



# The Bankruptcy Dictionary

## A

### abandonment

the act of a trustee relinquishing possession and control of property out of the estate and back to the debtor. Sec. 554

### absolute priority rule

in a Chapter 11 case the rule that no junior class of claims or interests may receive anything of value from the estate unless a more senior nonaccepting class of unsecured claims or interests is paid in full. 11 U.S.C. § 1129(b)(2)(B) and (C)

### abstention

a bankruptcy court's refusal to take up a matter out of deference to another court with jurisdiction. § 305; 28 U.S.C. § 1334(c)

### accountant

means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized. Sec. 101. Definitions

### Act

means Commodity Exchange Act; Sec. 761. Definitions for this subchapter

### action or civil action

means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter. Rule 9002.

### adequate protection

security, collateral or some other measure undertaken or provided by the debtor in bankruptcy, to protect a claim holder from depreciation of its collateral pending confirmation of a plan, for the period during which the debtor has continued possession or use of the collateral. Sec. 361; Lundin, Hon. Keith M., Chapter 13 Bankruptcy (Bankruptcy Press)

### administration of the case

the acts of the trustee marshalling and liquidating the assets and distribution of proceeds to the creditors; filing report with the court; closing the case.

### administrative expenses

actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the order for relief, and any taxes on, measured by, or

withheld from such wages, salaries, or commissions. Sec. 503, Notes of Committee on the Judiciary

adversary matter

a dispute in a bankruptcy proceeding that may be adjudicated by means of an adversary proceeding (lawsuit) filed in bankruptcy court. Rule 7001

affiliate

means -

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities -

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities -

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement; Sec. 101. Definitions

after notice and a hearing, or a similar phrase -

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if -

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act; Sec. 102. Rules of construction

allowed claim

a claim or debt deemed allowed in a bankruptcy case pursuant to sec. 502; an allowed secured claim pursuant to sec. 506.

antecedent debt

a debt that is accrued or acquired prior to the debtor making a payment to the creditor on account of the debts

anti-alienation clause

a term or provision of a trust that forbids transfer of the debtor's beneficial interest in the trust to another. § 541(c)(2)

AP

adversary proceeding

appeal

means an appeal as provided by 28 U.S.C. § 158. Rule 9002.

applicable commitment period

that period of time determined, in a chapter 13 case, pursuant to 11 U.S.C. § 1325(b)(1)(B). The cases are split on whether the “applicable commitment period” defines the length of the plan, or rather is only a multiplier used in calculating the debtor's projected disposable income. 11 U.S.C. § 1325(b)(4).

assessed

the status of a debt determined to be owed without further right of appeal or adjudication; implies finality.

assets

real or personal property. Assets are anything of value, and include intangible property such as goodwill, intellectual property such as patents and copyrights, and present right to future assets, such as certain retirement plans.

asset bankruptcy

a bankruptcy case in which the debtor owns assets, at least some of which are not exempt from the estate.

assignment

a transfer of a right or property and duties in connection with a contract, to another. § 365

assisted person

a term imposed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, defined as an individual whose debts are "primarily consumer debts" and whose value of nonexempt property is less than \$164,250 as of the date of this entry (08/31/08). The figures are adjusted every three years. § 101(3).

assumption

a debtor or the estate may assume or reject a lease or executory contract; the act of continuing to be responsible for the lease or contract § 365

attorney

means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law; Sec. 101. Definitions

automatic stay

a restraining order arising out of the filing of a bankruptcy case. The filing of a petition "automatically stays" most actions against the debtor or the debtor's property. 11 U.S.C. § 362. This stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors normally receive notice of the filing of the petition from the clerk. Public Information Series of the Bankruptcy Judges Division

avoidance of lien

the act of obtaining a release from the effect of a lien, judgment or security interest in property, typically in connection with exempt property but also on any grounds provided by the Bankruptcy Code § 522(f); 544, 553

avoidance powers

the trustee's or debtor's powers to avoid a lien. 11 U.S.C. §§ 542, 544, 545, 546, 547, 548

## B

badges of fraud

various kinds of conduct that may suggest fraudulent intent on the part of the debtor.

BAFJA

The Bankruptcy Amendments and Federal Judgeship Act of 1984.

bankrupt

subject to, or under, legal process because of insolvency; unable to pay one's debts; insolvent  
New Webster's Dictionary of the English Language

bankruptcy

the state of being or the fact of becoming bankrupt. New Webster's Dictionary of the English Language

Bankruptcy Act of 1898

the bankruptcy statute enacted in 1898 and repealed in 1978 to be replaced by the Bankruptcy Reform Act of 1978 (the current statute).

Bankruptcy Act of 1932

an expansion of reorganization for businesses, superseded by the Chandler Act of 1938.

Bankruptcy Appellate Panel (BAP)

the three-judge panel adopted in several federal circuits, made up of bankruptcy judges and providing an alternative forum for bankruptcy appeals (alternative from the District Court).

Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 ("BAPCPA")

the legislation enacted into law by Congress in 2005, effective date for most purposes Oct. 17 2005, substantially amending and adding to the substantive and procedural content of the Bankruptcy Code and substantially changing bankruptcy cases, in particular consumer bankruptcy cases, are handled. Public law No. 109-8

bankruptcy clerk

the office of the bankruptcy court that receives and processes all documents filed in bankruptcy cases. Rule 9001. General Definitions

Bankruptcy Code or Code

means title 11 of the United States Code. Rule 9001. General Definitions

bankruptcy estate

all legal or equitable interests of the debtor in property at the time of the bankruptcy filing.  
§ 541

Bankruptcy Reform Act of 1978

the 1978 statute under which bankruptcy would be governed, establishing the current Bankruptcy Code and replacing the former Bankruptcy Act.

Bankruptcy Reform Act of 1994

the 1994 legislation amending the Bankruptcy Code. This enactment included provisions to expedite bankruptcy proceedings, standardize fees, and encourage consumers to file chapter 13 instead of chapter 7. Created the National Bankruptcy Review Commission to do a thorough review of the Bankruptcy Code and recommendations for additional changes.

bankruptcy petition preparer

a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing (document for filing; a petition or any other document prepared for filing by a debtor in a United States Bankruptcy court or a United States district court in connection with a case under this title (title 11, U.S.C., Bankruptcy). Sec. 110(a)

bankruptcy rules

also known as the Federal Rules of Bankruptcy Procedure, the rules that govern the procedures in bankruptcy and adversary cases. In addition to these rules, each bankruptcy court typically adopts its own "local rules" that supplement the Federal Rules.

BAP

the Bankruptcy Appellate Panel

BAPCPA

the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005.

best interests test

in Chapter 13 and Chapter 11, a requirement for confirmation of the plan; under the "test" the plan must provide to pay the general unsecured creditors at least as much as they would have been paid had the debtor filed in Chapter 7, instead.

bifurcation

the act of splitting an undersecured claim into its respective secured and unsecured portions for listing and treatment in the bankruptcy

bona fide purchaser

a purchaser who purchases goods or property for fair value and without notice of a lien or other encumbrance on the property held by a third party

broken bench

origin of the word *bankruptcy*. The origin of the word bankruptcy can be traced back to Italy during the Medieval Period. In those days, when a businessman was unable to pay his debts, the practice at that time was to destroy his trading bench. From the term "broken bench" or "banca rotta" comes the word "bankruptcy".

bust-out (see also *loading up*)

the act of a person going on a credit spree (incurring large debts on credit cards and store charge accounts) on the eve of filing bankruptcy.

## C

### cash collateral

various kinds of cash assets such as, money, securities, documents of title, and proceeds, products, offspring, rents or profits of property, upon which a creditor has a lien or other secured interest. 11 U.S.C. § 363(a). Rule 4001.

### Chandler Act of 1938

Legislation substantially adding to the Bankruptcy Act of 1898

### chapter 7

a liquidation bankruptcy for an individual, husband and wife, partnership or corporation; typically, nonexempt property is liquidated (sold) and the proceeds paid out to creditors on a pro-rata bases, and the debtor is discharged of liability for the debts. Certain categories of debtors are not entitled to a discharge, and certain categories of property are exempt (i.e., can not be taken from the debtor). Sec. 701 et seq.

### chapter 9

a financial reorganization of a public entity. Sec. 901 et seq.

### chapter 11

a financial reorganization of a business. Sec. 1101 et seq.

### chapter 12

a financial reorganization of a family farming enterprise. Sec. 1201 et seq.

### chapter 13

an adjustment of debts of an individual (which may include a husband and wife, or a sole proprietorship business). Sec. 1301 et seq.

