style-type: none"> <li>▶ necessary to ensure adequate representation of creditors or equity security holders</li> <li>▶ may increase number members to include a small business concern if creditor holds claims that are disproportionately large in relation to gross revenues</li> </ul>

<p>Committee Duties §1102(b)(3)</p>	<p>Committee must—</p> <ul style="list-style-type: none"> <li>▶ provide access to creditors who <ul style="list-style-type: none"> <li>▶ claims of the kind represented by the committee and</li> <li>▶ who are not members of the committee</li> </ul> </li> <li>▶ solicit and receive comments from the represented creditors</li> <li>▶ be subject order of court that compels any additional report or disclosure to represented creditors</li> </ul>
<p>Property of Estate §1115</p>	<p>For an individual, includes all property as defined in §541 acquired and personal services income earned postpetition</p>
<p>Plan §1121(d) §1123(a)(8)</p>	<p>120-day exclusive period for filing a plan may not be extended beyond 18 months 180-day period for confirmation may not be extended for a period exceeding 20 months If debtor is an individual, must provide for payment to creditors of all or such portion of personal service earnings as necessary for the execution of the plan</p>
<p>Plan Confirmation §1129(a)(9), (a)(14), (b)(2)(B)</p>	<p>Tax claims, priority or secured (if would be priority except for secured status) must be paid in regular cash installments</p> <ul style="list-style-type: none"> <li>▶ period not exceed 5 years from date of petition</li> <li>▶ manner not less favorable than most favored unsecured nonpriority claims</li> </ul> <p>Domestic support obligations must be current If individual, plan may be crammed down if holder of unsecured claim objects, amount distributed to unsecured claims may not be less than—</p> <ul style="list-style-type: none"> <li>▶ current value of allowed claim <i>or</i></li> <li>▶ projected disposable income as computed under §1325(b)(2) during first 5 years of plan payments</li> </ul>
<p>Disclosure Statement §1125(a)</p>	<p>Must include an analysis of potential tax consequences of the plan</p>
<p>Modification of Plan §1127(e), (f)</p>	<p>If debtor individual, plan may be modified at any time before completion of payments under the plan to—</p> <ul style="list-style-type: none"> <li>▶ increase or reduce amount of payments to any class of creditors;</li> <li>▶ extend or reduce the time for payments; or</li> <li>▶ alter payments to a creditor to account for payments received from sources outside the plan</li> <li>▶ §§1121–1128 and requirements of §1129 apply to a modification of the plan</li> <li>▶ modification not effective until approved by the court</li> </ul>
<p>Appointment of Trustee/Examiner §1104(a)(3)</p>	<p>Grounds for dismissal or conversion also grounds for appointment of a trustee/examiner as an alternative</p>

Appointment of Trustee/Examiner (CEO/CFO Fraud) §1104(e)	U.S. trustee must move for appointment of a trustee/examiner if reasonable grounds exist to suspect CEO/CFO (or members of body who selected CEO/CFO) participated in actual fraud, dishonesty or criminal conduct in management of debtor or public financial reporting
Conversion/Dismissal §1112(b)	Conversion/dismissal must be granted in absence of unusual circumstances specifically identified by the court that not in best interests of creditors or estate Expanded grounds for dismissal/conversion <ul style="list-style-type: none"> <li>▶ gross mismanagement of the estate;</li> <li>▶ failure to maintain appropriate insurance</li> <li>▶ unauthorized use of cash collateral</li> <li>▶ failure to comply with court order</li> <li>▶ untimely failure to satisfy any reporting requirement</li> <li>▶ failure to attend creditors' meeting or Rule 2004 examination or as requested by U.S. trustee</li> <li>▶ failure to timely pay postpetition taxes or file return</li> <li>▶ failure to pay domestic support obligation</li> </ul>
Retiree Benefits §1114(l)	Reinstatement of benefits modified within 180 days of filing if insolvent at time of modification
Impaired Claims §1124(2)(D)	Must compensate actual pecuniary loss arising out of a nonmonetary default other than a nonresidential real property lease
Discharge (Individual) §1141(d)(5)(A), (B)	Discharge for an individual is not entered until payments under the plan are completed <i>except</i> may be discharged without full payment similar to "hardship discharge" in chapter 13
Discharge Delayed (Individual) §1141(d)(5)(C)	Entry of a discharge for an individual may be delayed— <ul style="list-style-type: none"> <li>▶ if there is an action pending in which the debtor may be found <ul style="list-style-type: none"> <li>▶ guilty of a felony, or</li> <li>▶ liable for a debt arising from <ul style="list-style-type: none"> <li>▶ violation of federal Securities Exchange Act or similar state law</li> <li>▶ criminal act, intentional tort, or willful or reckless misconduct causing serious physical injury or death to individual</li> <li>▶ RICO civil penalty</li> </ul> </li> </ul> </li> </ul>
Discharge (Corporation) §1125(d)(6)	Corporations not discharged from debts— <ul style="list-style-type: none"> <li>▶ owed to a domestic governmental unit obtained by fraud</li> <li>▶ for a tax with respect to which the debtor filed a fraudulent tax return or willfully attempted to evade or defeat a tax</li> </ul>

CHAPTER 11 — SMALL BUSINESS

<p>Defined §101(51D) §1102(a)(3)</p>	<p>Aggregate noncontingent liquidated debts, secured and unsecured, (excluding debts to affiliates or insiders) do not exceed \$2,000,000 and no creditors' committee appointed upon request of a party in interest for cause, or court determines committee inactive and not providing adequate oversight of the debtor.</p> <ul style="list-style-type: none"> <li>▶ Does not include a member of an affiliated group having aggregate noncontingent unsecured debts in excess of \$2,000,000.</li> <li>▶ Does not include a person whose primary activity is owning or operating real property or businesses incidental thereto</li> </ul>
<p>Duties of Small Business DIP §1116</p>	<p>In addition to other duties of DIP, must:</p> <ul style="list-style-type: none"> <li>▶ append to the petition or furnish within 7 days a copy of most recent balance sheet, statement of operations, cash-flow statement, and tax return;</li> <li>▶ attend through senior management and counsel all meetings scheduled by the court;</li> <li>▶ timely file all schedules and statements (may be extended not more than 30 days after petition is filed absent extraordinary and compelling circumstances);</li> <li>▶ file all postpetition financial and other required reports;</li> <li>▶ maintain insurance customary and appropriate for the industry;</li> <li>▶ timely file tax returns and pay taxes entitled to administrative expense priority; and</li> <li>▶ permit the U.S. trustee to inspect business premises, books and records.</li> </ul>
<p>Duties of U.S. trustee 28 USC §586(a)(3)(H), (7)</p>	<p>Conduct an initial interview before the creditors' meeting—</p> <ul style="list-style-type: none"> <li>▶ begin investigation of debtor's viability</li> <li>▶ inquire about debtor's business plan</li> <li>▶ explain the debtor's duties about monthly operating reports and other required reports</li> <li>▶ attempt to get an agreed scheduling order</li> <li>▶ inform debtor of other obligations</li> </ul> <p>If appropriate</p> <ul style="list-style-type: none"> <li>▶ visit debtor's business premises</li> <li>▶ inspect debtor's books and records</li> <li>▶ verify filing of tax returns</li> </ul> <p>Diligently review and monitor debtor's operations to promptly identify whether debtor will be able to confirm a plan</p>

<p>Reporting Requirements §308</p>	<p>Periodic financial reports must include—</p> <ul style="list-style-type: none"> <li>▶ profitability</li> <li>▶ reasonable approximation of projected cash receipts/disbursements over a reasonable period</li> <li>▶ comparison of actual cash receipts/disbursements to prior projections</li> <li>▶ whether debtor is in compliance with all applicable provisions fo the Code and rules</li> <li>▶ whether tax returns and other governmental reports filed and taxes paid timely</li> <li>▶ If not in compliance with Code, rules, governmental reporting requirements or tax payments, identify the deficiencies, the costs incurred, and when expected to be remedied</li> </ul> <p>[NOTE: This provision does not become effective until 60 days after the Supreme Court adopts implementing rules]</p>
<p>Plan §1121(e) §1129(a)(9), (e)</p>	<p>Only debtor may file plan for first 180 days but must be filed within 300 days. Confirmation within 45 days after plan is filed.</p> <ul style="list-style-type: none"> <li>▶ May be extended only if— <ul style="list-style-type: none"> <li>▶ debtor establishes by preponderance of evidence that a plan may be confirmed within a reasonable time,</li> <li>▶ the court sets a deadline date, and</li> <li>▶ order is signed before existing deadline has expired.</li> </ul> </li> </ul>
<p>Disclosure Statement §1125(f)</p>	<p>Court may conditionally approve without a hearing; hearing on any objection to adequacy held concurrently with confirmation hearing Court may dispense with separate disclosure statement if determines that plan itself contains sufficient information</p>

<p>CHAPTER 12</p>	
<p>Family Farmer §101(18)</p>	<p>Individual, individual and spouse, whose—</p> <ul style="list-style-type: none"> <li>▶ aggregate debts do not exceed \$3,237,000</li> <li>▶ NLT 50% of aggregate noncontingent liquidated debts (other than the residence of the farmer) arise out of farming operations</li> <li>▶ 50% of gross income is received from farming operations for the— <ul style="list-style-type: none"> <li>▶ tax year preceding, or</li> <li>▶ each of the 2<sup>nd</sup> and 3<sup>rd</sup> tax years preceding filing</li> </ul> </li> </ul> <p>A qualified corporation, whose—</p> <ul style="list-style-type: none"> <li>▶ aggregate debts do not exceed \$3,237,000</li> <li>▶ NLT 50% of aggregate noncontingent liquidated debts (other than the residence of the farmer) arise out of farming operations</li> </ul>

