6-29/110.00 Judicial Lien

The levy of a levying officer creates a judicial lien. (11 USC 101(36)) A judicial lien may be set aside (avoided) by the trustee or debtor. If not avoided, the judicial lien survives the bankruptcy case after the automatic stay has been terminated and the levying officer may proceed with the levy, e.g., sale, transfer property to the creditor.

• 6-29/111.00 Avoidance of Lien

• 6-29/111.10 Trustee Avoidance

The trustee may file an adversary proceeding to obtain a court order avoiding any transfer of the debtor's property if (11 USC 547, 548):

- the transfer was made while the debtor was insolvent
- the transfer was made within 90 days before the date of the filing of the petition;
- the transfer was made between 90 days and one year before the date of the filing of the petition if the creditor was an insider and had reasonable cause to believe the debtor was insolvent at the time of such transfer; or,
- the transfer or obligation was incurred within one year before the date of the filing of the petition with the debtor's intent to defraud.

The debtor is presumed to be insolvent on and during the 90 days immediately preceding the date of the filing of the petition. (11 USC 547) If the trustee claims that the creditor's lien is void because the debtor was insolvent at the time of levy, the trustee must allege and prove such insolvency. (Liberty Natl. Bank v. Bear, 265 US 365; Travis v. Bixler, 20 CA 2d 279; Fischer v. Pauline Oil & Gas Co., 309 US 294) A petition in bankruptcy does not automatically discharge a judicial lien. The trustee must take positive action to avoid any such acquired lien, otherwise the lien is retained intact by the creditor obtaining it. (Fischer v. Pauline Oil & Gas Co., 309 US 294)

• 6-29/111.20 Debtor Avoidance

The debtor must initiate a contested proceeding by filing a motion to obtain a court order to avoid a judicial lien or other transfer of exempt property. (11 USC 522(f); FRBP 4003(d), 7001(2), 9014) The debtor may reopen the bankruptcy case after discharge in order to avoid a lien if the delay has not prejudiced the lienholder. (In re Costello, 72 BR 841; In re Quackenbos, 71 BR 693; In re Skakalski, 67 BR 448)

• 6-29/111.30 Chapter 7

A debtor can avoid certain involuntary liens, except for liens for support obligations, that are on property that the debtor could exempt. Debtors can also avoid certain voluntary liens on property that the debtor could exempt such as liens on certain household goods, tools of the trade and professionally prescribed health aids.

• 6-29/111.40 Chapter 13

The chapter 13 debtor has the additional ability to remove liens by completing payments under the plan. In some cases, the plan will reduce the amount that the debtor must pay or change the time period over which the debt must be paid. In the case of homes and cars (at least as of October 17, 2005), the ability to change the payment terms is very limited.

• 6-29/112.00 Proof of Claim

11 USC 726 governs the distribution of the property of the estate and provides for six classes of claims. Each class must be paid in full before the next lower class is paid anything. The debtor is only paid if all other classes of claims have been paid in full.

A creditor seeking compensation from the debtor's assets may file a proof of claim with the bankruptcy clerk. Unsecured creditors and equity security holders in Chapter 7 asset cases and Chapter 13 cases must file proofs of claim within 90 days after the first date set for the 341 meeting of creditors. (FRBP 3002(a)) Chapter 7 cases are initially processed as no-asset cases and creditors are instructed not to file proof of claim unless notified by the clerk. (FRBP 2002(e), 3002(c)(5)) If the trustee determines that assets may be available, the clerk will notify creditors to file proofs of claim within 90 days of mailing of the notice. (FRBP 3002(c)(5))

Under Chapter 11, a creditor or equity security holder whose claim is scheduled but not listed as disputed, contingent or unliquidated does not need to file a proof of claim. (FRBP 3003(b)(1), (2)) If the claim or interest is not scheduled, listed incorrectly, or scheduled as disputed, contingent, or unliquidated, the creditor or security holder must file a proof of claim to receive any distribution or retain any voting rights. (FRBP 3003(c)(2)) The court normally sets a deadline (bar date) for filing claims. (FRBP 3003(c)(3))

An objection to a claim may result in either a contested matter or an adversary proceeding. (FRBP