### chapter 20

courthouse slang; a chapter 7 bankruptcy which, after final discharge, is quickly followed by the same debtor filing a chapter 13. ed. Note

### choate

a choate lien is defined as "[a] lien in which the lien holder, the property, and the monetary amount are established so that the lien is perfected and nothing else needs to be done to make it enforceable." Black's Law Dictionary at 934 (7th ed. 1999). IN RE WPG, INC., (D.C. 2002)

### churning

the act of a bankruptcy trustee recovering and administering assets for the sole purpose of generating fees for himself or legal counsel, with no or minimal benefit to the estate.

### claim

means -

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured; Sec. 101. Definitions

claim against the debtor

includes claim against property of the debtor. Sec. 102. Rules of construction

claim, proof of

the document that a creditor files in a bankruptcy case to establish his claim in the case; a form used to file a claim.

claims agent

in large cases, often a claims agent is appointed (instead of the clerk) to manage the filing and retention of proofs of claim.

claims register

a file or record located at the bankruptcy clerk's office that lists all proofs of claim that have been filed in a bankruptcy case.

class of creditors

a group of creditors having similar characteristics and entitled to similar treatment in a bankruptcy case

clearing organization

means organization that clears commodity contracts made on, or subject to the rules of, a contract market or board of trade. Sec. 761. Definitions for this subchapter

clerk

means bankruptcy clerk , if one has been appointed, otherwise clerk of the district court. Rule 9001. General Definitions

clerk or clerk of the district court

means the court officer responsible for the bankruptcy records in the district. Rule 9002.

CM/ECF

Case Management/Electronic Case Filing system, which allow for the electronic filing of documents with the bankruptcy clerk.

CMI

current monthly income. 11 U.S.C. § 109(10A).

code

Bankruptcy Code; title 11 of the United States Code. Rule 9001. General Definitions

co-debtor stay

in Chapter 13 cases, an automatic stay which restrains creditor actions against someone who is co-liable with the debtor on a consumer debt, but who has not filed bankruptcy, and the debtor has agreed to pay the 100% of the debt through the chapter 13 plan. 11 U.S.C. § 1301



collateral

property that a creditor has the right to collect to pay a debt; property pledged to secure payment of a debt

collective bargaining agreement

an employment agreement entered into by an employee with a group of employees to negotiate with the employer over pay, benefits etc.

Collection Financial Standards

expense limits or guidelines described in the IRS Manual, and which are incorporated into the "means test" litany of permissible expenses by the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005.

comfort order

an order signed or issued by a bankruptcy judge even court approval is not required to perform the act. For example, a title company refusing to let a debtor in Chapter 13 sell his or her house without a court order approving it. Orders issued to "comfort" some party to the event.

commission

means Commodity Futures Trading Commission. Sec. 761. Definitions for this subchapter

commission

means Securities and Exchange Commission; Sec. 741. Definitions for this subchapter

commodity broker

means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title; Sec. 101. Definitions

commodity contract

means -

- (A) with respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;
  - (B) with respect to a foreign futures commission merchant, foreign future;
  - (C) with respect to a leverage transaction merchant, leverage transaction;
  - (D) with respect to a clearing organization, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;
  - (E) with respect to a commodity options dealer, commodity option;
- Sec. 761. Definitions for this subchapter

commodity option

means agreement or transaction subject to regulation under section 4c(b) of the Act. Sec. 761. Definitions for this subchapter

commodity options dealer

means person that extends credit to, or that accepts cash, a security, or other property from, a customer of such person for the purchase or sale of an interest in a commodity option.

Sec. 761. Definitions for this subchapter

community claim

means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case; Sec. 101. Definitions

community property

property owned jointly or in common, by spouses, as a matter of law, in states recognizing marital property as community property. Each spouse owns a 50% interest in the property. As distinct from separate property or entireties property.

confirmation

a bankruptcy court's approval of a debtor's proposed plan in one of the reorganization chapters or chapter 13. Common usage

consensual lien

a lien granted by agreement between the lien holder and the debtor, such as a mortgage or a UCC security interest. Blum, Bankruptcy And Debtor/creditor (Aspen 1999)

constructive trust

an equitable remedy under which a person who has acquired property by a wrongful act is deemed to hold the property in trust for the victim of the wrong. Blum, Bankruptcy And Debtor/creditor (Aspen 1999)

consumer debt

means debt incurred by an individual primarily for a personal, family, or household purpose, as distinct from a tax, business or tort debt; Sec. 101. Definitions

contested matter

a dispute in a bankruptcy proceeding that may be adjudicated by motion in the bankruptcy court Rule 9014

contingent debt

a claim for which the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event. In re Kaufman, 93 B.R. 319 (Bkrcty.N.Y. 1988); In re Munsie, 33 F.2d 79 (2nd Cir. 1929)

contract market

means board of trade designated as a contract market by the Commission under the Act. Sec. 761. Definitions for this subchapter

contract of sale, commodity, future delivery, board of trade, and futures commission merchant

have the meanings assigned to those terms in the Act. Sec. 761. Definitions for this subchapter

conversion

in a bankruptcy context, changing a case from one chapter to another. Sec. 706(a); 1307(a)

core proceeding

a proceeding in a bankruptcy case that involves the adjudication of rights created by the Code, or concerns issues that, by their nature, could only arise in a bankruptcy case. A sample list on core

proceedings may be found at 28 U.S.C. § 157(2). Blum, Bankruptcy And Debtor/creditor (Aspen 1999)

corporation

(A) includes -

- (i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
- (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
- (iii) joint-stock company;
- (iv) unincorporated company or association; or
- (v) business trust; but

(B) does not include limited partnership. Sec. 101. Definitions

court or judge

means the judicial officer before whom a case or proceeding is pending. Rule 9001. General Definitions

cram down

where the balance owed on a secured claim exceeds the value of the property on which it is secured, the provision of a chapter 13 plan that allows the debtor to pay, over time, the secured value of an item, but pay none or only a portion of the unsecured balance. Common usage

creditor

means

- (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
  - (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or
  - (C) entity that has a community claim;
- Sec. 101. Definitions

creditors' committee

a committee of creditors appointed by the U.S. Trustee in Chapter 11 cases and sometimes in Chapter 7 cases, to represent the interests of the creditor body as a whole.  
Blum, Bankruptcy And Debtor/creditor (Aspen 1999)

current monthly income ("CMI")

a phrase imposed by BAPCPA defined as the average monthly income from all sources that the debtor receives (including spouse if spouse is also filing) regardless of whether or not the income is taxable, derived during the 6-month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case, or, the date such income is determined by the court, including certain contributions by others in the household and excluding certain categories of income. § 101(10A).

custodian

means -

- (A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;
- (B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors; Sec. 101. Definitions

customer

includes -

(A) entity with whom a person deals as principal or agent and that has a claim against such person on account of a security received, acquired, or held by such person in the ordinary course of such person's business as a stockbroker, from or for the securities account or accounts of such entity -

- (i) for safekeeping;
- (ii) with a view to sale;
- (iii) to cover a consummated sale;
- (iv) pursuant to a purchase;
- (v) as collateral under a security agreement; or
- (vi) for the purpose of effecting registration of transfer; and

(B) entity that has a claim against a person arising out of -

- (i) a sale or conversion of a security received, acquired, or held as specified in subparagraph (A) of this paragraph; or
- (ii) a deposit of cash, a security, or other property with such person for the purpose of purchasing or selling a security; Sec. 741. Definitions for this subchapter

customer name security

means security -

- (A) held for the account of a customer on the date of the filing of the petition by or on behalf of the debtor;
- (B) registered in such customer's name on such date or in the process of being so registered under instructions from the debtor; and
- (C) not in a form transferable by delivery on such date; Sec. 741. Definitions for this subchapter

customer property

means cash, security, or other property, and proceeds of such cash, security, or property, received, acquired, or held by or for the account of the debtor, from or for the securities account of a customer -

(A) including -

- (i) property that was unlawfully converted from and that is the lawful property of the estate;
- (ii) a security held as property of the debtor to the extent such security is necessary to meet a net equity claim of a customer based on a security of the same class and series of an issuer;
- (iii) resources provided through the use or realization of a customer's debit cash balance or a debit item includable in the Formula for Determination of Reserve Requirement for Brokers and Dealers as promulgated by the Commission under the Securities Exchange Act of 1934; and
- (iv) other property of the debtor that any applicable law, rule, or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property; but

(B) not including -

- (i) a customer name security delivered to or reclaimed by a customer under section 751 of this title; or

(ii) property to the extent that a customer does not have a claim against the debtor based on such property; Sec. 741. Definitions for this subchapter

## D

### debt

means liability on a claim. Sec. 101. Definitions

### debt for child support

means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor; Sec. 101. Definitions

### debtor

means person or municipality concerning which a case under this title has been commenced; Sec. 101. Definitions

### debtor

(A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control;  
(B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control. Rule 9001. General Definitions

### debtor in possession

means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case. Sec. 1101. Definitions for this chapter

### debt relief agency

a term imposed by the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005, defining any person who gives, or promises to give, to any "assisted person" any bankruptcy "assistance" for consideration (i.e., paid a fee), or who is a bankruptcy petition preparer within the meaning of the Bankruptcy Code.. 11 U.S.C. § 101(12A).