<p>Family Fisherman §101(7A), (19A), (19B) §109(f)</p>	<p>Individual or individual and spouse</p> <ul style="list-style-type: none"> <li>▶ aggregate debts NTE \$1,500,000</li> <li>▶ NLT 80% of noncontingent liquidated debts (excluding family residence) arise out of a commercial fishing operation owned by debtor or spouse</li> <li>▶ At least 50% of gross income from prior year received from commercial fishing operations</li> </ul> <p>Corporation or partnership</p> <ul style="list-style-type: none"> <li>▶ NLT 50% owned by family conducting commercial fishing operation</li> <li>▶ More than 80% of value of assets consist of assets related to commercial fishing operation</li> <li>▶ aggregate debts NTE \$1,500,000</li> <li>▶ NLT 80% of noncontingent liquidated debts (excluding residence owned used a principal dwelling of partner or shareholder) arise out of a commercial fishing operation</li> <li>▶ No stock held publicly</li> </ul> <p>Commercial fishing operation includes catching or harvesting fish, shrimp, lobster, shellfish, seaweed or other aquatic species and aquaculture</p>
<p>Dismissal §1208(c)(10)</p>	<p>May be dismissed for failure to pay domestic support obligation coming due postpetition</p>
<p>Plan §1222(a), (b)(7)</p>	<p>Claim owed to a governmental unit arising out of the disposition of a farm asset used in debtor's farming operation treated as an unsecured claim without priority if debtor receives a discharge</p> <p>May provide for payment of less than 100% of priority domestic support obligations if all disposable income devoted to the plan for 5 years</p> <p>May provide for payment of interest on priority claims if unsecured claims first paid in full</p>
<p>Plan Confirmation §1225(a)(7), (b)(2)(A)</p>	<p>Debtor must have paid all postpetition domestic support obligations</p> <p>Plan may be confirmed if property distributed during term of the plan is not less than debtor's disposable income</p> <p>Disposable income does not include domestic support obligations coming due postpetition</p>
<p>Plan Modification §1229(d)</p>	<p>Plan may not be modified—</p> <ul style="list-style-type: none"> <li>▶ to increase payments coming due before the modification</li> <li>▶ except by the debtor based on an increase in disposable income to increase payments to unsecured creditors for a particular month so that the aggregate payments exceed debtor's disposable income for the month</li> <li>▶ except by the debtor in the last year of the plan if the increase would leave insufficient funds to carry on farming operations</li> </ul>
<p>Discharge §1228(a)</p>	<p>Debtor must certify that all postpetition domestic support obligations, (including payments on prepetition obligations to the extent required by the plan) have been paid</p>

Discharge Delayed §1228(f)	<p>Discharge may be delayed if there is an action pending in which the debtor may be found</p> <ul style="list-style-type: none"> <li>▶ guilty of a felony, or</li> <li>▶ liable for a debt arising from <ul style="list-style-type: none"> <li>▶ violation of federal Securities Exchange Act or similar state law</li> <li>▶ criminal act, intentional tort, or willful or reckless misconduct causing serious physical injury or death to individual</li> <li>▶ RICO civil penalty</li> </ul> </li> </ul>
-------------------------------	--

CHAPTER 13	
Conversion or Dismissal §1307(a)(11), (e)	<p>Chapter 13 may be dismissed or converted if debtor—</p> <ul style="list-style-type: none"> <li>▶ fails to make any domestic support payment coming due postpetition</li> <li>▶ file a tax return as required by §1308</li> </ul>
Assigned Domestic Support Claims §1322(a)(4)	<p>The plan need not provide for payment in full of domestic support claims assigned to a governmental unit if all of the debtor's disposable income is committed to the plan for 5 years</p>
Interest on Nondischargeable Claims §1322(b)(10)	<p>The plan may provide for the payment of interest on nondischargeable claims provided that a debtor has sufficient disposable income to pay all claims in full</p>
Commitment Period §1322(d) §1325(b)(4)	<p>If the current monthly income of the debtor and the debtor's spouse combined multiplied by 12 is less than the median family income for the state for a family of the same or smaller size, the commitment period for the plan is 3 years</p> <ul style="list-style-type: none"> <li>▶ Court may, for cause, approve a longer period, not to exceed 5 years</li> </ul> <p>If the current monthly income of the debtor and the debtor's spouse combined multiplied by 12 is equal to or greater than the median family income for the state for a family of the same or smaller size, the commitment period for the plan is 5 years</p>
Repayment of Pension Plan Loans §1322(f)	<p>A chapter 13 plan may not materially alter the repayment terms of a loan made by a plan established by the employer under IRC §§401, 403, 408, 408A, 414, 457, and 501(c)</p>
Confirmation Hearing §1324(b)	<p>The confirmation hearing may be held not less than 20 nor more than 45 days after the date of the creditors' meeting</p> <ul style="list-style-type: none"> <li>▶ Court may hold earlier if no party in interest objects</li> </ul>

<p>Secured Claims §1325(a)(5)(B)</p>	<p>Secured claimants retain security interest until—</p> <ul style="list-style-type: none"> <li>▶ paid the entire balance due under applicable nonbankruptcy law, or</li> <li>▶ discharge is entered under §1328</li> </ul> <p>If case is dismissed or converted before completion of plan, creditor retains secured status as determined by applicable nonbankruptcy law  Periodic payments must be monthly  Amount of payments must not be less than amount required to provide the creditor with adequate protection  Debtor may not “strip down” a PMSI—</p> <ul style="list-style-type: none"> <li>▶ if collateral a motor vehicle, if incurred within 910 days of the date the petition was filed</li> <li>▶ if collateral other personal property, within 1-year of date petition filed</li> </ul>
<p>Cure Arrearage on Secured Debt §707(b)(2)(A)(iii)(II)</p>	<p>In a chapter 13 may include in allowable monthly expenses the total amount necessary to cure an arrearage in an obligation secured by the debtor’s residence, automobile or other property reasonably necessary for support, divided by 60.</p>
<p>Effect of Conversion §348(f)(1)(C)</p>	<p>In a case converted from chapter 13 to chapter 7</p> <ul style="list-style-type: none"> <li>▶ a secured creditor retains the security interest until the full amount of the claim as determined under applicable nonbankruptcy law is paid in full</li> <li>▶ Unless a prepetition default has been fully cured through the plan at the time of conversion, the default has the effect given under applicable nonbankruptcy law</li> </ul>
<p>Unsecured Claims §1325(b)</p>	<p>If trustee or unsecured creditor object all disposable income during the commitment period must be applied to payments to unsecured creditors</p>
<p>Other Confirmation Requirements §1325(a)(7), (8), (9)</p>	<p>Petition must have been filed in good faith  Debtor is current on all postpetition domestic support payments  Debtor has filed all tax returns as required by §1308</p>



<p>Disposable Income  §541(b)(7)(A)(i)  §1322(f)  §1325(b)(2)</p>	<p>Current monthly income is current monthly income determined under §101(10A) excluding in addition—</p> <ul style="list-style-type: none"> <li>▶ child support &amp; foster care payments</li> <li>▶ disability payments for a dependent child to the extent reasonably necessary for the support of the child</li> </ul> <p>Exclusions from disposable income—</p> <ul style="list-style-type: none"> <li>▶ payments made to repay a loan made from a pension plan established by an employer under IRC §§401, 403, 408, 408A, 414, 457, and 501(c)</li> <li>▶ contributions to a qualified religious or charitable organization, to the extent it does not exceed 15% of the debtor’s gross annual income</li> <li>▶ domestic support payments</li> <li>▶ contributions— <ul style="list-style-type: none"> <li>▶ employee benefit plan under ERISA Title I or a government plan under IRC §414(d)</li> <li>▶ deferred compensation plan under IRC §457</li> <li>▶ tax deferred annuity under IRC §403(b)</li> </ul> </li> </ul> <p>If the debtor has current monthly income X 12 greater than the median family income in the state for a family of the same or smaller size, monthly expenses are the same as computed under §707(b)(2)(A) &amp; (B) [NOTE: As §1325 is silent on the subject it is assumed under generally accepted canons of legislative interpretation that Congress did not intend to change existing law: if debtor’s monthly income X 12 is less than the median income for a family of comparable size, debtor’s actual expenses not those determined under §707(b)(2), to the extent reasonable and necessary under the existing standard, are used]</p>
<p>Debtor’s Payments  §1326</p>	<p>Not later than 30 days after the <i>earlier</i> of the filing of the petition or the plan, the debtor must commence making payments</p> <ul style="list-style-type: none"> <li>▶ proposed by the plan to the trustee</li> <li>▶ scheduled in a lease of personal property directly to the lessor that portion of the lease payments that come due postpetition</li> <li>▶ that provides adequate protection directly to a creditor holding a PMSI in personal property for the portion of the obligation that comes due postpetition</li> <li>▶ court may modify, increase or reduce the payments to be made pending confirmation of the plan</li> </ul> <p>Not later than 60 days after the petition is filed, the debtor must provide all lessors and holders of claims secured by personal property, in whole or in part attributable to the purchase of the property, of evidence of insurance</p> <p>Unpaid fees of a chapter 7 trustee in a case converted from chapter 7 or a case refiled after dismissal under §707(b) by prorating the amount owed over the duration of the plan and paid monthly in an amount not to exceed the greater of—</p> <ul style="list-style-type: none"> <li>▶ \$25, or</li> <li>▶ 5% of the amount payable to general unsecured creditors divided by the number of months in the plan</li> </ul>

<p>Discharge §1328(a), (f), (g)</p>	<p>Debtor must certify that all postpetition domestic support obligations, (including payments on prepetition obligations to the extent required by the plan) have been paid</p> <p>Added nondischargeable debts</p> <ul style="list-style-type: none"> <li>▶ fraud (523(a)(2))</li> <li>▶ unsecured debts (523(a)(3))</li> <li>▶ fraud or defalcation by a fiduciary, larceny, embezzlement (523(a)(4))</li> <li>▶ restitution or damages awarded in a civil action as result of willful or malicious injury resulting in personal injury or death of an individual</li> </ul> <p>Discharge disallowed if debtor has received a discharge—</p> <ul style="list-style-type: none"> <li>▶ in case under chapter 7, 11, or 12 in the 4-year period preceding the filing of the petition</li> <li>▶ in a case under chapter 13 in the 2-year period preceding the filing of the petition</li> </ul> <p>Must complete an instructional course in personal financial management</p> <ul style="list-style-type: none"> <li>▶ Excused if U.S. trustee determines approved instructional courses are not adequate to service the additional individuals required to complete the course</li> </ul>
<p>Discharge Delayed §1328(h)</p>	<p>Entry of discharge may be delayed if there is an action pending in which the debtor may be found</p> <ul style="list-style-type: none"> <li>▶ guilty of a felony, or</li> <li>▶ liable for a debt arising from <ul style="list-style-type: none"> <li>▶ violation of federal Securities Exchange Act or similar state law</li> <li>▶ criminal act, intentional tort, or willful or reckless misconduct causing serious physical injury or death to individual</li> <li>▶ RICO civil penalty</li> </ul> </li> </ul>
<p>Filing Prepetition Tax Returns §1308</p>	<p>Not later than the date set for the first meeting of creditors, all tax returns required to be filed under applicable nonbankruptcy law must be filed</p> <ul style="list-style-type: none"> <li>▶ if not filed by date of first meeting of creditors, the trustee may hold the meeting open for a reasonable period of time <ul style="list-style-type: none"> <li>▶ if return past due, not more than an additional 120 days</li> <li>▶ if return not past due until the later of 120 days after the first meeting date or the date upon which the return is due under the last automatic extension of time for which the debtor has timely requested under applicable nonbankruptcy law</li> </ul> </li> <li>▶ Court may by order entered before the expiration of the tolling period extend the time established by the trustee— <ul style="list-style-type: none"> <li>▶ if the debtor shows that the failure to file was due to circumstances beyond the control of the debtor</li> <li>▶ for an additional period of 30 days</li> </ul> </li> </ul> <p>For the purposes of this section a return includes a return filed under IRC §6020(a) or (b) (a “forced filing”), or comparable state law</p>
<p>Tax Claims (Chapter 13) §502(b)(9)</p>	<p>In a chapter 13 case a claim for taxes filed by a governmental unit is timely if filed within 60 days after a return is filed as required by §1308</p>