3007) Any party in interest may object to the allowance of a claim. (11 USC 502(a)) An objection to a claim usually initiates a contested matter. (FRBP 3007) If the objection to claim contains a counter- claim seeking relief of the kind specified in FRBP 7001, it becomes an adversary proceeding. (FRBP 3007)

• 6-29/113.00 Closing

The court orders a Chapter 7, 11, 12, and 13 case closed after the estate is fully administered and the trustee is discharged. (11 USC 350(a)) In a Chapter 9, the court must close the case when the administration of the case has been completed. (11 USC 945(b))

At the conclusion of an individual's bankruptcy case, the court enters an order closing the case. Unless the trustee has assets to distribute to creditors, case closing takes place fairly quickly in chapter 7 cases. In chapter 13, the case will not be closed until after the debtor finishes making payments under the plan. The case will also be closed if the court dismisses the case.

A final decree is required in Chapter 11 cases. The court, after an estate is fully administered and on its own motion or that of a party in interest, shall enter a final decree closing the case. The court considers the following to determine whether the estate has been fully administered (FRBP 3022):

1. order confirming the plan has become final;
2. deposits required by the plan have been distributed;
3. property has been transferred;
4. debtor or successor under the plan has assumed management of the property;
5. payments under the plan have begun; and,
6. all motions, contested matters, and adversary proceedings have been finally resolved.

In Chapter 7and 13 cases, it is presumed that the estate has been fully administered if: the trustee has filed a final report and accounting; the trustee has certified that the estate has been fully administered; and, the United States trustee or a party in interest does not file an objection within 30 days. (FRBP 5009) The court closes a case by issuing a final decree discharging any trustee not previously discharged, canceling the trustee's bond and closing the case.

• 6-29/114.00 Codebtor

In a Chapter 13, a codebtor who is liable for a consumer debt with the debtor, e.g., a cosigner with the debtor for an automobile loan, is protected by a stay created by 11 USC 1301(a). The codebtor stay protects the debtor from pressure exerted by friends or relatives who may have cosigned with the debtor. Codebtors are listed in Schedule H. A codebtor is distinguishable from a joint debtor, who is a spouse jointly filing in bankruptcy with the other spouse.

• 6-29115.00 Community Property

The automatic stay does not apply to a non-debtor spouse. However, community property jointly owned by the bankrupt debtor and a non-debtor spouse is subject to the automatic stay. (11 USC 541(a)(2))

• 6-29/116.00 Consolidation

The court may order the consolidation of cases if two or more petitions are pending in the same court by or against the same debtor, e.g., a voluntary and an involuntary petition relating to the same debtor or two involuntary petitions against the same debtor. Consolidated cases are treated as one case with a single case number. Usually, joint cases are jointly administered, rather than consolidated. (FRBP 1015)

• 6-29/117.00 Contempt of Bankruptcy Court

A bankruptcy judge may summarily adjudicate a contempt committed in the judge's presence and issue a

contempt order. If the contempt is not in the presence of the judge, a noticed hearing is required. Following the issuance of a contempt order, the bankruptcy clerk must forthwith serve a copy of the order on the contemnor. (FRBP 9020(c)) Within 10 days after service of the contempt order, the contemnor must serve and file written objections with the bankruptcy clerk. (FRBP 9020(c)) – 14 days under 9033(b)) The bankruptcy judge must then prepare a report and recommendation for submission to the district judge for review de novo. If objections are not filed, the contempt order becomes effective 10 days after service and has the same force and effect as an order of contempt entered by the district court. (FRBP 9020(c))

• 6-29/118.00 Conversion

The trustee, United States trustee, or a party in interest may attempt to convert or dismiss a bankruptcy case when the debtor fails to comply with filing requirements or pay filing fees. The court has *sua sponte* powers to convert and may issue an order to show cause why the case should not be converted or dismissed for lack of compliance with the law. A case cannot be converted to another Chapter unless the debtor is eligible to be a debtor under that Chapter. Debtors under Chapter 7 and 13 have an absolute right to convert under certain circumstances. (11 USC 706(a), (d), 1112(f), 1208(a), (e), 1307(a), (f)) The court should not accept a new petition under the Chapter to which conversion is sought because a petition is not required to effect a conversion.