### discharge

extinguishing the debtor's personal liability on dischargeable debts, through the granting of a permanent injunction protecting the debtor from efforts to collect such debts as a personal liability. A discharge protects the debtor from personal liability for discharged debts and prevents the creditors owed those debts from taking any action against the debtor or his property to collect the debts. Public Information Series of the Bankruptcy Judges Division

### dischargeable

a debt capable of being discharged in bankruptcy

### disclosure

one of several documents required by the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005, to be given to the debtor by the debtor's attorney a part of the duties of a Debt Relief Agency.

### disclosure statement

a written document prepared by the chapter 11 debtor or other plan proponent that is designed to provide adequate information to creditors to enable them to evaluate the chapter 11 plan of reorganization. List of Terms; Administrative Office of the United States Courts

disgorgement

the term typically used to describe a bankruptcy court order to an attorney (typically the debtor's attorney) to refund money paid to the attorney because payment was unauthorized under the provisions of the Bankruptcy Code, or for other reasons; the money is typically ordered returned either to the estate or the debtor.

disinterested person

means person that -

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not an investment banker for any outstanding security of the debtor;

(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph

(B) or (C) of this paragraph; and

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason; Sec. 101. Definitions

dismissal

the court's termination of the bankruptcy case upon voluntary request or withdrawal by the petitioner, or on the motion of a party in interest, or by the court "sua sponte."

dismissal with prejudice

the court's dismissal of a bankruptcy case with the added condition that the debtor is barred from re-filing a bankruptcy for a period of time, or barred from discharging certain debts in any future bankruptcy case.

distribution

also called dividend, the payment to creditors of money generated by the liquidation of a debtor's property in chapter 7, or payments to creditors made pursuant to a confirmed chapter 11 or chapter 13 plan.

disposable income

income which is received by the debtor and which is not reasonably necessary to be expended for maintenance or support of the debtor or a dependent of the debtor; for a debtor engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business. Sec. 1325(b)(2)

district court, trial court, court, district judge, or judge

means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge. Rule 9002.

dividend

also called distribution, the payment to creditors of money generated by the liquidation of a debtor's property in chapter 7, or payments to creditors made pursuant to a confirmed chapter 11 or chapter 13 plan.

docket

the court's official record or registry of the history of the case, including documents filed, hearings held, and orders made.

domestic support obligation

prescribed by BAPCPA, a domestic support obligation is a debt that accrues before, on, or after the date of the order for relief in a bankruptcy case, that is owed to or recoverable by a spouse, former spouse, or a child of the debtor, and/or other qualifying categories. 11 U.S.C. § 101(14A)

domicile

the place a person lives with an expectation of permanency; as opposed to residence, which is the place a person currently resides (may not be deemed a permanent home).

drop-dead clause

a provision in a contract or rehabilitation plan that requires exact compliance with the debtor's obligations and gives the creditor an immediate right of action in the event of default. For example, a stipulation providing that if the debtor falls behind in car payments one more time, the creditor can repo the car without need of seeking relief from stay.

dso

domestic support order



## E

### earmarking doctrine

given the right circumstances a secured creditor who, within the preference period, simply steps into the shoes of another secured creditor, with no diminution to the estate, and who is not deemed to have taken a preferential transfer in the collateral. *In re Adams*, 240 B.R. 807 (Bkrcty.D.Me. 1999).

### education individual retirement account

A form of retirement account defined by 26 U.S.C. § 530(b)(1). Funds placed in such account more than 365 days prior to filing the bankruptcy are excluded from the bankruptcy estate. 11 U.S.C. § 541(b)(5).

### effective date

the date on which an approved chapter 11 plan of reorganization becomes operational; may also be used to describe the operational date of a chapter 13 plan.

### election of trustee

in a chapter 7 case, the creditors have the option to elect a trustee, at the meeting of creditors, to replace the interim trustee. For such an election to occur, creditors representing at least 20% of the claims must request a vote and a majority of the creditors voting must approve the candidate. In a chapter 11 case, if a trustee appointment has been ordered by the court, any party in interest may within a certain time request an election to replace the trustee. 11 U.S.C. § 702

### enabling loan

purchase money security interest. Blum, *Bankruptcy and Debtor/Creditor* (Aspen, 1999).

### encumbrance

a mortgage, UCC-1 security agreement, judgment lien, statutory lien, purchase money security interest or other security interest attaching to a particular property

### entity

includes person, estate, trust, governmental unit, and United States trustee; Sec. 101. Definitions

### entireties property

in certain states, typically real or personal property owned by husband and wife in a form of indivisible co-ownership that upon death of one, survivor takes title to the whole estate.

### equity

the value of an asset over and above any encumbrances, such as mortgages, liens or other security interests; the hypothetical net proceeds after sale and payoff of any balance owed and expenses of sale. Common usage. See, "net equity," this dictionary

### equity security

means -

- (A) share in a corporation, whether or not transferable or denominated "stock", or similar security;
- (B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph;  
Sec. 101. Definitions

equity security holder

means holder of an equity security of the debtor. Sec. 101. Definitions

equitable lien

a lien recognized under principles of equity in the absence of legal lien rights  
Blum, Bankruptcy and Debtor/Creditor (Aspen, 1999).

equitable subordination

the demotion of a claim under principles of equity, appropriate where fairness so requires, typically when the claimant has behaved in a dishonest or inequitable manner to the prejudice of a more junior party. Blum, Bankruptcy and Debtor/Creditor (Aspen, 1999).

equity cushion

the amount of surplus equity in a property, in excess of the lien holder's claim, sufficient to prevent the lien holder's claim from becoming less valuable due to nonpayment of the mortgage or other monthly payment

equity security

a share in a corporation or a limited partner's interest in a partnership

estate

the commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all of the debtor's property. The estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.  
Public Information Series of the Bankruptcy Judges Division

examiner

a person appointed by the court to investigate the management or conduct of the debtor in Chapter 11. Blum, Bankruptcy And Debtor/Creditor (Aspen 1999).

exception from discharge

a category of debt that is not dischargeable in bankruptcy. Sec. 523; Sec. 507; Sec. 1328

exclusivity period

the period following the filing of a Chapter 11 petition, during which the debtor has the exclusive right to file a plan. Blum, Bankruptcy And Debtor/Creditor (Aspen 1999).

exclusions (from the estate)

categories of property that are not deemed property of the bankruptcy estate; as distinct from exempt property, which is property of the estate that the debtor may retain.

executory contract

a contract in which both parties have duties remaining to be satisfied.  
Common usage. 11 U.S.C. § 744.

exemption, exempt property

category of debtor's property that is not taken from the debtor to satisfy debts; the debtor gets to keep it. Sec. 522. Rule 4003.

exigent circumstances

circumstances excusing the debtor from the requirement to satisfy the credit counseling requirement prior to filing the petition. 11 U.S.C. § 109(h)(3)(A).

## F

### family

all individuals residing under the same roof and who are related by blood or marriage. The Census Bureau Glossary prescribes the difference between household and family:  
 Household: A household includes all the people who occupy a housing unit as their usual place of residence .  
 Family: A group of two or more people who reside together and who are related by birth, marriage, or adoption. Bureau of the Census (census.gov). Definitions. Glossary.

### family farmer

means -

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or  
 (B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation,  
 and

- (i) more than 80 percent of the value of its assets consists of assets related to the farming operation;
- (ii) its aggregate debts do not exceed \$1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership;

and

- (iii) if such corporation issues stock, such stock is not publicly traded.