<p>Postconfirmation Modification §1329</p>	<p>May reduce payments by actual amount of health insurance premiums for coverage of the debtor and debtor's family</p> <ul style="list-style-type: none"> <li>▶ reasonable and necessary</li> <li>▶ not materially greater than payments for previous coverage, if any</li> <li>▶ if no prior coverage, cost not materially higher than reasonable cost that would be incurred by a person in similar circumstances</li> <li>▶ amount not previously used in determining disposable income</li> <li>▶ any party in interest may request proof of purchase be filed</li> </ul>
<p>Postpetition Reports §521(f)(4), (g)</p>	<p>90 days after the end of a tax year or 1 year after commencement of the case, whichever is later, if a plan has not been confirmed, and annually after confirmation, not later than 45 days before the anniversary date of confirmation, file a statement under penalty of perjury with the trustee that shows—</p> <ul style="list-style-type: none"> <li>▶ income and expenses for the tax year most recently concluded</li> <li>▶ monthly income</li> <li>▶ how income, expenses and monthly income are calculated</li> <li>▶ the amount and sources of income of the debtor</li> <li>▶ identity of any person responsible with the debtor for support of any dependents of the debtor</li> <li>▶ the identity and amount contributed of any person who contributed to debtor's household</li> </ul>

DEBTOR'S DUTIES	
<p>Prepetition Credit Counseling §109(h) § 521(b)</p>	<p>An individual must obtain a briefing from an accredited credit counseling agency within 180-day period preceding filing the petition</p> <ul style="list-style-type: none"> <li>▶ May be telephonic or on internet</li> <li>▶ Waived if residing in district where U.S. trustee has determined approved agencies are not reasonably able to provide counseling services</li> <li>▶ May be waived for period of 30 days postpetition if debtor requested but was unable to obtain counseling within 5 days of the filing date</li> <li>▶ Court may, for cause, extend for an additional 15 days</li> </ul> <p>Requirement does not apply with respect to a debtor who is</p> <ul style="list-style-type: none"> <li>▶ incapacitated</li> <li>▶ disabled</li> <li>▶ on active military duty in a war zone</li> </ul> <p>File with the court—</p> <ul style="list-style-type: none"> <li>▶ certificate of the credit counseling agency that provided the services describing the services provided, and</li> <li>▶ a copy of the plan, if any, developed by the credit counseling agency</li> </ul>

<p>Statement of Financial Affairs §521(a)(1)</p>	<p>Include with the statement of financial affairs—</p> <ul style="list-style-type: none"> <li>▶ if §342(b) applies <ul style="list-style-type: none"> <li>▶ a statement by counsel or the bankruptcy petition preparer who signed the petition that the statement required by §342(b) has been delivered to the debtor</li> <li>▶ if no attorney or bankruptcy petition preparer appears on the petition, a statement that the debtor has received and read the notice</li> </ul> </li> <li>▶ copies of all payment advices received from any employer in the 60 days preceding the filing date</li> <li>▶ statement of net monthly income itemized to show calculation</li> <li>▶ statement disclosing any changes in income or expenses reasonably expected to occur in 12 months following the filing of the petition</li> </ul>
<p>Perform Intentions §521(a)(2)</p>	<p>Perform intent to surrender, reaffirm or redeem debt secured by property of the estate within 30 days after the first date set for the meeting of creditors [NOTE: no longer limited to secured consumer debts]</p>
<p>PMSI in Personal Property §521(a)(6)</p>	<p>In a chapter 7 case in which the debtor is an individual, with respect to personal property secured by a PMSI—</p> <ul style="list-style-type: none"> <li>▶ within 45 days after the first meeting of creditors either— <ul style="list-style-type: none"> <li>▶ reaffirm</li> <li>▶ redeem, or</li> <li>▶ surrender the property</li> </ul> </li> <li>▶ If debtor does not reaffirm or redeem within 45 days the property is no longer property of the estate unless the court on motion of the trustee, filed within the 45-day period, determines the property is of consequential value to the estate</li> </ul>
<p>As ERISA Administrator §521(a)(7)</p>	<p>Unless a trustee is appointed in the case, continue to perform duties as an Administrator under an ERISA plan</p>
<p>Education Accounts §521(c)</p>	<p>File a record of any interest the debtor has in an education individual retirement account</p>

<p>Provide Tax Returns §521(e)(2), (f), (g)(2)</p>	<p>NLT 7 days before the first date set for the creditors' meeting, provide the trustee with a copy of the federal tax return (or a transcript of the return) for the most recent tax year preceding the filing for which a return was filed</p> <ul style="list-style-type: none"> <li>▶ must also provide a copy to any creditor who has timely requested a copy</li> <li>▶ Court must dismiss for failure to comply unless debtor shows that failure to comply was beyond the control of the debtor</li> </ul> <p>At the request of the court, U.S. trustee, or any party in interest in a case under chapter 7, 11, or 13 in which the debtor is an individual, file at the same time filed with the taxing authority a copy of—</p> <ul style="list-style-type: none"> <li>▶ each tax return for tax years ending in which the case is pending</li> <li>▶ returns filed for tax years preceding the filing filed while the case is pending</li> <li>▶ any amendment to the returns</li> <li>▶ returns filed are available for inspection and copying by the U.S. trustee, trustee, or any party in interest</li> </ul> <p>[NOTE: §315(c) of the Act requires the Administrative Office of the U.S. Courts to promulgate guidelines by the effective date of the Act to preserve the privacy of tax returns, including restriction on access by creditors]</p>
<p>Establish Identity §521(h)</p>	<p>If requested by the U.S. trustee or the trustee, provide photo identification that establishes the identity of the debtor</p>
<p>Dismissal for Failure to Provide Information §521(l)</p>	<p>A failure to provide any required information required under §521(a) within 45 days of the date the petition is filed results in automatic dismissal on the 46<sup>th</sup> day, except—</p> <ul style="list-style-type: none"> <li>▶ Upon request of the debtor made within the 45-day period, the court may extend the period for an additional 45 days</li> <li>▶ Upon motion of the trustee made within the 45-day period the court may decline to dismiss the case if the court finds— <ul style="list-style-type: none"> <li>▶ the debtor in good faith attempted to comply, and</li> <li>▶ the best interests of the estate would be served by administration of the estate</li> </ul> </li> <li>▶ Within 5 days of a request by a party interest the court will enter an order of dismissal</li> </ul>

DEBTORS' COUNSEL	
Signature as Certification §707(b)(4)(C), (D)	Signature on petition, pleading or motion is certification that attorney has— <ul style="list-style-type: none"> <li>▶ performed a reasonable investigation into the circumstances giving rise to the petition, pleading or motion</li> <li>▶ determined that the petition, pleading or motion is well grounded in fact</li> <li>▶ warranted by existing law or a good-faith extension, modification, or reversal of existing law and does not constitute an abuse</li> <li>▶ the attorney has no knowledge after an inquiry that any information in the schedules filed with the petition is incorrect</li> </ul>
Sanctions §707(b)(4)(A), (B)	Court may award trustee reasonable costs, including attorneys fees, in bringing a motion under §707(b), if— <ul style="list-style-type: none"> <li>▶ grants the trustee's motion and</li> <li>▶ finds that the debtor's attorney violated Rule 9011</li> </ul> <p>If debtor's attorney violates Rule 9011, the court may also assess a civil penalty payable to the U.S. trustee</p>
Debt Relief Agency §101(3), (12A)	Any person who provides any bankruptcy assistance to an assisted person for compensation, <i>except</i> <ul style="list-style-type: none"> <li>▶ an officer, director, employee, or agent of the person who provides assistance</li> <li>▶ non-profit organization exempt under IRC §501(c)(3)</li> <li>▶ a creditor of the assisted person to extent assisting the person in restructuring a debt owed to the creditor</li> <li>▶ A depository institution or credit union</li> <li>▶ author, publisher or distributor of works subject to copyright protection</li> </ul> <p>An "assisted person" is a consumer debtor having nonexempt property with a value of less than \$150,000</p>
Restriction on Debt Relief Agencies §526	Debt relief agencies may not— <ul style="list-style-type: none"> <li>▶ fail to perform any service promised</li> <li>▶ counsel or advise making an untrue or misleading statement in connection with any case filed under the Code</li> <li>▶ misrepresent the services to be rendered</li> <li>▶ misrepresent the benefits and risks of filing bankruptcy</li> <li>▶ advise incurring additional debt to pay for any services to be rendered</li> </ul> <p>Waiver of rights is unenforceable</p>