Conversion constitutes a new order for relief under the Chapter to which the case is converted requiring the setting of a date for a new 341 meeting of creditors. (11 USC 341(a)) Conversion also creates a new period for filing a: proof of claim; complaint objecting to discharge; complaint to determine the dischargeability of a debt; and, a motion by the United States trustee for dismissal of a Chapter 7 for substantial abuse. The original filing date of the case does not change. Conversion terminates the service of any trustee or examiner. (11 USC 348(e))

Upon conversion from one bankruptcy Chapter to another, an automatic stay is not reimposed so as to make one who obtained relief apply again. (Cowans, Bankruptcy Law and Practice, 11.3(f) "… an order lifting the automatic stay remains effective notwithstanding subsequent conversion of the bankruptcy case, e.g., from Chapter 13 to Chapter 7"; In re Ramirez, 188 BR 413; In re State Airlines, Inc., 873 F 2d 264) Thus, manipulative debtors are prevented from filing a Notice of Conversion simply to avoid the terms of an earlier stay order. (In re Campos, 128 BR 790)

• • 6-29/118.10 Chapter 7 Conversion

The debtor has a one-time, absolute right to convert a Chapter 7 to a Chapter 11, 12 or 13 if the case has not been previously converted. (11 USC 706(a)) Following a noticed motion, a Chapter 7 case may also be converted to a Chapter 11 at the request of a party in interest. (11 USC 706(b); FRBP 9014, 1017(d))

The court may not convert a Chapter 7 case to a Chapter 13 unless requested by the debtor. (11 USC 706(c)) If a Chapter 7 is converted to Chapter 13, the property of the estate is turned over to the debtor rather than the Chapter 13 trustee because the debtor remains in possession of all property of the estate in a Chapter 13. (11 USC 1306(b))

• • 6-29/118.20 Chapter 11 Conversion

A Chapter 11 debtor has a one-time absolute right to convert to Chapter 7 unless: the debtor is not a debtor in possession; the case originally was commenced as an involuntary Chapter 11; or the case was converted to a Chapter 11 at the request of a party other than the debtor. (11 USC 1112(a))

The debtor must file and serve a motion for conversion. (FRBP 1017(d); 9013) No hearing is required unless ordered by the court. (FRBP 1017) The court may convert a Chapter 11 to a Chapter 7 when it is in the best interest of creditors and the estate at the request of a party in interest or the United States trustee after a noticed hearing for cause. (11 USC 1112(b)) Additionally, the court may convert the case *sua sponte* by issuing an order to show cause against the debtor.

At the request of the U.S. trustee, a conversion or dismissal may occur upon failure of the debtor in a voluntary case to timely file a list containing the names, addresses and claim amounts of the holders of the 20 largest unsecured claims. (11 USC 1112(e))

The court may not convert a Chapter 11 to a Chapter 7 if the debtor is a corporation that is not a moneyed business or commercial corporation, unless requested by the debtor. (11 USC 1112(c)) The court may convert a Chapter 11 to Chapter 13 if requested by the debtor and the debtor has not been discharged. (11 USC 1112(d))

• • 6-29/118.30 Chapter 13 Conversion

The debtor has an absolute right to convert from a Chapter 13 to a Chapter 7 at any time without prior notice, hearing or court order by filing a notice of conversion. (FRBP 1017(d)) Any party in interest, including the debtor and the United States trustee, may file a motion to convert to a Chapter 11 or 12 any time before confirmation of a plan and following a noticed hearing. (11 USC 1307(d)) The court may convert a Chapter 13 case to a Chapter 7 or dismiss the case, in the best interests of the creditors and the estate, upon the request of a party in interest or the United States trustee after a noticed hearing and for cause. The court may also *sua sponte* issue an order to show cause why the case should not be converted. (11 USC 1307(c))

• • 6-29/118.40 Involuntary Bankruptcy Conversion

An involuntary Chapter 7 debtor may convert to a Chapter 11 or 13. If an involuntary Chapter 7 case is converted to Chapter 11, the converted Chapter 11 debtor can convert back to Chapter 7 without notice or hearing, provided that the debtor remained in possession of the property. An involuntary Chapter 11 debtor does not have an absolute right of conversion. (11 USC 1112(a)(2))