Sec. 101. Definitions

### family farmer with regular annual income

means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title; Sec. 101. Definitions

### farmer

means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person;

Sec. 101. Definitions

### farming operation

includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state; Sec. 101. Definitions

farmout agreement

means a written agreement in which

- (A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and
- (B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property; Sec. 101. Definitions

feasibility

the requirement for confirmation of a chapter 13 or chapter 11 plan that the plan be "feasible," i.e., the financial projections, considering income and expenses, appear to make it likely that the plan will succeed.

federal depository institutions regulatory agency

means -

- (A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);
- (B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;
- (C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and
- (D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation; Sec. 101. Definitions

fee application

in order for a professional, such as a lawyer representing the debtor or the trustee, to be paid out of the bankruptcy estate, he or she must file an application with the bankruptcy court and obtain court approval of the compensation to be paid. 11 U.S.C. §§ 327, 329; Bankruptcy Rules 2016, 2017

fee-sharing or fee-splitting agreement

sharing or splitting a bankruptcy fee between attorneys who are not members, partners, or regular associates of the same firm. Prohibited under 11 U.S.C. § 504. Rule 2016(b).

final discharge

extinguishing the debtor's personal liability on dischargeable debts, through the granting of a permanent injunction protecting the debtor from efforts to collect such debts as a personal liability. A discharge protects the debtor from personal liability for discharged debts and prevents the creditors owed those debts from taking any action against the debtor or his property to collect the debts. Public Information Series of the Bankruptcy Judges Division

financial institution

means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company and, when any such person is acting as agent or custodian for a

customer in connection with a securities contract, as defined in section 741 of this title, such customer; Sec. 101. Definitions

firm

includes a partnership or professional corporation of attorneys or accountants.  
Rule 9001. General Definitions

first meeting of creditors

following the filing of the petition, the first date of the required meeting which provides the creditors and the bankruptcy trustee an opportunity to question and debtor about his or her financial affairs; the meeting may be continued to one or more other dates in order to complete the examination.

floating lien

a security interest that extends to collateral of a specified type acquired by the debtor, to advances made to the debtor after the execution of the security agreement, or to both.

foreclosure

where a property owner has defaulted on the mortgage or installment agreement, or has become subject to a judgment creditor lien, the process of a mortgagor or other holder of an encumbrance on the debtor's property seizing and liquidating (i.e. selling) the property to pay the debt.

foreign proceeding

means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization; Sec. 101. Definitions

foreign representative

means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding; Sec. 101. Definitions

forward contract

means a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any combination thereof or option thereon;  
Sec. 101. Definitions

forward contract merchant

means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade; Sec. 101. Definitions

FRBP

Federal Rules of Bankruptcy Procedure

fraudulent transfer or conveyance

a debtor's conveyance or transfer of an asset, without adequate consideration, primarily for the purpose of concealing it from his or her creditors or the bankruptcy estate. Sec. 548

fresh start

the characterization of a debtor's status after bankruptcy. i.e., free of most debts.

List of Terms; Administrative Office of the United States Courts

## G

### gap period

the period between the filing of an involuntary petition and adjudication that the debtor is a "bankrupt." Jordan, Warren, Bussel, Bankruptcy (5th ed.), Foundation Press.

### garnishment

a creditor's levy (seizure) on property of the debtor in the possession of a third party; e.g., wage garnishment or levy.

### governmental unit

means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government; Sec. 101. Definitions

### going concern value

the fair market value of a business as an ongoing enterprise, as opposed to the value of its liquidable assets sold individually. Going concern value typically includes the value of intangibles such as good will that exist only where the business is still operating.

### good faith

the criteria required of chapter 13 and chapter 11 debtors that they have filed their cases or plans "in good faith," meaning they are honestly trying to sort out and solve debt problems without unfair manipulation of the bankruptcy system, or fraud against a creditor or the court.

### good faith purchaser

a phrase sometimes used instead of bona fide purchaser; typically, a purchaser who is innocent of any fraudulent or unfair motive and who purchases an asset for fair value.

### governmental unit

means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government; Sec. 101. Definitions

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### good faith purchaser

a phrase sometimes used instead of bona fide purchaser; typically, a purchaser who is innocent of any fraudulent or unfair motive and who purchases an asset for fair value.



## H

### Health Care Business

an entity described by BAPCPA as an entity engaged in offering to the general public facilities and services for diagnosis, treatment, surgery, drugs, psychiatric or other medical services, with additional qualifications prescribed by the Bankruptcy Code. 11 U.S.C. § 101(27A). Rule 1021.

### homestead exemption

an exemption granted under state law or the Bankruptcy Code for the debtor's residence, protecting it from seizure by the bankruptcy estate.

### household

a term relevant to the median income and means tests prescribed by BAPCPA. A strict definition is based on the Census Bureau, and the Census Bureau definition is all persons living under the same roof, regardless of blood, marital, or other relationship to the debtor. Household "A household includes all the people who occupy a housing unit as their usual place of residence." The Census Bureau Glossary prescribes the difference between household and family:  
 Household: A household includes all the people who occupy a housing unit as their usual place of residence .  
 Family: A group of two or more people who reside together and who are related by birth, marriage, or adoption.  
 Bureau of the Census (census.gov). Definitions. Glossary.

### household size

the total number of people living in a housing unit. 11 U.S.C. § 707(b)(6);

### household income

household income is the sum of money income received in calendar year 1999 by all household members 15 years old and over, including household members not related to the householder, people living alone, and other non-family household members. Included are in the total are amounts reported separately for wage or salary income; net self-employment income; interest, dividends, or net rental or royalty income or income from estates and trusts; Social Security or Railroad Retirement income; Supplemental Security Income (SSI); public assistance or welfare payments; retirement, survivor, or disability pensions; and all other income.  
 Bureau of the Census (census.gov). Definitions.

### hypothetical status of the trustee

the legal fiction created under 11 U.S.C. § 544 permitting the trustee to exercise avoidance powers that would have been available to a bona fide purchaser of real property, a lien creditor, or an execution creditor, had such persons existed on the date the bankruptcy was filed.

## I

### illiquid

an asset that cannot easily be converted into cash

### impaired

in Chapter 11 cases, when a plan of reorganization alters the contractual rights of a class of holders of claims, that class is deemed to be impaired. A class that is unimpaired is deemed to automatically accept a plan of reorganization. includes and "including" are not limiting; Sec. 102. Rules of construction

### in personam

an action directed towards an individual personally

### in rem

an action directed towards some specific piece of property

### indenture

means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor; Sec. 101. Definitions

### indenture trustee

means trustee under an indenture. Sec. 101. Definitions

### individual

a natural person, as opposed to a business or other entity

### individual with regular income

means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker; Sec. 101. Definitions

### indubitable equivalent

value equal to the value of an interest in an asset

### insider

includes -

- (A) if the debtor is an individual -
  - (i) relative of the debtor or of a general partner of the debtor;
  - (ii) partnership in which the debtor is a general partner;
  - (iii) general partner of the debtor; or
  - (iv) corporation of which the debtor is a director, officer, or person in control;
- (B) if the debtor is a corporation -
  - (i) director of the debtor;
  - (ii) officer of the debtor;
  - (iii) person in control of the debtor;
  - (iv) partnership in which the debtor is a general partner;
  - (v) general partner of the debtor; or

- (vi) relative of a general partner, director, officer, or person in control of the debtor;
- (C) if the debtor is a partnership -
  - (i) general partner in the debtor;
  - (ii) relative of a general partner in, general partner of, or person in control of the debtor;
  - (iii) partnership in which the debtor is a general partner;
  - (iv) general partner of the debtor; or
  - (v) person in control of the debtor;
- (D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;
- (E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and
- (F) managing agent of the debtor; Sec. 101. Definitions

insolvent

means -

- (A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of -
  - (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and
  - (ii) property that may be exempted from property of the estate under section 522 of this title;
- (B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation -
  - (i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and
  - (ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts; and
- (C) with reference to a municipality, financial condition such that the municipality is -
  - (i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or
  - (ii) unable to pay its debts as they become due; Sec. 101. Definitions

institution-affiliated party

- (A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and
- (B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act; Sec. 101. Definitions

insured credit union

has the meaning given it in section 101(7) of the Federal Credit Union Act; Sec. 101. Definitions

insured depository institution

- (A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and
- (B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection); Sec. 101. Definitions

intellectual property

means -

- (A) trade secret;
  - (B) invention, process, design, or plant protected under title 35;
  - (C) patent application;
  - (D) plant variety;
  - (E) work of authorship protected under title 17; or
  - (F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law.
- Sec. 101. Definitions

intentions, statement of

a form the chapter 7 debtor files indicating his/her intentions with regard to secured or undersecured assets (reaffirm, redeem, or surrender).

interim trustee

a trustee appointed when a chapter 7 case is filed, who serves until a permanent trustee is appointed; in actual practice, the "interim" trustee typically takes over as the permanent trustee in chapter 7 cases. Sec. 701. Rule 2001.

intervention & right to be heard

the court may permit any interested entity to intervene in a case in connection with the rights and interests of such person in the adjudication. Rule 2018.

inventory

means personal property leased or furnished held for sale or lease, or to be furnished under a contract for services, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease. 11 U.S.C. § 547(a)(1)

involuntary bankruptcy

a chapter 7 or chapter 11 case initiated by a debtor's creditors rather than by the debtor. 11 U.S.C. § 303; Rule 1003.

ipso facto clause

a provision of a contract providing that the filing of a bankruptcy is deemed a default on the contract; Under pre-BAPCPA law such clauses were a nullity. The Reform Act rescinded the prohibition on ipso facto clauses, but they remain effective to the extent valid under state law.