<p>Debt Relief Agency Disclosures §527</p>	<p>Provide the notice required under §342(b)  Debt relief agencies must in a clear and conspicuous written notice advise the assisted person that—</p> <ul style="list-style-type: none"> <li>▶ all information given in the petition and the case must be complete, accurate, and truthful</li> <li>▶ all assets and liabilities must be completely and accurately disclosed</li> <li>▶ replacement value of property subject to a lien or encumbrance must be stated after a reasonable inquiry</li> <li>▶ current monthly income and allowable expenses and disposable income in a chapter 13 case are to be stated after reasonable inquiry</li> <li>▶ all information provided may be subject to audit and failure to provide such information may result in dismissal of the case and/or criminal sanctions</li> </ul> <p>[The statute sets out in detail a written notice that must be provided to all assisted persons.]</p>
<p>Debt Relief Agency Requirements §528</p>	<p>A debt relief agency must—</p> <ul style="list-style-type: none"> <li>▶ within 5 days of first providing assistance but before the petition is filed provide a written contract that clearly and conspicuously explains <ul style="list-style-type: none"> <li>▶ the services to be provided, and</li> <li>▶ fees and charges for those services</li> </ul> </li> <li>▶ Include in any advertisement the words “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.”</li> </ul> <p>Advertisements include any communication directed to the general public of bankruptcy assistance services or the benefits of bankruptcy, including—</p> <ul style="list-style-type: none"> <li>▶ in general media</li> <li>▶ seminars</li> <li>▶ specific mailings</li> <li>▶ telephonic</li> <li>▶ or electronic messages</li> </ul> <p>An advertisement directed to the general public that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay consumer debt is included</p> <p>Descriptions of assistance in connection with a chapter 13, even if chapter 13 is not mentioned, “federally supervised repayment plan” or “federal debt restructuring” fall within these strictures</p>

NONPROFIT CREDIT COUNSELING AGENCIES	
Approval/Listing §111(a), (b)	<p>Clerk maintains a list of all approved credit counseling agencies and instructional courses</p> <p>Credit counseling agencies/instructional courses must be approved by the U.S. trustee</p> <ul style="list-style-type: none"> <li>▶ thorough review of qualifications</li> <li>▶ determine that the agency meets the standards</li> <li>▶ initial approval is probationary for a period of 6 months</li> <li>▶ subsequent approvals are for 1-year periods on condition that agency has met the requirements during the preceding period and adequately demonstrated it will continue to so do</li> </ul>
Requirements for Credit Counseling §111(c)	<p>Minimum requirements include—</p> <ul style="list-style-type: none"> <li>▶ a board the majority of whom are not employed by the agency and will not benefit financially, directly or indirectly, from the outcome of the services provided</li> <li>▶ charge only a reasonable fee and provide services irrespective of ability to pay</li> <li>▶ provide for safekeeping and payment of client funds, including an annual audit and adequate bonding</li> <li>▶ provide full disclosure to clients, including sources of funding, counselor qualifications, possible impacts on credit reports, costs of the program that will be paid by the client and how those costs will be paid</li> <li>▶ provide adequate counseling with respect to client's financial problems including an analysis of the client's current condition, factors that caused the condition, and how to develop a plan to respond to the conditions without negatively amortizing debt</li> <li>▶ provide trained experienced counselors who receive no bonus or commission based on the outcome of the services provided</li> <li>▶ demonstrate adequate experience and background in credit counseling</li> <li>▶ have adequate financial resources to continue service over the life any plan</li> </ul>
Requirements for Instructional Courses §111(d)	<p>Minimum requirements for instructional courses include—</p> <ul style="list-style-type: none"> <li>▶ personnel with adequate experience and training</li> <li>▶ learning materials and methodologies designed to assist in understanding personal finance management</li> <li>▶ adequate facilities in reasonably convenient locations (may include telephonic and internet, if effective)</li> <li>▶ maintain adequate records to permit evaluation of effectiveness, including satisfaction of each debtor attending, which records must be available for inspection by the U.S. trustee or the Chief Bankruptcy Judge</li> <li>▶ if a fee is charged, it must be reasonable and services must be offered without regard to ability to pay</li> </ul>



BANKRUPTCY PETITION PREPARERS (“BPP”)	
Non-Individual BPP §110(b)(1), (c)(2)(B)	<p>If the BPP is not an individual, an officer, principal, responsible person, or partner must—</p> <ul style="list-style-type: none"> <li>▶ sign the document</li> <li>▶ print on the document the name and address of the signer</li> <li>▶ include the SSN of the signer</li> </ul>
Notice to Debtor §110(b)(2)	<p>Before preparing any document or accepting a fee, give debtor written notice—</p> <ul style="list-style-type: none"> <li>▶ BPP is not an attorney and may not give legal advice</li> <li>▶ signed by the debtor and, under penalty of perjury, the BPP</li> <li>▶ filed with any document for filing</li> </ul> <p>May include a description of any advice the BPP may not give</p>
Prohibited Legal Advice §110(e)(2)	<p>A BPP may not give the debtor legal advice, including—</p> <ul style="list-style-type: none"> <li>▶ whether to file a petition or commencing a case under chapter 7, 11, 12, or 13 is appropriate</li> <li>▶ whether the debtor’s debts will be discharged</li> <li>▶ whether the debtor will be able to retain the debtor’s residence, car or any other property</li> <li>▶ concerning the tax consequences of filing or the dischargeability of any tax claim</li> <li>▶ whether a debtor should promise to repay debts or enter into a reaffirmation agreement</li> <li>▶ how to characterize interests in property or debts</li> <li>▶ concerning bankruptcy procedure or rights</li> </ul>
Fees §110(h)	<p>Maximum fees may be set in FRBP or by guidelines promulgated by Judicial Conference of U.S.</p> <p>BPP must—</p> <ul style="list-style-type: none"> <li>▶ advise a debtor of maximum fees permitted before accepting any payment or preparing any document</li> <li>▶ file a declaration with the petition under penalty of perjury stating the total fees received in the 12-months preceding the filing and, if maximum fees have been set, a certification that the fees do not exceed the maximum</li> </ul> <p>The court must disallow and order refund of any fees excess of—</p> <ul style="list-style-type: none"> <li>▶ the value of the services rendered, or</li> <li>▶ the maximums provided by rule or JCUS guideline</li> </ul>
Sanctions §110(j)	<p>In addition to the other remedies provided, the court may enjoin a BPP that has violated a previous order <i>sua sponte</i> or upon the motion of the trustee or U.S. trustee</p>

Fines §110(l)	<p>A BPP may be fined \$500 for each violation of the prohibitions in this section</p> <p>Fine may be tripled if—</p> <ul style="list-style-type: none"> <li>▶ advises the debtor to exclude assets of income that should have been included</li> <li>▶ advised debtor to use a false SSN</li> <li>▶ failed to inform the debtor that the debtor was filing for relief under the Code</li> <li>▶ prepared a document for filing that failed to disclose the identity of the BPP</li> </ul> <p>Motion to impose a fine may be brought by—</p> <ul style="list-style-type: none"> <li>▶ debtor</li> <li>▶ creditor</li> <li>▶ trustee</li> <li>▶ U.S. trustee</li> </ul>
------------------	--

EXCLUSIONS FROM ESTATE	
Education Account §541(b)(5), (e)	<p>Funds placed in an education individual retirement account (IRC §530(b)(1))—</p> <ul style="list-style-type: none"> <li>▶ at least 365 days before the petition is filed</li> <li>▶ for benefit of a child, stepchild, grandchild, or step grandchild (including adopted or foster child who is member of debtor's household) for taxable year in which deposited</li> <li>▶ not pledged or promised as collateral for an obligation</li> <li>▶ not an excess contribution as defined in IRC §4793(e)</li> <li>▶ funds placed in an account or accounts having the same beneficiary within 365 to 720 days before filing can not exceed \$5,000</li> </ul>
Tuition Credit Account §541(b)(6), (e)	<p>Funds used to purchase a tuition credit under a qualified state tuition program (IRC §529(b))—</p> <ul style="list-style-type: none"> <li>▶ at least 365 days before the petition is filed</li> <li>▶ for benefit of a child, stepchild, grandchild, or step grandchild (including adopted or foster child who is member of debtor's household) for taxable year in which deposited</li> <li>▶ not pledged or promised as collateral for an obligation</li> <li>▶ not an excess contribution as defined in IRC §529(b)(7)</li> <li>▶ funds placed in an account or accounts having the same beneficiary within 365 to 720 days before filing can not exceed \$5,000</li> </ul>
Contributions to Qualified Benefit Plans §541(b)(7)	<p>Amounts withheld from wages by an employer or received from an employee for payment of a contribution to—</p> <ul style="list-style-type: none"> <li>▶ employee benefit plan subject to ERISA Title 1 or a government plan under IRC §414(d)</li> <li>▶ deferred compensation plan under IRC §457</li> <li>▶ tax-deferred annuity under IRC §403(b)</li> <li>▶ health insurance plan regulated by state law</li> </ul>

Pawned Property §541(b)(8)	Interest of the debtor in tangible personal property pledged or sold as collateral for a loan or an advance by a licensed lender— <ul style="list-style-type: none"> <li>▶ property in the possession of the pledgee/transferee</li> <li>▶ debtor has no obligation to repay the money, redeem the collateral or buy back the property at a stipulated price</li> <li>▶ neither the debtor nor the trustee have exercised any right to redeem the property under state law in a timely manner as provided by state law as extended by §108(b)</li> </ul>
Tax Exempt Organizations §541(f)	Property of a IRC §501(c)(3) organization may be transferred to a non-IRC §503(c)(1) organization under the same conditions as if the debtor were not a debtor

EXEMPTIONS	
General Domiciliary Requirements §522(b)(3)(A)	State law exemptions of state in which debtor resided for 730 days preceding the filing <ul style="list-style-type: none"> <li>▶ if debtor did not reside in any one state for 730 days, the state in which the debtor resided for 180 days or longer than 180 days in any one state</li> <li>▶ If debtor does not meet domiciliary requirements of any state, debtor may elect federal exemptions</li> </ul>
Retirement Funds §522(b)(3)(C), (4), (12), (n)	Retirement funds covered by IRC §§401, 403, 408, 408A, 414, 457, or 501(a) are exempt irrespective of whether state or federal exemptions are elected <ul style="list-style-type: none"> <li>▶ If in IRA or SEP under §§408 or 408A, NTE \$1,000,000 [excluding any rollovers under §§402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 403(b)(8)]</li> <li>▶ Direct transfer from I qualified account to another does not affect qualification for exemption</li> <li>▶ Distribution that qualifies as an eligible rollover distribution from an exempt account retains its exempt status if deposited in another qualified account within 60 days after distribution</li> </ul>
Lien Avoidance on Exempt Property §522(f)	The classification of “household goods” for the purpose of avoiding liens that impair exemptions has been severely restricted

