

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 704(8) of the Senate amendment is deleted in the House amendment. Trustees should give constructive notice of the commencement of the case in the manner specified under section 549(c) of title 11.

SENATE REPORT NO. 95-989

The essential duties of the trustee are enumerated in this section. Others, or elaborations on these, may be prescribed by the Rules of Bankruptcy Procedure to the extent not inconsistent with those prescribed by this section. The duties are derived from section 47a of the Bankruptcy Act [section 75(a) of former title 11].

The trustee's principal duty is to collect and reduce to money the property of the estate for which he serves, and to close up the estate as expeditiously as is compatible with the best interests of parties in interest. He must be accountable for all property received, and must investigate the financial affairs of the debtor. If a purpose would be served (such as if there are assets that will be distributed), the trustee is required to examine proofs of claims and object to the allowance of any claim that is improper. If advisable, the trustee must oppose the discharge of the debtor, which is for the benefit of general unsecured creditors whom the trustee represents.

The trustee is responsible to furnish such information concerning the estate and its administration as is requested by a party in interest. If the business of the debtor is authorized to be operated, then the trustee is required to file with governmental units charged with the responsibility for collection or determination of any tax arising out of the operation of the business periodic reports and summaries of the operation, including a statement of receipts and disbursements, and such other information as the court requires. He is required to give constructive notice of the commencement of the case in the manner specified under section 342(b).

REFERENCES IN TEXT

Section 3 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(11), is classified to section 1002 of Title 29, Labor.

Sections 464 and 466 of the Social Security Act, referred to in subsec. (c)(1)(A)(i), are classified to sections 664 and 666, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

2010—Subsec. (a)(3). Pub. L. 111-327 substituted “521(a)(2)(B)” for “521(2)(B)”.

2009—Subsec. (b)(1)(B). Pub. L. 111-16 substituted “7 days” for “5 days”.

2005—Pub. L. 109-8, §102(c)(1), designated existing provisions as subsec. (a).

Subsec. (a)(10). Pub. L. 109-8, §219(a)(1), added par. (10).

Subsec. (a)(11). Pub. L. 109-8, §446(b), added par. (11). Subsec. (a)(12). Pub. L. 109-8, §1105(a), added par. (12). Subsec. (b). Pub. L. 109-8, §102(c)(2), added subsec. (b). Subsec. (c). Pub. L. 109-8, §219(a)(2), added subsec. (c).

1986—Par. (8). Pub. L. 99-554, §217(1), inserted “, with the United States trustee,” after “with the court” and “the United States trustee or” after “information as”.

Par. (9). Pub. L. 99-554, §217(2), inserted “with the United States trustee” after “court”.

1984—Par. (1). Pub. L. 98-353, §474, substituted “close such estate” for “close up such estate”.

Pars. (3) to (9). Pub. L. 98-353, §311(a), added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-16 effective Dec. 1, 2009, see section 7 of Pub. L. 111-16, set out as a note under section 109 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 705. Creditors' committee

(a) At the meeting under section 341(a) of this title, creditors that may vote for a trustee under section 702(a) of this title may elect a committee of not fewer than three, and not more than eleven, creditors, each of whom holds an allowable unsecured claim of a kind entitled to distribution under section 726(a)(2) of this title.

(b) A committee elected under subsection (a) of this section may consult with the trustee or the United States trustee in connection with the administration of the estate, make recommendations to the trustee or the United States trustee respecting the performance of the trustee's duties, and submit to the court or the United States trustee any question affecting the administration of the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2605; Pub. L. 99-554, title II, §218, Oct. 27, 1986, 100 Stat. 3100.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 705(a) of the House amendment adopts a provision contained in the Senate amendment that limits a committee of creditors to not more than 11; the House bill contained no maximum limitation.

SENATE REPORT NO. 95-989

This section is derived from section 44b of the Bankruptcy Act [section 72(b) of former title 11] without substantial change. It permits election by general unsecured creditors of a committee of not fewer than 3 members and not more than 11 members to consult with the trustee in connection with the administration of the estate, to make recommendations to the trustee respecting the performance of his duties, and to submit to the court any question affecting the administration of the estate. There is no provision for compensation or reimbursement of its counsel.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-554 inserted “or the United States trustee” in three places.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 706. Conversion

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of

this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

(b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion.

(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2606; Pub. L. 99-554, title II, §257(q), Oct. 27, 1986, 100 Stat. 3115; Pub. L. 103-394, title V, §501(d)(22), Oct. 22, 1994, 108 Stat. 4146; Pub. L. 109-8, title I, §101, Apr. 20, 2005, 119 Stat. 27.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 706(a) of the House amendment adopts a provision contained in the Senate amendment indicating that a waiver of the right to convert a case under section 706(a) is unenforceable. The explicit reference in title 11 forbidding the waiver of certain rights is not intended to imply that other rights, such as the right to file a voluntary bankruptcy case under section 301, may be waived.

Section 706 of the House amendment adopts a similar provision contained in H.R. 8200 as passed by the House. Competing proposals contained in section 706(c) and section 706(d) of the Senate amendment are rejected.

SENATE REPORT NO. 95-989

Subsection (a) of this section gives the debtor the one-time absolute right of conversion of a liquidation case to a reorganization or individual repayment plan case. If the case has already once been converted from chapter 11 or 13 to chapter 7, then the debtor does not have that right. The policy of the provision is that the debtor should always be given the opportunity to repay his debts, and a waiver of the right to convert a case is unenforceable.

Subsection (b) permits the court, on request of a party in interest and after notice and a hearing, to convert the case to chapter 11 at any time. The decision whether to convert is left in the sound discretion of the court, based on what will most inure to the benefit of all parties in interest.

Subsection (c) is part of the prohibition against involuntary chapter 13 cases, and prohibits the court from converting a case to chapter 13 without the debtor's consent.

Subsection (d) reinforces section 109 by prohibiting conversion to a chapter unless the debtor is eligible to be a debtor under that chapter.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109-8 inserted “or consents to” after “requests”.

1994—Subsec. (a). Pub. L. 103-394 substituted “1208, or 1307” for “1307, or 1208”.

1986—Subsec. (a). Pub. L. 99-554, §257(q)(1), inserted references to chapter 12 and section 1208 of this title.

Subsec. (c). Pub. L. 99-554, §257(q)(2), inserted reference to chapter 12.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date,

except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or \$6,000,¹ whichever is greater; or

(II) \$10,000.¹

(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal

¹ See Adjustment of Dollar Amounts notes below.