IRS Collection Financial Standards

expense limits or guidelines described in the IRS Manual, and which are incorporated into the "means test" litany of permissible expenses by the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005.

## J

### joint administration

a court-approved mechanism under which two or more cases can be administered together.  
List of Terms; Administrative Office of the United States Courts

### joint petition

one bankruptcy petition filed by a husband and wife together  
List of Terms; Administrative Office of the United States Courts

### judicial lien, judgment lien

lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;  
Sec. 101. Definitions

### judgment

any appealable order . Rule 9001. General Definitions

## K

## L

### lien

charge against or interest in property to secure payment of a debt or performance of an obligation; Sec. 101. Definitions

### lien avoidance

the procedure prescribed by the Bankruptcy Code of permitting the trustee or the debtor, in some circumstances, to nullify or strip off the security interest lien that a creditor may have on real or personal property. 11 U.S.C. § 544 Avoidance of judicial lien; § 545 Avoidance of unperfected statutory lien; § 547 Avoidance of preferential lien, etc.

### levy

a term used to describe the act of a taxing authority to seize a taxpayer's property held by a third person on account of the taxpayer's delinquent taxes

### lien stripping

the provision of a plan providing for payment of an undersecured claim at the value of the collateral only, with the unsecured balance discharged in whole or in part. Lien strip-off - a lien set aside on property that has no equity to which the lien may attach

### liquidate

to marshal and sell a debtor's property and distribution of the proceeds to creditors in a bankruptcy  
Common usage

### liquidated claim

a claim for which the amount and liability have been precisely determined, or which is capable of ready and precise determination with simple arithmetical calculations.  
Lundin, Hon. Keith M., Chapter 13 Bankruptcy (Bankruptcy Press)

### liquidating chapter 11 or chapter 13

a chapter 11 reorganization or an adjustment of debt under Chapter 13 which provides for the sale of the assets, payoff of claims and prompt final discharge without the long-term payment schedule and preservation of assets more typical of such bankruptcies.

### liquidating securities to money

the trustee may liquidate, that is sell, securities such as stocks, partnership interests, investment interests held by the estate. 11 U.S.C. § 748

### loading up (see also *bust-out*)

a debtor deliberately running up debt on the eve of bankruptcy

### local rules

special rules governing filing of papers, procedural matters, compensation, and similar rules adopted by bankruptcy courts and bankruptcy districts. These are typically imposed by local judges who wish some uniformity in how the court's business is conducted.

Official Bankruptcy Rule 9029, Local Bankruptcy Rules; procedure when there is no controlling law

local standards

as prescribed by BAPCPA, the debt limits or allowances for specified expense categories as prescribed by the Internal Revenue Service. Local standards include monthly allowable expenses for housing and transportation. 11 U.S.C. § 707(b)(2)(A)(ii).

lockup agreement

a letter agreement between a company and certain of its major constituents in support of a proposed Chapter 11 plan of reorganization.

long-arm powers

generally, the bankruptcy trustee's power, under certain circumstances, to avoid or set aside a lien or security interest on property. Sec. 544, 545, 547, 548, 553

long-term secured debt

any secured debt on which the last payment is due after the date on which the final payment under the plan is due. Sec. 1322(b)(5)

Look-back period

refers to the number of days prior to the filing of a bankruptcy that a significant event may have occurred, or was supposed to occur. For example, the lookback period in which the debtor must satisfy the credit-counseling requirement imposed by BAPCPA is 180-days prior to filing bankruptcy. Lookback periods apply in other statutes as well, including, for example, homestead exemptions, vehicle strip-downs, fraud, and prior filing of a bankruptcy and how it may affect the automatic stay, and the period of time for which the debtor must provide payment advices (pay stubs).

## M

### mail

means first class, postage prepaid. Rule 9001. General Definitions

### margin payment

means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments; and [2] Sec. 101. Definitions

### margin payment

means payment or deposit of cash, a security, or other property, that is commonly known to the securities trade as original margin, initial margin, maintenance margin, or variation margin, or as a mark-to-market payment, or that secures an obligation of a participant in a securities clearing agency. Sec. 741. Definitions for this subchapter

### marshalling

the doctrine of marshalling> <is an equitable remedy which the bankruptcy court may apply in its discretion. In Oregon, it has been defined as a "basic principle of equity that where a senior creditor has recourse to two funds and a junior creditor has recourse to but one of them, the senior creditor must seek to satisfy itself first out of the fund in which the junior creditor has no interest." *Community Bank v. Jones*, 278 Or. 647, 678, 566 P.2d 470, 488 (1977)

In order to support a claim for marshalling of assets, the creditor must prove "(1) the existence of two creditors with a common debtor; (2) the existence of two funds belonging to the debtor; (3) the legal right of one creditor to satisfy his demand from either or both of the funds, while the other may resort to only one fund." *Id.* at 14-15; See also *Exchange Bank of Kingstree v. South Carolina Nat'l Bank (In re Dig It, Inc.)*, 129 B.R. 65 (Bankr.D.S.C. 1991).

### mask work

has the meaning given it in section 901(a)(2) of title 17. Sec. 101. Definitions

### matrix

a list of the names and addresses of creditors typically filed with the petition and schedules upon commencement of the bankruptcy case.

### may not

is prohibitive, and not permissive. Sec. 102. Rules of construction

### means test

an arithmetical formula prescribed by 11 U.S.C. § 707(b)(2) used in all cases with debtors whose incomes exceed the state median, and which is done to determine whether or not a "presumption of abuse" arises if the debtor files chapter 7, triggering a motion to dismiss or convert to chapter 13. Prescribed by BAPCPA.

### median family income

means median family income as reported by the Bureau of the Census for any given year, or as adjusted annually pursuant to qualification set forth in the Code. 11 U.S.C. § 101(39A)



median income test

a comparison of a prospective debtor's income with the median state income for the state in which the debtor resides, to determine whether or not the debtor must be subject to the means test, and used to determine several aspects of a chapter 13 plan.

meeting of creditors

a meeting that takes place about 30 days after the commencement of a bankruptcy case. The debtor (s) must attend this meeting, at which creditors may appear and ask questions regarding the debtor's financial affairs and property. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The trustee also will attend this meeting. It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The trustee is required to examine the debtor orally at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy, including the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. This meeting is also sometimes called the "341" hearing, named after the section of the Bankruptcy Code authorizing it. Public Information Series of the Bankruptcy Judges Division

motion

a request filed with the bankruptcy clerk setting a court hearing and seeking an order of some kind from the judge

multiplier

the provisions of the Bankruptcy Code enacted by BAPCPA used to calculate the debtor's projected disposable income. Also called the "applicable commitment period."  
11 U.S.C. § 1325(b)

municipality

means political subdivision or public agency or instrumentality of a State. Sec. 101. Definitions

## N

### NACBA

National Association of Consumer Bankruptcy Attorneys

### NCLC

National Consumer Law Center

### National Bankruptcy Review Commission

an entity created by the Bankruptcy Reform Act of 1994 and given the assignment of conducting, over a period of two years, a thorough study of the existing bankruptcy law and report back to Congress on recommended changes to the Code and Rules. Included public hearings across the country. The report, lodged with Congress according to schedule, has been largely ignored.

### national standards

as prescribed by BAPCPA, the debt limits or allowances for specified expense categories as prescribed by the Internal Revenue Service. National standards include monthly allowable expenses for food, household supplies and expenses, apparel, personal services, miscellaneous expenses. 11 U.S.C. § 707(b)(2)(A)(ii).

### net equity

means, with respect to all accounts of a customer that such customer has in the same capacity -  
(A)

(i) aggregate dollar balance that would remain in such accounts after the liquidation, by sale or purchase, at the time of the filing of the petition, of all securities positions in all such accounts, except any customer name securities of such customer; minus

(ii) any claim of the debtor against such customer in such capacity that would have been owing immediately after such liquidation; plus

(B) any payment by such customer to the trustee, within 60 days after notice under section 342 of this title, of any business related claim of the debtor against such customer in such capacity;  
Sec. 741. Definitions for this subchapter

### "new debtor" syndrome

a practice whereby a company in trouble transfers a parcel of "distressed" real property that is on the eve of foreclosure, to a new corporation, then puts the new corporation into chapter 11 to halt the foreclosure.