<p>State Homestead Exemptions §522(o), (p), (q)</p>	<p>A state-law homestead exemption is reduced by the amount that the value of the exemption is attributable to any property disposed of by the debtor during the preceding 10 years with the intent to hinder, delay or defraud a creditor, to the extent the property disposed was not exempt at the time of disposition</p> <p>May not exempt more than \$125,000 under a state-law homestead exemption acquired within 1215 days of filing the petition, except that it does not apply to—</p> <ul style="list-style-type: none"> <li>▶ the residence of a family farmer</li> <li>▶ any amount rolled over from another residence acquired by the debtor prior to the 1215 day period provided the prior and current residences are located in the same state</li> </ul> <p>May not exempt more than \$125,000 under a state-law homestead exemption if—</p> <ul style="list-style-type: none"> <li>▶ convicted of a felony, which under the circumstances demonstrates that filing would constitute an abuse, or</li> <li>▶ owes a debt arising from <ul style="list-style-type: none"> <li>▶ violation of federal Securities Exchange Act or similar state law</li> <li>▶ criminal act, intentional tort, or willful or reckless misconduct causing serious physical injury or death to individual</li> <li>▶ RICO civil penalty</li> </ul> </li> <li>▶ Does not apply to the extent that the interest is reasonably necessary to the support of the debtor or debtor's dependents</li> </ul>
---	--

CLAIMS	
<p>International Fuel Tax §501(e)</p>	<p>Claim for international fuel tax may be filed as single claim by the base jurisdiction designated under the International Fuel Tax Agreement</p>
<p>Domestic Support Obligation §101(14A) §507(a)(1)</p>	<p>Debt under applicable nonbankruptcy law owed to—</p> <ul style="list-style-type: none"> <li>▶ spouse, former spouse, child, child's parent, legal guardian, or responsible relative</li> <li>▶ for alimony, maintenance or support</li> <li>▶ established by a separation agreement, divorce decree, property settlement agreement, court order, or determination under applicable nonbankruptcy law by a governmental unit</li> </ul> <p>Includes debt assigned to a governmental unit for collection purposes Is entitled to first priority</p> <ul style="list-style-type: none"> <li>▶ subject to payment of certain administrative expenses incurred by the trustee in administering assets otherwise available for payment of the claim</li> </ul>

<p>Trustee's Notice (Domestic Support Claims) §§704(c) §1106(c) §1202(c) §1302(d)</p>	<p>Provide the holder of a domestic support claim with notice including—</p> <ul style="list-style-type: none"> <li>▶ right to use services of a child support agency</li> <li>▶ name, address, and telephone number of the agency</li> <li>▶ an explanation of the rights of the holder under chapter 7</li> </ul> <p>Provide notice to the child support agency of the claim and the name, address and telephone number of the claimant</p> <p>Upon entry of discharge, provide the holder of the claim and the child support agency of—</p> <ul style="list-style-type: none"> <li>▶ granting of the discharge</li> <li>▶ last recent known address of the debtor</li> <li>▶ last recent known name and address of the debtor's employer</li> <li>▶ the name of each creditor that holds a claim— <ul style="list-style-type: none"> <li>▶ not discharged</li> <li>▶ reaffirmed</li> </ul> </li> </ul>
<p>Secured Valuation §506(a)(2)</p>	<p>In individual chapter 7 or 13 case, value is replacement value disregarding costs of sale</p> <p>For consumer goods, value is price a retail merchant would charge considering the age and condition</p>
<p>Reduction of Claim (Unsecured Consumer Credit) §502(k)</p>	<p>Court may upon motion of debtor reduce by not more than 20% a claim based on an unsecured consumer debt if the debtor proves by clear and convincing evidence that—</p> <ul style="list-style-type: none"> <li>▶ creditor unreasonably refused to negotiate a repayment schedule proposed through a credit counseling agency</li> <li>▶ the offer was made within 60 days preceding the filing of the petition</li> <li>▶ the proposal repaid at least 60% of the balance over a period not exceeding the repayment period of the loan, or a reasonable extension</li> <li>▶ no part of the debt is nondischargeable</li> </ul>

ADMINISTRATIVE EXPENSES	
<p>Back Pay Awards §503(b)(1)(A)</p>	<p>Certain awards by courts or the NLRB for back pay and benefits for services attributable to postpetition periods are entitled to administrative expense priority even if no services are performed</p>
<p>Taxes §503(b)(1)(B), (D)</p>	<p>Includes both secured and unsecured and property taxes whether liability is <i>in rem</i> or <i>in personam</i></p> <p>Taxing authority does not need to file a request for payment as a condition of allowance as administrative expense</p>
<p>Nonresidential Real Property Lease §503(b)(7)</p>	<p>Nonresidential real property lease assumed and then rejected the lessor entitled to an administrative expense claim—</p> <ul style="list-style-type: none"> <li>▶ all monetary obligations (except failure to operate penalties) due for 2-year period following the later of date of rejection or surrender of possession without reduction except for amounts paid by an entity other than the debtor</li> <li>▶ sums due for the balance of lease term a claim under §502(b)(6)</li> </ul>

Health Care Closing Costs §503(b)(8)	Actual necessary costs incurred by the trustee or Federal, state or local agency in closing a health care business, including— <ul style="list-style-type: none"> <li>▶ disposing of patient records</li> <li>▶ transferring patients to another health care facility</li> </ul>
Reclamation Claims §503(b)(9)	Value of goods received by the debtor within 20-day prepetition period sold by the debtor in the ordinary course of business
Limitations on Insider Claims §503(c)	Subsection (b) notwithstanding claims of insiders are not allowed or paid for purpose of inducing the insider to stay unless the court finds— <ul style="list-style-type: none"> <li>▶ essential to retention of the person because of bona fide job offer from another business at same or greater pay</li> <li>▶ services are essential to operation of the business</li> <li>▶ amount does not exceed either <ul style="list-style-type: none"> <li>▶ 10 times the amount paid a nonmanagement employee for any purpose during calendar year in which payment is made, or</li> <li>▶ if no such transfer made, 25% of the amount of any similar transfer made to the insider for any purpose during the preceding calendar year</li> </ul> </li> </ul> Severance pay to an insider, unless— <ul style="list-style-type: none"> <li>▶ part of a program applicable to all employees</li> <li>▶ amount not greater than 10 times the mean severance pay paid to nonmanagement employees during calendar year in which payment is made</li> </ul> Any other transfer outside the ordinary course of business not justified by the facts and circumstances

CLAIMS ENTITLED TO PRIORITY	
General Note	Domestic support claims moved from seventh to first priority; former first through sixth dropped one place to second through seventh
Wage Claims §507(a)(4)	Amount raised to \$10,000 in wages salaries earned within 180 days of filing date
Employee Benefits §507(a)(5)	Amount raised to \$10,000 per employee
Taxes 507(a)(8)	The 240-day assessment period is extended for any period during which a stay was in effect in a prior case plus 30 days Property tax date is measured from when the obligation was incurred (vice date of assessment) All time periods are tolled during the time— <ul style="list-style-type: none"> <li>▶ a taxing authority is prohibited from collecting as result of a request for hearing or appeal by the debtor, plus 90 days</li> <li>▶ any time a stay was in effect in a prior bankruptcy case or collection was precluded by 1 or more confirmed plans, plus 90 days</li> </ul>

DUI Claims §507(a)(10)	Claims for personal injury or death arising out of the operation of a motor vehicle, boat, or aircraft while under the influence of alcohol, drugs, or another substance
---------------------------	--

NONDISCHARGEABLE DEBTS	
Taxes §523(a)(1)	Return means a return that satisfies applicable nonbankruptcy law (including filing requirements), including <ul style="list-style-type: none"> <li>▶ a return filed under IRC §6020(a) or similar state or local law</li> <li>▶ written stipulation to final judgment or order by nonbankruptcy tribunal</li> </ul> Does not include a return filed under IRC §6020(b), or comparable state or local law
Consumer Debts §523(a)(2)	Consumer debts incurred for luxury goods and services owed to a single creditor in excess of \$500 incurred within 90 days of filing are presumed nondischargeable Cash advances in excess of \$750 made within 70 days of filing are presumed nondischargeable The terms “consumer,” “credit,” and “open-end credit plan” have same meaning as in TILA §103
Domestic Support Obligations §523(a)(5)	Former (a)(5) deleted and replaced with simply the term “domestic support obligations” [See “Domestic Support Obligation,” <i>ante</i> , p. 22]
Student Loans §523(a)(8)	Expanded to include any student loan the interest paid on which is deductible for federal income tax purposes
Incurred to Pay Taxes §523(a)(14A)	Obligations incurred to pay taxes (other than federal taxes) that would not be dischargeable under 523(a)(1)
Incurred to Pay Election Law Fines §523(a)(14B)	Obligations incurred to pay a fine or penalty imposed under Federal election law
Non-Support Marital Debts §523(a)(15)	Non-support obligations owed to a spouse, former spouse, or child incurred in connection with a divorce or separation are automatically excepted from discharge [the former 2-prong test has been rescinded]
Condo Dues §523(a)(16)	Postpetition dues/fees for as long as the debtor or trustee holds an equitable, legal or possessory interest in the unit
Prisoner’s Fees §523(a)(17)	Fees assessed against prisoners expanded to include those imposed under state law comparable to federal law

Pension Plan Loans §523(a)(18)	<p>Obligations owed to a pension plan established by an employer under IRC §§401, 403, 408, 408A, 414, 457, and 501(c) to the extent—</p> <ul style="list-style-type: none"> <li>▶ permitted under ERISA §408(b)(1) or subject to IRC §72(p)</li> <li>▶ permitted loan from a thrift savings plan meeting the requirements of 5 USC §8433(g)</li> </ul> <p>Loan made by under a government plan under IRC §§414(d) or a contract under §403(b) does not constitute a claim or debt under the Code</p> <p>[NOTE: Former §523(a)(18) deleted]</p>
-----------------------------------	---