### new value exception

in Chapter 11 cases, an exception to the absolute priority rule that enables equity holders to retain their interests in the debtor, even though a senior non-accepting class has not been paid in full, if the equity holders contribute new capital to the debtor equal to or greater than the value of their interests. Blum, Bankruptcy And Debtor/Creditor, Aspen 1999

### new value

money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation. 11 U.S.C. § 547(a)(2).

no-asset case

a bankruptcy case where there are no assets available to satisfy any portion of the creditor's unsecured claims; a case in which all of the debtor's property is "exempt." Typically used in connection with chapter 7 bankruptcies. List of Terms: Administrative Office of the United States Courts

nol

net operating loss

non-dischargeable debt

a debt that may not be discharged under one or more chapters of the Bankruptcy Code

nonexempt property

nonexempt property is property that the debtor owns free and clear of liens and the debtor's property which has market value above the amount of any security interest or lien and any exemption that the debtor holds in the property. Public Information Series of the Bankruptcy Judges Division

nonrecourse secured debt

a secured debt for which the debtor has no liability beyond the value of the collateral, so that the debtor cannot be held responsible for any deficiency following foreclosure. Blum, Bankruptcy And Debtor/Creditor, Aspen 1999

notice and a hearing

if required by the Bankruptcy Code, notice of a proposed order and notice of an opportunity to be heard (i.e., an opportunity to request a hearing to object to the proposed action).  
11 U.S.C. § 102(1)

notice of presumption of abuse

in chapter 7 cases, the court clerk's notice to parties in interest of the existence of a presumption of abuse, pursuant to Bankruptcy Rule 5008. 11 U.S.C. § 707(b)(2)(A).

## O

### objection to discharge

an objection filed in a bankruptcy case requesting the court to prohibit the discharge of a particular debt, or to deny the debtor a discharge as to all of the debts

### objection to claim

an objection filed in a bankruptcy case requesting the court to deny a creditor's claim or a portion of it, or the creditor's characterization of it as secured, priority, or other.

### objection to exemption

an objection filed in a bankruptcy case requesting the court to deny a debtor's claim of exemption in property. Rule 4003(b).

### objection to plan

an objection to confirmation of a plan, typically in connection with chapter 13 and chapter 11. May also apply to chapter 12 (family farmer) or chapter 9 (municipality).

### offer in compromise

a program offered by the IRS and some states by which an eligible delinquent taxpayer may compromise a tax liability for less than the total amount owed.

### or

is not exclusive; Sec. 102. Rules of construction

### official rules

the set of Federal Rules of Practice that govern bankruptcy court procedure. Properly referred to as the Federal Rules of Bankruptcy Procedure. 28 U.S.C. § 2075

### order for relief

means entry of an order for relief, i.e. the automatic stay; Sec. 102. Rules of construction

### ordinary course of business

a defense to an accusation of preferential transfer; the payment to the creditor was in the manner and timeliness that is usual in the industry or was the usual manner of payment between the debtor and the creditor. If found to be a preferential payment the Trustee has the right to demand that it be returned to the estate. 11 U.S.C. § 547

### OUST

Office of the United States Trustee

## P

### PACER

the acronym for Public Access to Court Electronic Records. An Internet service provided by the court system that provides information and documents in all filed bankruptcy cases across the nation.

### party, party-in-interest

for purposes of Chapter 11, "party-in-interest" includes the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee; 11 U.S.C. § 1109(b). May also include "... any party that can demonstrate it has an interest in the bankruptcy case ..." In re Hathaway Ranch Partnership, 116 B.R. 208, 212 (Bankr.C.D.Cal. 1990).

Generally, has been defined as one who has a direct pecuniary interest in the matter before the court. Nintendo Co. Ltd v. Patten (In re Alpex Computer Corp), 71 F.3d 353, 356 (10th Cir. 1995) Has been defined as the holder of an allowed claim. In re Stewart, 46 B.R. 73 (Bankr. D. Or. 1985) "party-in-interest" is not otherwise defined in the Bankruptcy Code.

### patient care ombudsman

a debtor who is a health care business must have a patient care ombudsman to monitor the quality of patient care and to represent the interests of the patients during the pendency of the bankruptcy proceeding. 11 U.S.C. § 333.

### payment advices

a term imposed by BAPCPA referring to the documentary proof of income required to be filed with the petition, referred to at 11 U.S.C. § 521(a)(1)(B)(iv). This phrase is generally understood to refer primarily to a wage-earner's paycheck stubs.

### perfection

the process of making a lien legally effective by completing any required steps such as filing it with the county recorder's office.

### permanent injunction or permanent discharge

extinguishing the debtor's personal liability on dischargeable debts, through the granting of a permanent injunction protecting the debtor from efforts to collect such debts as a personal liability. A discharge protects the debtor from personal liability for discharged debts and prevents the creditors owed those debts from taking any action against the debtor or his property to collect the debts. Public Information Series of the Bankruptcy Judges Division

### person

includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that -

(A) acquires an asset from a person -

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of -

- (i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or
  - (ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986; shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;
- Sec. 101. Definitions

petition

means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title; Sec. 101. Definitions

plan

a chapter 11, chapter 13, chapter 9, chapter 12 debtor's detailed description of how the debtor proposes to pay creditors' claims, deal with leases and executory contracts, and fund the plan, over a fixed period of time. The plan may propose payment in whole or in part.

PMSI

purchase-money security interest, such as a contract to buy a car with installments, where the car is security for the debt.

postpetition

any event happening after the date the bankruptcy was filed

pot plan

a chapter 13 plan under which the debtor pays a fixed amount, or "pot of money," into the bankruptcy estate. The percentage of a claim that a creditor ultimately receives from the bankruptcy estate will depend on the total amount of approved claims.  
Meyer v. Pagano, \_\_\_\_\_ B.R. \_\_\_\_\_ (D.N.D.Cal. 2002)

pre-bankruptcy planning

the allowed practice of transferring non-exempt property to exempt property in contemplation of filing bankruptcy. The term may encompass a broader range of "planning" such as choice of venue, chapter of bankruptcy, transfer-back of prepetition transfers, etc.

preference, or preferential transfer

a pre-petition payment or transfer made to a creditor, during a certain period of time before the bankruptcy petition is filed, on account of an antecedent debt, which enables such creditor to receive more than such creditor would receive had the case been one under chapter 7.  
Sec. 547(b), (c)

preference period

the period of 90 days immediately prior to filing the petition during which time a debtor's payment to a creditor may be deemed a preferential payment in that it is made without adequate consideration and which puts the payee creditor in a better position vis-à-vis the other creditors. The preference period for payments made to an insider is one-year prior to the filing of the petition. Such payments (transfers) may be avoided by the trustee for the benefit of the estate. 11 U.S.C. § 547(b).

preferential lien

a lien obtained under circumstances which make it a preferential payment or transfer and subject to being avoided. See preference, above.

prepackaged bankruptcy

before filing a bankruptcy case (typically a chapter 11) debtor and creditors may have negotiated an agreed upon plan of reorganization. The bankruptcy petition can then be filed and the plan proposed and confirmed with much less time and expense.

prepetition

the time before the date that a bankruptcy petition is filed. Common usage

prepetition arrears or default

money owed to a creditor before a bankruptcy is filed, or a default on the terms of lease or executory contract that occurred prior to filing.

present value

the present equivalent of the value of a future amount or future stream of payments, adjusted to account for inflation.

presumption of abuse

prescribed by BAPCPA, the presumption of abuse is a presumption that arises in chapter 7 cases where the debtor's income exceeds the state median and demonstrates sufficient future disposable (i.e., surplus) income to pay a certain defined amount to unsecured creditors if it were a chapter 13 case, prescribed by the means test. Upon the presumption arising in a chapter 7 case, the trustee will in most cases move for an order dismissing the case or, with the debtor's consent, convert to chapter 13. 11 U.S.C. § 707(b)(2).

primarily consumer debts

debtor's liabilities of which more than 50% are consumer debts.

priority

the Bankruptcy Code's statutory ranking of unsecured claims that determines the order in which unsecured claims will be paid if there is not enough money to pay all unsecured claims in full. List of Terms; Administrative Office of the United States Courts

priority claim

an unsecured claim falling into one of the categories listed in Bankruptcy Code § 507.

production payment

means a term overriding royalty satisfiable in cash or in kind -

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs;

Sec. 101. Definitions

professional person

a person such as a lawyer, accountant, appraiser or other professional person employed on behalf of the bankruptcy estate, the debtor, or the trustee.

projected disposable income

the future income of the debtor that has a bearing on the chapter 13 plan. The phrase has been defined in contradictory terms by different courts, some defining it as the debtor's future actual

disposable income, others defining it as the historical disposable income as determined by the Bankruptcy Code as the average over the six months preceding the filing of the petition, multiplied by the number of months of the projected plan. 11 U.S.C. § 1325(b)(1)(B).

proof of claim

the official form prescribed by the Bankruptcy Rules by which a creditor files his claim or evidence of debt in a bankruptcy case

property of the estate

the commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all of the debtor's property. The estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.  
Public Information Series of the Bankruptcy Judges Division. 11 U.S.C. § 541.

pro se

an individual representing him/herself in litigation (i.e., without an attorney)

purchaser

means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee; Sec. 101. Definitions

purchase money security interest

a security interest in property, to the extent that it secures a loan or credit given to the debtor for the express purpose of acquiring the property and actually used by the debtor for that purpose.  
Blum, Bankruptcy And Debtor/Creditor, Aspen 1999



## Q

qui tam

"who sues on behalf of the king as well as for himself" is a provision of the Federal Civil False Claims Act that allows a private citizen to file a suit in the name of the U.S. Government charging fraud by government contractors and other entities who receive or use government funds, and share in any money recovered.