REAFFIRMATION/REDEMPTION	
Disclosures by Creditor §524(k)(1)–(3)	<p>Section 524(k) spells out in considerable detail the disclosures that must be made by a creditor before a debt may be reaffirmed, including essentially the form and language that must be used</p> <ul style="list-style-type: none"> <li>▶ Disclosures must be made before the reaffirmation is signed by the debtor</li> </ul>
Debtor's Affirmations §524(k)(4), (6)	<p>The debtor must—</p> <ul style="list-style-type: none"> <li>▶ sign the agreement</li> <li>▶ state the amount of monthly take home pay and other income, current monthly expenses (including post-bankruptcy obligations and other debt(s) reaffirmed), and the amount available to make the payments on the debt being reaffirmed</li> <li>▶ affirm that entering into the reaffirmation agreement will not impose an undue hardship and that the debtor has the ability to make the payments or, if a presumption of undue hardship arises, how the debtor intends to make the payment</li> </ul>
Attorney's Certification §524(k)(5)	<p>Debtor's attorney must certify that—</p> <ul style="list-style-type: none"> <li>▶ debtor fully informed and agreement voluntary</li> <li>▶ attorney has fully explained the effect of a reaffirmation</li> <li>▶ that either— <ul style="list-style-type: none"> <li>▶ the agreement does not impose an undue hardship, or</li> <li>▶ if the presumption of undue hardship applies, in the opinion of the attorney the debtor has the ability to make the payments</li> </ul> </li> </ul>
Creditor Payments §524(l)	<p>Creditor may receive payments before or after the reaffirmation agreement is filed if debtor believes in good faith the agreement is effective</p> <ul style="list-style-type: none"> <li>▶ good faith established if disclosure requirements of §524(k) satisfied</li> </ul>



Presumption of Undue Hardship §524(m)	For the period extending through 60 days after the agreement is filed, a reaffirmation agreement is presumed to create an undue hardship if the statement required by §523(a)(6) shows that debtors expenses plus the payment on the reaffirmed debt exceed monthly income <ul style="list-style-type: none"> <li>▶ May be rebutted if debtor identifies additional sources of funds to make the payment</li> <li>▶ Court may disapprove reaffirmation agreement after hearing concluded before entry of the discharge</li> </ul> This subsection does not apply where the creditor is a credit union
Redemption Payment §722	Redemption price must be paid at the time of redemption

TRUSTEE AVOIDANCE/PREFERENCES/FRAUDULENT TRANSFERS	
Statutory Liens §545(2)	Trustee may not avoid a perfected lien in any case where the purchaser described in IRC §6323, or similar state or local law
Reclamation Rights §546(c)	Reclamation claims are not subject to avoidance— <ul style="list-style-type: none"> <li>▶ goods received by the debtor within 45 days preceding the filing</li> <li>▶ creditor makes written reclamation demand— <ul style="list-style-type: none"> <li>▶ NLT 45 days after receipt of goods by debtor</li> <li>▶ NLT 20 days after the petition is filed if the 45-day period expires postpetition</li> </ul> </li> <li>▶ If creditor does not give timely notice, retains administrative expense claim under §503(b)(9)</li> </ul>
Warehouseman's Lien §546(i)	May not avoid a lien for storage, transportation, or incidental charges for storage and handling of goods Applied in a manner consistent with UCC §7-209 as adopted by the state
Ordinary Course of Business Exception §547(c)(2)	May not avoid a transfer made the debtor and creditor if— <ul style="list-style-type: none"> <li>▶ made in the ordinary course of business between the debtor and the creditor, <i>or</i></li> <li>▶ made according to ordinary business terms</li> </ul>
De Minimis Exception §547(c)(9)	May not avoid a transfer by a debtor who is not a consumer debtor if the aggregate amount of the transfer is less than \$5,000

Time of Transfer §547(e)(2)	A transfer is deemed made— <ul style="list-style-type: none"> <li>▶ at the time the transfer takes effect between the transferor and transferee if perfected within 30 days after the transfer</li> <li>▶ at the time the transfer is perfected, if perfected more than 30 days after the transfer</li> <li>▶ immediately before the petition is filed if not perfected at the later of— <ul style="list-style-type: none"> <li>▶ the date of filing, or</li> <li>▶ 30 days after the transfer takes effect between the transferor and transferee</li> </ul> </li> </ul>
Alternate Repayment Plan §547(h)	Trustee may not avoid a payment made to a creditor under an alternate repayment plan created by an approved credit counseling agency
Insider Employment Contracts §548(a)(1)	Transfer includes a transfer made to an insider on account of an employment contract between the debtor and insider <ul style="list-style-type: none"> <li>▶ not in the ordinary course of business</li> </ul>
“Look back” Period §548(a)(1), (b)	Extends the look back period for fraudulent transfers to 2 years [NOTE: Effective 1 year after enactment]
Self-Settled Asset Protection Trusts §548(e)	Avoid a transfer made to any self-settled or similar trust made within 10 years of the date the petition— <ul style="list-style-type: none"> <li>▶ transfer made by the debtor</li> <li>▶ the debtor the beneficiary</li> <li>▶ made with the actual intent to hinder, delay or defraud</li> </ul> Includes a transfer made in anticipation of any money judgement, settlement, criminal fine, civil penalty, equitable order— <ul style="list-style-type: none"> <li>▶ any violation of federal or state securities law, or</li> <li>▶ fraud, deceit, or manipulation in connection with the purchase or sale of any registered security</li> </ul>

AUTOMATIC STAY — EXCEPTIONS	
Tax Court Proceedings §362(a)(8)	Limited to— <ul style="list-style-type: none"> <li>▶ corporate tax proceedings that bankruptcy court may determine</li> <li>▶ individual tax periods ending before the petition is filed</li> </ul>

<p>Domestic Relations §362(b)(2)</p>	<p>Stay does not apply to domestic relations/domestic support—</p> <ul style="list-style-type: none"> <li>▶ child custody/visitation</li> <li>▶ marital dissolution (except property division)</li> <li>▶ domestic violence</li> <li>▶ withholding of income that is property of the estate or the debtor for payment of domestic support obligations</li> <li>▶ withholding or suspension of a driver's, professional, or occupational license as specified in Social Security Act</li> <li>▶ reporting of overdue support obligations to a credit reporting agency by a parent as specified in the Social Security Act</li> <li>▶ interception of a tax refund in satisfaction of support obligation</li> <li>▶ enforcement of a medical obligations as specified in the Social Security Act</li> </ul>
<p>Pension Plan Obligations §362(b)(19)</p>	<p>Stay does not apply to withholding from wages and collection of amounts under an agreement with the debtor for repayment of loans made by plans established by the employer under IRC §§401, 403, 408, 408A, 414, 457, and 501(c)</p> <ul style="list-style-type: none"> <li>▶ Payments must be applied to the repayment of the loan</li> </ul>
<p>Eviction Judgment (Residential) §362(b)(22), (l)</p>	<p>Stay does not apply to enforcement of residential eviction judgment entered prepetition</p> <p>Provision not effective until 30 days after the petition is filed if the debtor—</p> <ul style="list-style-type: none"> <li>▶ files with the petition and serves on the lessor a certification that under applicable nonbankruptcy law circumstances exist that permit cure of the default, and</li> <li>▶ deposits with the clerk the rental that would accrue during that 30-day period</li> </ul> <p>Exception does not apply if during the 30-day period the debtor files a certification that the debtor has cured under applicable nonbankruptcy law the monetary default</p> <p>If lessor contests debtor's certification, court must hold a hearing within 10 days</p> <p>If court upholds the lessor's objection or the debtor fails to file the certifications, the stay is terminated and lessor may continue the action to obtain possession</p>

<p>Residential Lease Eviction (Drugs) §362(b)(23), (m)</p>	<p>Stay does not apply to continuation of residential eviction action based on endangerment of the property or illegal use of drugs on the property if the lessor files with the court and serves on the debtor a certification that—</p> <ul style="list-style-type: none"> <li>▶ an eviction action has been commenced, or</li> <li>▶ that such activity has occurred in the 30 days preceding the filing of the certification</li> </ul> <p>Applies 15 days after lessor’s certification filed unless the debtor serves and files an objection to the truth or legal sufficiency of the lessor’s certification</p> <ul style="list-style-type: none"> <li>▶ Court must hold hearing on objection within 10 days</li> <li>▶ debtor must establish that conditions did not exist or have been remedied</li> </ul> <p>If debtor does not object or court does not uphold the debtor’s objection the stay is terminated and lessor may continue the eviction action</p>
<p>Non-avoidable Transfers §362(b)(24)</p>	<p>Transfers that are not avoidable under §§ 544 or 549 are excepted from the stay</p>
<p>Securities Investigations §362(b)(25)</p>	<p>Actions by self-regulatory securities organization excepted from stay</p> <ul style="list-style-type: none"> <li>▶ investigations or actions to enforce organization’s regulatory powers</li> <li>▶ enforce order, other than monetary sanctions, obtained in enforcing regulatory powers</li> <li>▶ delist, delete or refuse to permit quotation of stock that does not meet organization’s regulations</li> </ul>
<p>Tax Refunds §362(b)(26)</p>	<p>Setoff under applicable nonbankruptcy law of tax refunds for against tax liabilities for tax periods ending prepetition excepted from stay</p> <p>If setoff not permitted due to pending action to determine liability, governmental unit may hold refund pending resolution unless upon motion of trustee court may grant adequate protection to taxing authority</p>
<p>Medicare Programs §362(b)(28)</p>	<p>Exclusion by Secretary of Health &amp; Human Services from participation in medicare or federal health care programs</p>

AUTOMATIC STAY — TERMINATION	
<p>Prior Case Dismissed §362(c)(3), (i)</p>	<p>Stay terminated 30 days after petition is filed in case filed by individual under chapter 7, 11, or 13 if a case pending within 1-year preceding was dismissed other than a case refiled after dismissal under §707(b) Stay may be continued if the court finds after a hearing upon motion of a party in interest that refiling was in good faith Case presumed not to be in good faith (rebuttable only by clear and convincing evidence) <u>As to all creditors if—</u></p> <ul style="list-style-type: none"> <li>▶ more than 1 case under chapter 7, 11, or 13 pending in previous year</li> <li>▶ previous case was dismissed because debtor failed to— <ul style="list-style-type: none"> <li>▶ amend petition or schedules when ordered by court without substantial excuse (inadvertence or neglect not substantial excuse unless caused by debtor’s attorney)</li> <li>▶ provide adequate protection ordered by the court</li> </ul> </li> <li>▶ there has not been a substantial change in the debtor’s financial or personal affairs or any other reason to conclude that the later case will not be concluded— <ul style="list-style-type: none"> <li>▶ if a chapter 7, with a discharge, or</li> <li>▶ if a chapter 11 or 13, with a confirmed plan that will be fully performed</li> </ul> </li> </ul> <p><u>As to any creditor</u> who had filed a motion under §362(d) and at the time of dismissal the motion was pending or had been resolved by the termination, modification, or conditioning of the stay in the prior case If dismissal of prior case under chapter 7, 11, or 13 due to creation of a debt repayment plan, subsequent refiling not presumed to not be in good faith</p>
<p>More than One Prior Case Dismissed §362(c)(4)</p>	<p>No stay goes into effect in case filed by individual under chapter 7, 11, or 13 if 2 or more cases pending within 1-year preceding were dismissed other than a case refiled after dismissal under §707(b) Court may impose the stay upon request of a party in interest if it is established that later filing was in good faith</p> <ul style="list-style-type: none"> <li>▶ must be filed within 30 days of the date the petition is filed</li> <li>▶ effective on date order entered</li> <li>▶ good faith presumption same as under §362(c)(3)</li> </ul> <p>Upon request court may enter order confirming that no stay was in effect</p>

<p>Real Property (<i>In Rem</i>) §362(d)(4)</p>	<p>Stay may be terminated as against real property securing an obligation if the court finds that the filing was part of a scheme to hinder, delay, or defraud the creditor involving—</p> <ul style="list-style-type: none"> <li>▶ transfer of an ownership interest without the approval of the creditor or court order, or</li> <li>▶ multiple bankruptcy filings involving the property</li> </ul> <p>If recorded in accordance with state law an order entered under this paragraph is binding in any other case filed under the Code within 2 years of the entry of the order</p> <ul style="list-style-type: none"> <li>▶ debtor may obtain relief from order in subsequent filing upon showing of good cause or changed circumstances</li> </ul>
<p>Time for Ruling on Motion (Individuals) §362(e)(2)</p>	<p>In a case filed by an individual under chapter 7, 11, or 13, the stay automatically terminates 60 days after a motion under §362(d) is filed unless—</p> <ul style="list-style-type: none"> <li>▶ a final decision is rendered within the 60 days</li> <li>▶ the 60-day period is extended by— <ul style="list-style-type: none"> <li>▶ agreement of the parties, or</li> <li>▶ by the court for a specific time upon good cause as described in the findings of the court</li> </ul> </li> </ul>
<p>Personal Property (Individual Debtors) §362(h)</p>	<p>In a case where the debtor is an individual the stay is terminated as to personal property securing an obligation or subject to a lease if the debtor fails to—</p> <ul style="list-style-type: none"> <li>▶ timely file a statement of intentions indicating that the debtor will— <ul style="list-style-type: none"> <li>▶ surrender,</li> <li>▶ retain and redeem or reaffirm, or</li> <li>▶ assume the lease (see “Personal Property Leases,” <i>post</i>, p. 33), and</li> </ul> </li> <li>▶ take timely action to perform the intentions</li> </ul> <p>Does not apply if upon motion of the trustee filed within the time specified in §521(a)(2)—</p> <ul style="list-style-type: none"> <li>▶ the court determines that the personal property is of consequential value to the estate</li> <li>▶ orders adequate protection for the creditor/lessor</li> <li>▶ orders the debtor to deliver the personal property to the trustee</li> </ul>
<p>Sanctions §362(k)(2)</p>	<p>Sanctions limited to actual damages if creditor believes in good faith that the stay as to personal property was terminated under §362(h)</p>

<p>Small Business Cases §362(p)</p>	<p>Stay does not apply to cases in which the debtor is a small business at the time the petition filed if—</p> <ul style="list-style-type: none"> <li>▶ was a debtor in small business case in which an order of dismissal became final within 2 years preceding the filing of the petition</li> <li>▶ was debtor in which a order confirming a plan was entered within 2 years preceding the filing of the petition</li> <li>▶ an entity that has acquired substantially all the assets of a small business having had a dismissal or plan confirmed within the 2 years preceding unless it is established that the acquisition was in good faith and not for the purpose of evading this provision</li> </ul> <p>Does not apply—</p> <ul style="list-style-type: none"> <li>▶ to an involuntary petition filed without the collusion of the debtor, or</li> <li>▶ if the debtor proves— <ul style="list-style-type: none"> <li>▶ filing resulted from circumstances beyond the control of the debtor, and</li> <li>▶ more likely than not that the court will confirm a feasible non-liquidating plan within a reasonable time</li> </ul> </li> </ul>
<p>Order Confirming Termination §362(j)</p>	<p>Upon request, the court may enter an order confirming termination of the stay under §362(c)</p>

EXECUTORY CONTRACTS/LEASES	
<p>Nonmonetary Defaults §365(b)</p>	<p>Need not cure nonmonetary faults under an unexpired lease of real property that is impossible to cure prior to assumption except a failure to operate in accordance with the terms of a nonresidential lease, in which case the default must be cured at the time of assumption and the lessor be compensated for any pecuniary loss resulting from the breach</p>
<p>Nonresidential Real Property §365(d)(4)</p>	<p>Lease of nonresidential real property deemed rejected if not assumed by the earlier of—</p> <ul style="list-style-type: none"> <li>▶ 120 days after the petition is filed, or</li> <li>▶ date a plan is confirmed</li> </ul> <p>Court may extend 120-day period for an additional 90 days</p> <ul style="list-style-type: none"> <li>▶ any further extension requires written consent of the lessor</li> </ul>
<p>Personal Property Leases §365(p)</p>	<p>In a chapter 7 case filed by an individual the debtor may assume a lease of personal property</p> <ul style="list-style-type: none"> <li>▶ written notification to the lessor of desire to assume</li> <li>▶ creditor, at creditor’s option, may notify debtor of consent to assumption</li> <li>▶ creditor may condition assumption on cure of any arrearage</li> <li>▶ within 30 days debtor must notify lessor that lease is assumed</li> <li>▶ assumption is by debtor and no liability may be imposed on the estate</li> <li>▶ stay not violated by notice to debtor and negotiation of cure</li> </ul> <p>In a chapter 11 or 13 case in which the debtor is an individual, if a lease of personal property is not assumed in the plan, it is deemed rejected</p>

SPECIAL TAX PROVISIONS	
<p>State &amp; Local Taxes §346</p>	<p>As amended, conforms state and local income tax administrative issues to the Internal Revenue Code by requiring the states to follow the Federal convention. It conforms state and local tax administration to the Internal Revenue Code in the following areas:</p> <ul style="list-style-type: none"> <li>▶ division of tax liabilities and responsibilities between the estate and the debtor</li> <li>▶ tax consequences with respect to partnerships and transfers of property, and</li> <li>▶ the taxable period of a debtor</li> </ul> <p>The estate must use the same accounting method used by the debtor if it complies with applicable nonbankruptcy law            Except as otherwise provided in this section or §505, returns are filed in accordance with otherwise applicable nonbankruptcy law</p>
<p>Interest on Tax Claims §511</p>	<p>Interest on tax claims or administrative tax expenses is determined under the applicable nonbankruptcy law            For taxes paid under a plan, the applicable rate is the rate in effect in the month in which the plan is confirmed</p>
<p>Subordination of Tax Liens §724(b) §724(e) §724(f)</p>	<p>Excludes perfected <i>ad valorem</i> property tax liens from subordination            Excludes chapter 11 administrative expense claims other than those for wages, salaries or commissions from distribution            Before subordinating tax lien on real or personal property, the trustee must—</p> <ul style="list-style-type: none"> <li>▶ exhaust the unencumbered assets of the estate and</li> <li>▶ recover from secured creditors costs and expenses under §506(c)</li> </ul> <p>May pay wage claims entitled to priority under §507(a)(4) and contributions to an employee benefit plan entitled to priority under §507(a)(5)</p>
<p>Dismissal for Failure to File Tax Returns §521(j)</p>	<p>If the debtor does not timely file a tax return or request an extension, a taxing authority may request the court to dismiss or convert the case            If the debtor does not file the return or obtain an extension within 90 days of the date of the request that the case be converted or dismissed, the court must dismiss or convert the case, whichever is in the best interests of the creditors and the estate</p>
<p>Determination of Liability §505(a)(1)(C)</p>	<p>Court may not determine amount or legality of an <i>ad valorem</i> property tax if the time for contesting or redetermining has expired under applicable nonbankruptcy law</p>



<p>Tax Liability – Estate 28 USC §960</p>	<p>Taxes to be paid on or before due date under applicable nonbankruptcy law unless—</p> <ul style="list-style-type: none"> <li>▶ property tax secured by lien on property abandoned within reasonable time after lien attaches, or</li> <li>▶ payment excused under a specific provision of Code</li> </ul> <p>In chapter 7 case, payment may be deferred until final distribution if—</p> <ul style="list-style-type: none"> <li>▶ tax not incurred by the trustee, or</li> <li>▶ before the due date of the tax, court finds a probable insufficiency of funds to pay in full administrative claims having same priority</li> </ul>
---	--

HEALTH CARE BUSINESS	
<p>Defined §101(27A)</p>	<p>Any private or public entity primarily engaged in offering to the general public facilities and services for—</p> <ul style="list-style-type: none"> <li>▶ diagnosis and treatment of injury, deformity or disease</li> <li>▶ surgical, drug treatment, psychiatric, or obstetric care</li> </ul>
<p>Patient Care Ombudsman §333</p>	<p>In a case in which a health care business is the debtor, the court must order the appointment of a health care ombudsman within 30 days of the date the petition is filed</p> <p>The U.S. trustee must appoint a disinterested person to serve</p> <ul style="list-style-type: none"> <li>▶ If debtor provides long-term care, the State Long-Term Care Ombudsman may be appointed</li> </ul> <p>The ombudsman’s duties include—</p> <ul style="list-style-type: none"> <li>▶ monitor the quality of patient care</li> <li>▶ NLT than 60-days after appointment and at 60-day intervals thereafter at a hearing or in writing regarding the debtor’s quality of care</li> <li>▶ if it is determined the quality of care is declining significantly or is otherwise being materially compromised, immediately file a motion or written report and give notice to interested parties</li> <li>▶ has access to patient records but must maintain confidentiality</li> </ul>
<p>Disposal of Patient Records §351</p>	<p>If the trustee in a case of a health care business has insufficient funds to store patient records, the trustee must—</p> <ul style="list-style-type: none"> <li>▶ promptly publish in 1 or more newspapers notice that if patient records are not claimed by patient or an insurance provider by a date not less than 365 days after notice, the records will be destroyed</li> <li>▶ during the first 180 days attempt to notify directly by mail at the last known address each patient and insurance provider, or family member or contact person for the patient</li> <li>▶ at the end of the 365-day period, mail by certified mail a request to each appropriate federal agency requesting permission to deposit unclaimed patient records with that agency</li> <li>▶ records that are not claimed or accept for storage by a federal agency are destroyed— <ul style="list-style-type: none"> <li>▶ if written, by shredding or burning</li> <li>▶ if magnetic, optical or other electronic records, by destroying in a manner so that they may not be retrieved</li> </ul> </li> </ul>