## R

## railroad

means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier; Sec. 101. Definitions

## reaffirmation agreement (reaffirm)

a reaffirmation is an agreement between the debtor and the creditor (typically a secured creditor) that the debtor will pay all or a portion of the money balance owed on the installment agreement, even though the debtor has filed bankruptcy. In return, the creditor promises that, as long as payments are made, the creditor will not repossess or take back the automobile or other personal property constituting the collateral for the debt. Public Information Series of the Bankruptcy Judges Division

reach-back period (see also *look-back period*)

the period immediately prior to filing the bankruptcy within which transfers of money or property may be deemed fraudulent or preferential; the period prior to filing bankruptcy within which one or more of the critical time periods may or may not have expired for purposes of discharging taxes in bankruptcy.

## receivable

money owed to a person or entity; in business usage, money owed by a customer or client to a business entity for goods or services sold.

## recoupment

the doctrine allowing one party to reduce a judgment owed to another on account of an obligation owed to the first party arising out of the same transaction. [to be distinguished from setoff] In re LaPierre, 180 B.R. 95 (Bkrtcy. S.C. 1994).

## redemption (redeem)

the act of a bankruptcy debtor retaining title and possession of an asset for which there is a balance owed, by paying off in a lump sum the present value of the property "as is" and discharging any unsecured balance, pursuant to Bankruptcy Code § 722.

## reference

a bankruptcy court is established in each federal judicial district. However, this bankruptcy court is not an independent court. Instead, it is a "unit" of the district court. Reference of bankruptcy cases and proceedings by the district court to the bankruptcy court is discretionary with the district court.

Nevertheless, all district courts have adopted a local rule automatically referring all bankruptcy cases and proceedings to the bankruptcy judges in the district.

Because the bankruptcy court is merely an adjunct of the district court, the district court may withdraw the reference of a bankruptcy case or a particular bankruptcy proceeding from the bankruptcy judge at any time. Ginsberg And Martin On Bankruptcy [Aspen]

## referee

the original name for a bankruptcy judge under the Bankruptcy Act of 1898.

regular associate

means any attorney regularly employed by, associated with, or counsel to an individual or firm.  
Rule 9001. General Definitions

regular income

income consistent enough to fund a chapter 13 plan without frequent default or amendment required. 11 U.S.C. § 109(e). “An individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13.” Code § 101(30).

rehabilitation

resolution of a debtor's financial problems through the bankruptcy process. Typically used in a Chapter 13 or Chapter 11 business context

rejection

in the bankruptcy context, may refer to the act of the debtor or the estate rejecting (repudiating) a lease or executory contract pursuant to 11 U.S.C. § 365, or may refer to a creditor's negative vote on the plan in a Chapter 11 case.

relative

means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree;  
Sec. 101. Definitions

relief from stay

permission of the bankruptcy court to proceed against the debtor or the debtor's property during the period that the automatic or permanent stay is in effect. Sec. 362(d)

remand

the act of a court of appeal returning a case to the lower court (i.e., the bankruptcy court) for further adjudication of issues within the ruling or guidelines in the case set by the court of appeal.

removal

the act of moving a piece of litigation from another court to the bankruptcy court, or the U.S. District Court.

reorganization

a form of bankruptcy (chapter 9 or chapter 11) in which an entity's financial affairs are reorganized in order to provide relief from debt while continuing as a going-concern. Typically involves a rescheduling of debt payments and may include discharge of some debt.  
Sec. 1101 et seq.

repo participant

means an entity that, on any day during the period beginning 90 days before the date of the filing of the petition, has an outstanding repurchase agreement with the debtor; Sec. 101. Definitions

repurchase agreement

(which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, or securities with a

simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;

Sec. 101. Definitions

revest or vest

act of returning control and possession of assets to the debtor; a term in connection with chapter 13 cases. 11 U.S.C. § 1327.

ride-through

in Chapter 7 the debtor has the choices, provided by statute, to deal with a secured debt by 1) surrendering the property and discharging the debt; 2) keeping the property, paying in a lump sum only the present value of the collateral and discharging the unsecured balance (redemption); or 3) reaffirming the original contract, keeping the property and continue paying the regular payment. In many jurisdictions the courts have allowed a fourth option - keep the collateral, no need to reaffirm, and keep paying the regular payment (ride-through).

Rooker-Feldman doctrine

a limitation on the jurisdiction of lower federal courts, based on the statute, 28 U.S.C. § 1257, that grants the Supreme Court of the United States jurisdiction to review decisions of the highest court of a state. Specifically, "[t]he Rooker-Feldman doctrine interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court. In re Benalcazar, \_\_\_\_\_ B.R. \_\_\_\_\_ (N.D.Ill. 2002).

Under this principle, even though a California state court decision is on appeal and not final for the purposes of claim preclusion under California law, it is binding upon us and all federal courts (except the United States Supreme Court) and may not be reexamined by us except in very limited circumstances. In Re Williams, (9th Cir. 2002)

## S

### schedules

documents consisting of lists of debts, property and other information that are filed together with the petition at the commencement of a bankruptcy case. Sec. 521(1); Rule 1007

### scream or die

an expression often used to describe a notice of motion made in bankruptcy court giving parties in interest a certain number of days in which to object to the requested action; if no party objects within the given time (typically 20 days) the judge will sign the order.

### section 341 meeting

the meeting of creditors required and conducted pursuant to 11 U.S.C. § 341. See, meeting of creditors.

### secured debt

debts, for which the extension of credit was based upon the creditor's right to seize pledged property on default, in addition to the debtor's ability to pay.  
Public Information Series of the Bankruptcy Judges Division

### secured creditor

a creditor whose debt is secured by property of the debtor's estate or by right of setoff; may also include property in which the estate has an "interest."  
List of Terms; Administrative Office of the United States Courts

### securities clearing agency

means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A; Sec. 101. Definitions

### securities contract

means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency; Sec. 741. Definitions for this subchapter

### security

- (A) includes -
- (i) note;
  - (ii) stock;
  - (iii) treasury stock;
  - (iv) bond;
  - (v) debenture;
  - (vi) collateral trust certificate;
  - (vii) pre-organization certificate or subscription;
  - (viii) transferable share;
  - (ix) voting-trust certificate;

- (x) certificate of deposit;
  - (xi) certificate of deposit for security;
  - (xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;
  - (xiii) interest of a limited partner in a limited partnership;
  - (xiv) other claim or interest commonly known as "security"; and
  - (xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but
- (B) does not include -
- (i) currency, check, draft, bill of exchange, or bank letter of credit;
  - (ii) leverage transaction, as defined in section 761 of this title;
  - (iii) commodity futures contract or forward contract;
  - (iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;
  - (v) option to purchase or sell a commodity;
  - (vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or
  - (vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;
- Sec. 101. Definitions

security agreement

means agreement that creates or provides for a security interest; Sec. 101. Definitions

security interest

means lien created by an agreement; Sec. 101. Definitions

serial filer

an individual who files bankruptcy more than once

settlor

an individual who sets up a trust

setoff

a creditor's right, under certain circumstances, to keep debtor's money the creditor has in its possession in order to apply it to (i.e., offset it against) a prepetition debt owed by the debtor. [to be distinguished from recoupment]. 11 U.S.C. § 553.

settlement payment

means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade; Sec. 101. Definitions

settlement payment

means a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, or any other similar payment commonly used in the securities trade; Sec. 741. Definitions for this subchapter

singular

includes the plural; Sec. 102. Rules of construction

SIPC

means Securities Investor Protection Corporation. Sec. 741. Definitions for this subchapter

single asset real estate

means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto having aggregate non-contingent, liquidated secured debts in an amount no more than \$4,000,000; Sec. 101. Definitions

small business

means a person engaged in commercial or business activities (but does not include a person whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate non-contingent liquidated secured and unsecured debts as of the date of the petition do not exceed \$2,000,000; Sec. 101. Definitions

smooth-down

the right of a debtor in chapter 13 to retain property secured in favor of a creditor and pay only the secured portion, with interest, over the life of the plan.