Transfer of Patients §704(a)(12)	Trustee must use reasonable and best efforts to transfer patients of a health care business in the process of being closed to an appropriate health care business that— <ul style="list-style-type: none"> <li>▶ is in the vicinity of the health care business being closed</li> <li>▶ provides patients with substantially similar care</li> <li>▶ maintains a reasonable quality of care</li> </ul>
-------------------------------------	--

PERSONAL PRIVACY
------------------

Taxpayer Identification Numbers §342(c)(2)(B)	Notices sent to creditors contain the full taxpayer identification number of the debtor The copy of the notice filed with the court will only contain the last 4-digits
Personally Identifiable Information §101(41A)	Personally identifiable information of an individual is— <ul style="list-style-type: none"> <li>▶ first name (or initial) and last name</li> <li>▶ geographic address or physical place of residence</li> <li>▶ electronic (e-mail) address</li> <li>▶ telephone number at place of residence</li> <li>▶ social security account number</li> <li>▶ credit card account number</li> </ul> If associated with one of the foregoing— <ul style="list-style-type: none"> <li>▶ birth date</li> <li>▶ place of birth</li> <li>▶ number of birth, adoption or naturalization certificate</li> </ul>
Sale of Consumer Information §363(b))(1)	If the privacy policy of the business being sold or leased, as disclosed to individuals and in effect on the date the case was commenced, prohibits the transfer of personally identifiable information to persons not affiliated with the debtor, the trustee may not sell that information unless— <ul style="list-style-type: none"> <li>▶ the sale/lease is consistent with that policy, or</li> <li>▶ after appointment of a privacy ombudsman the court approves the sale/lease— <ul style="list-style-type: none"> <li>▶ giving due consideration to the facts, circumstances, and conditions of the sale/lease, and</li> <li>▶ no showing is made that the sale/lease would violate otherwise applicable nonbankruptcy law</li> </ul> </li> </ul>

<p>Consumer Privacy Ombudsman §332</p>	<p>Not later than 5 days before the hearing on the sale/lease of personally identifiable information, the U.S. trustee appoints a disinterested person as the consumer privacy ombudsman</p> <p>The ombudsman appears at the hearing on the sale/lease and presents to the court—</p> <ul style="list-style-type: none"> <li>▶ debtor’s privacy policy</li> <li>▶ potential losses or gains of privacy to consumers if the sale/lease is approved</li> <li>▶ potential costs or benefits to consumers if the sale/lease is approved</li> <li>▶ potential alternatives that would mitigate potential privacy losses or potential cost to consumers</li> </ul> <p>The ombudsman must keep all personally identifiable information confidential</p>
--	--

MISCELLANEOUS	
<p>Names of Minors §112</p>	<p>Debtor may not be required to disclose the name of minor child in public documents</p> <p>May be required to disclose the name of a minor child in a nonpublic document maintained by the court and made available for inspection to the U.S. trustee, trustee, and auditor, who may not disclose the name</p>
<p>Involuntary Petitioners §303(h)</p>	<p>A creditor whose claim is subject to a bona fide dispute as to liability or amount may not be an involuntary petitioner</p>
<p>False or Fictitious Involuntary Petitions §303(l)</p>	<p>Upon motion of the debtor, the court must seal all records of the court and all references to the proceeding if—</p> <ul style="list-style-type: none"> <li>▶ the petition is false or contains materially false, fictitious, or fraudulent statement</li> <li>▶ debtor is an individual</li> <li>▶ court dismisses the petition</li> </ul> <p>Court may enter an order prohibiting all consumer reporting agencies from making any consumer report that contains any information relating to the petition or the case</p>
<p>Professional Compensation §328(a)</p>	<p>Professional compensation may be awarded on an hourly, fixed, percentage or contingency fee basis</p>
<p>Sharing Compensation §504(c)</p>	<p>Prohibition on sharing compensation does not apply to sharing with a public service referral program</p>
<p>Estate Professionals §330(a)(1)</p>	<p>Consumer privacy ombudsman added as a professional entitled to be paid from the estate</p> <p>[NOTE: the patient care ombudsman is not listed. Was this omission an oversight or intentional?]</p>

Trustee Compensation §330(a)(7)	Compensation of a trustee is to be determined as a commission under §326
Appearances at Creditors' Meetings §341(c)	A corporation, partnership or LLC (other than the debtor) may appear at a creditors' meeting without an attorney
Creditor Addresses §342(c), (e), (f), (g) §505(b)(1)	<p>If within the 90-day period preceding the filing a creditor has provided 2 communications to the debtor in which the creditor provided the account number and address where communications were to be sent, the debtor must use that address and account number</p> <p>In individual chapter 7 &amp; 13 cases, a creditor may provide court and serve on debtor a notice of an address to be used for notices in the case, which address must be used</p> <p>A creditor may provide all or any court with an address at which it desires to receive notices in chapter 7 &amp; 13 cases</p> <p>If the creditor designates a person or organizational subdivision to receive notice, notice must be addressed to that person or organizational subdivision to be effective</p> <p>Notice not given in accordance with this section is not effective until such time as the notice is actually brought to the attention of the creditor</p> <ul style="list-style-type: none"> <li>▶ No monetary penalty may be assessed for a violation of the stay if notice is not effective</li> </ul> <p>Clerk to maintain a list of addresses provided by a governmental taxing authority designated as the address to which notices are to be sent</p> <ul style="list-style-type: none"> <li>▶ If no other address provided, notice to be sent to address for filing a return</li> </ul>
Sale or Lease by Trustee §363(d)	Sale must be in accordance with applicable nonbankruptcy law governing the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust
Purchase of Consumer Credit Interests §363(o)	Purchaser of an interest in a consumer credit transaction governed by TILA or a consumer credit contract (as defined in 16 CFR 433.1) remains subject to all claims and defenses as could be asserted if the interest was acquired in a transaction other than a transaction under §363

<p>Utility Service §366(c)</p>	<p>“adequate assurance” of payment means—</p> <ul style="list-style-type: none"> <li>▶ cash deposit</li> <li>▶ letter of credit</li> <li>▶ certificate of deposit</li> <li>▶ surety bond</li> <li>▶ prepayment</li> <li>▶ mutually agreeable form of security</li> </ul> <p>In a chapter 11 case, service may be altered, refused, or discontinued if utility does not receive adequate assurance of payment within 30 days of the date the petition is filed</p> <p>In making a determination of whether assurance of payment is adequate, the court may not consider—</p> <ul style="list-style-type: none"> <li>▶ the absence of prepetition security</li> <li>▶ that the debtor made prepetition payments timely</li> <li>▶ the availability of an administrative expense priority</li> </ul> <p>Utility may setoff against a prepetition deposit without notice or order of the court</p>
<p>Trustee Surcharges §506(c)</p>	<p><i>Ad valorem</i> property taxes added to the items that the trustee may recover from a secured claimant</p>
<p>Discharge Injunction §524(i)</p>	<p>Willful failure of a creditor to properly credit payments made under a confirmed plan constitutes a violation of the discharge injunction if the failure causes material injury to the debtor</p> <ul style="list-style-type: none"> <li>▶ Does not apply if— <ul style="list-style-type: none"> <li>▶ plan revoked</li> <li>▶ plan in default</li> <li>▶ has not received payments in accordance with the plan</li> </ul> </li> </ul>
<p>Disinterested Person §101(14)</p>	<p>Person was not an officer, director or employer of the debtor within 2 years of the date the petition is filed</p>
<p>Definition of Transfer §101(54)</p>	<p>Transfer includes—</p> <ul style="list-style-type: none"> <li>▶ creation of a lien</li> <li>▶ retention of title as a security instrument</li> <li>▶ foreclosure of a debtor’s equity of redemption</li> </ul>
<p>Adjustment of Dollar Amounts §104</p>	<p>Adds the amounts in §§101(3); 101(18); 101(19); 101(51D); 522(f)(3), (4); 522(n), (p), (q); 523(a)(2)(C); 541(b); 547(c)(9); 707(b); 1322(b); 1325(b); 1326(b)(9); and 28 USC §1409(b) to those adjusted every 3 years</p>
<p>Jurisdiction 28 USC §1334</p>	<p>The district court in which the case is commenced has exclusive jurisdiction over all claims involving the construction of or disclosure requirements under §327</p>
<p>Venue 28 USC §1409(b)</p>	<p>A case to recover money on a consumer debt of less than \$15,000 or a debt (excluding a consumer debt) against a non-insider of less than \$10,000 must be brought in the district in which the defendant resides</p>

<p>Appeals 28 USC §158(d)(2)</p>	<p>An appeal filed under §158(a) will be transferred to the appropriate court of appeals if the bankruptcy court, district court, or bankruptcy appellate panel, on its own motion or the request of a party, certifies the appeal—</p> <ul style="list-style-type: none"> <li>▸ involves a question of law that on which there is no controlling circuit or Supreme Court authority or involves a matter of public importance</li> <li>▸ involves a question of law requiring resolution of conflicting decisions</li> <li>▸ an immediate appeal may materially advance the progress of the case or proceeding from which the appeal is taken</li> </ul> <p>The court of appeals accepts immediate transfer (it may decline) Any request by a party for certification must be filed not later than 60 days after entry of the judgment</p>
<p>Bankruptcy Fraud 18 USC §157</p>	<p>Bankruptcy fraud includes a fraudulent involuntary petition filed under §303</p>
<p>Investigation of Fraud 18 USC §158</p>	<p>The U.S. Attorney for the district and the FBI field office have primary responsibility for investigating abusive reaffirmations and materially fraudulent representations in schedules that are intentionally false or misleading</p> <p>Each bankruptcy court is responsible for establishing procedures for referring any case that may contain a materially fraudulent representation to the designated investigators</p>