Lundin, Hon. Keith M., Chapter 13 Bankruptcy (Bankruptcy Press)

SOFA

Statement of Financial Affairs; is filed with the petition upon commencement of a bankruptcy case.

special circumstances

the phrase special circumstances arises in connection with certain provisions in the Bankruptcy Code imposed by BAPCPA. In a chapter 7 case where a presumption of abuse arises due to the means test, the Code allows the debtor to rebut the presumption by demonstrating the existence of special circumstances negating a finding of actual abuse. § 707(b)(2)(B)(i).

spendthrift provision

a trust with restrictions on alienation (i.e., restrictions on right to transfer to another) designed to protect the fund from dissipation by the beneficiary or seizure by the beneficiary's creditors.

state includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title; Sec. 101. Definitions

standing trustee

a person appointed by the U.S. Trustee to serve as trustee for all Ch. 12 and 13 cases filed in a region.

statement of financial affairs (“SOFA”)

a document that the debtor files at the commencement of a bankruptcy case summarizing his or her financial affairs. Rule 1007

statement of intentions

a document that the debtor files at the commencement of a bankruptcy case describing what he or she intends to do with secured assets. Rule 1007(b)

statutory lien

means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute; Sec. 101. Definitions

stay

a restraining order arising out of the filing of a bankruptcy case. The filing of a petition "automatically stays" most actions against the debtor or the debtor's property. 11 U.S.C. § 362. This stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors normally receive notice of the filing of the petition from the clerk. Public Information Series of the Bankruptcy Judges Division

stockbroker

means person -

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities -

(i) for the account of others; or

(ii) with members of the general public, from or for such person's own account;

Sec. 101. Definitions

straight bankruptcy

chapter 7 bankruptcy, in which debts are discharged, non-exempt property is liquidated and there is no extended payment plan involved.

strike

to close a bankruptcy case by striking, rather than dismissing it. A prior stricken case does not have the consequences a prior dismissed case may have in terms of the debtor's right to re-file and be eligible for a discharge, or potential termination of the automatic stay.

strong-arm clause

the name given to the trustee's power to avoid (set aside) certain liens under 11 U.S.C. § 544(a) and other sections of the bankruptcy code. See avoid.

subordination

the act of placing a claim or security interest at a lower priority in the administration of the bankruptcy case than it would ordinarily be entitled to, where the circumstances allow it. Typically an equitable power of the bankruptcy court based on the wrong-doing of the claimholder or security interest holder.

substantial abuse

the characterization of a bankruptcy case filed by an individual whose debts are primarily consumer debts where the court finds that the granting of relief would be an abuse of chapter 7 because, for example, the debtor can pay its debts. List of Terms; Administrative Office of the United States Courts



substantial consummation

means -

- (A) transfer of all or substantially all of the property proposed by the plan to be transferred;
- (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
- (C) commencement of distribution under the plan.

Sec. 1101. Definitions for this chapter

substantive consolidation

putting the assets and liabilities of two or more related debtors into a single pool to pay creditors.  
List of Terms; Administrative Office of the United States Courts

super-priority

special priority status given to two types of claims: 1) holders of certain administrative claims who do not have adequate protection; and 2) a priority status senior to all other claims granted to a postpetition financier under 11 U.S.C. § 364(c), as consideration for the extension of credit to the estate or the debtor.

swap agreement

means -

- (A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);
- (B) any combination of the foregoing; or
- (C) a master agreement for any of the foregoing together with all supplements;

Sec. 101. Definitions

swap participant

means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor; Sec. 101. Definitions

## T

### term overriding royalty

means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized; Sec. 101. Definitions

### TILA

Truth In Lending Act.

### timeshare plan

means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan;  
Sec. 101. Definitions

### Title 11

Title 11 of the United States Codes, i.e., the Bankruptcy Code; 11 U.S.C. § 101 et seq.

### transcript of return

a term imposed by BAPCPA referring to a transcript of a taxpayer's Federal tax return. Under BAPCPA the debtor is required to provide a copy of his/her most recent, required, filed Federal tax return, or "transcript of such return" to the trustee no later than 7 days before the date first set for the meeting of creditors. This transcript should not be confused with the IRS "Account Transcript" which is an entirely different document needed to determine the dischargeability of taxes in bankruptcy (formerly called the "MFTRA-X" transcript).  
11 U.S.C. § 521(e)(2)(A)(i)

### transfer

means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption;  
[added by BAPCPA: "creation of a lien, the retention of title as a security interest, the foreclosure of a debtor's equity of redemption or;"]. Sec. 101. Definitions

### trustee

upon the filing of the chapter 7 petition, an impartial case trustee is appointed by the United States trustee (or by the court in Alabama and North Carolina) to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. §§ 701, 704. The primary role of a chapter 7 trustee in an "asset" case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. Public Information Series of the Bankruptcy Judges Division

trustee

includes a debtor-in-possession in a chapter 11 case. Rule 9001. General Definitions

turnover

the surrender of estate property to the trustee by any person in possession of it, pursuant to 11 U.S.C. §§ 542 and 543.

## U

### UCC

the Uniform Commercial Code. A statute adopted in all states except Louisiana covering sales, negotiable instruments, security interests and other commercial transactions.

### UCC-1

a special document providing for certain personal property to be listed as collateral for a loan or debt.

### UFCA/UFTA

the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act.

### undersecured debt

debt secured on certain of the debtor's property by means of a security interest, lien or other security instrument, but for which the value of the property (i.e., collateral) securing the debt is less than the amount of the debt. Common usage

### unimpaired

a class of claims or interests that are deemed not impaired in the context of a Chapter 11 case.

### United States

when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States;  
Sec. 101. Definitions

### United States trustee

United States trustees and bankruptcy administrators are responsible for establishing a panel of private trustees to serve as trustees in chapter 7 cases and for supervising the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of the Bankruptcy Code.  
Public Information Series of the Bankruptcy Judges Division

### United States trustee

includes a designee of the United States trustee. Sec. 102. Rules of construction. United States trustee includes an assistant United States trustee and any designee of the United States trustee.  
Rule 9001. General Definitions

### unliquidated claim

a claim for which the amount and liability have not been precisely determined and which cannot be determined without an evidentiary hearing (or which cannot be determined by application of simple arithmetical calculations). Lundin, Hon. Keith M., Chapter 13 Bankruptcy (Bankruptcy Press)

### unmatured claim

a claim for a debt that has come into existence but whose date of payment has not yet come due.

### unscheduled debt

a debt that should have been listed by a debtor in the schedules filed with the court but was not.  
List of Terms; Administrative Office of the United States Courts

unsecured debt

those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay, as opposed to secured debts, for which the extension of credit was based upon the creditor's right to seize pledged property on default, in addition to the debtor's ability to pay. Public Information Series of the Bankruptcy Judges Division

United States Trustee

a federal official, appointed by the U.S. Attorney General, who is responsible for the appointment of trustees to supervise bankruptcy cases, and generally monitor the proceedings for adherence to the norms and rules of bankruptcy procedure.

## V

### venue

the proper district in which to file a bankruptcy case. Venue does not refer to the proper division within a district for filing of cases.

### vest

act of returning control and possession of assets to the debtor; a term in connection with chapter 13 cases. 11 U.S.C. § 1327.

### violation of the stay

the unauthorized act of a creditor attempting to take, or exercise control over, property or money of the debtor to satisfy a claim during the time the automatic stay is in effect; an attempt to collect on a debt against a debtor in bankruptcy without first obtaining relief from stay. Sec. 362

### void

null, of no legal effect. The majority rule is that actions taken in violation of the automatic stay are void *ab initio* (from the beginning, needing no judicial declaration to find void).

### voidable

Subject to being declared null and of no legal effect. A minority of jurisdictions hold that violations of the automatic stay may be declared void by the bankruptcy court, a ruling within the discretion of the Court.

### voluntary transfer

a transfer or conveyance of a debtor's property with the debtor's consent. List of Terms; Administrative Office of the United States Courts

### voluntary case

a bankruptcy filed voluntarily by the debtor, as opposed to an involuntary bankruptcy filed by a debtor's creditors.

## W

### wage earner plan

a name sometimes given to consumer chapter 13 cases.

### wildcard exemption

the exemption provided in some exemption schemes providing an exemption for any kind of property the debtor wishes to exempt, up to a dollar value limit.

### withdrawal of the reference

although U.S. District courts have original jurisdiction over bankruptcy matters, they typically refer those matters to bankruptcy courts. Under certain circumstances the district court must withdraw the reference (i.e., must take the case back) and may take the case back under any circumstances it deems appropriate.

### workout

a negotiated settlement under which the debtor and creditors resolve the debtor's financial difficulties by agreeing to terms of payment. A workout may occur outside of bankruptcy, or in the context of formulating a plan within bankruptcy.

**X**

**Y**

**Z**