# TITLE 11—BANKRUPTCY


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HISTORY OF BANKRUPTCY ACTS

This title is composed of the Bankruptcy Act of July 1, 1898, ch. 541, 30 Stat. 544, as amended, sometimes called the Nelson Act.

Special attention is directed to the Chandler Act of June 22, 1938, ch. 575, 52 Stat. 883, which revised this title generally and materially amended the provisions covering corporate reorganizations. See note under section 1 of this title.

Earlier bankruptcy laws included the following acts:

Apr. 4, 1800, ch. 19, 2 Stat. 19, repealed Dec. 19, 1803, ch. 6, 2 Stat. 248;

Aug. 19, 1841, ch. 9, 5 Stat. 440, repealed Mar. 3, 1843, ch. 82, 5 Stat. 614;

Mar. 2, 1867, ch. 176, 14 Stat. 517, the provisions of which were incorporated in Rev. Stat. Title LXI, §§ 4972 to 5132, were materially amended June 22, 1874, ch. 390, 18 Stat. 178, and were repealed June 7, 1878, ch. 160, 20 Stat. 99.

SHORT TITLE

Congress by act Dec. 20, 1950, ch. 1138, 64 Stat. 1113, amended act July 1, 1898, to authorize that act July 1, 1898, this title, be popularly known as the "Bankruptcy Act".

COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES

Pub. L. 91-354, §§ 1 to 6, July 24, 1970, 84 Stat. 468, as amended by Pub. L. 92-251, Mar. 17, 1972, 86 Stat. 63; Pub. L. 93-56, § 1, July 1, 1973, 87 Stat. 140, established the Commission on the Bankruptcy Laws of the United States, to study and recommend changes to this title, which ceased to exist 30 days after the date of submission of its final report which was required prior to July 31, 1973.

AVAILABILITY OF APPROPRIATIONS

Pub. L. 93-56, § 2, July 1, 1973, 87 Stat. 140, made the moneys appropriated for the commission to study the bankruptcy laws of the United States available until expended or until the commission ceased to exist.

CROSS REFERENCES

Congressional power to establish uniform bankruptcy laws throughout the United States, see Const. Art. 1, § 8, cl. 4.

FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 15 sections 78eee, 80a-25; title 42 sections 294w, 656.

## CHAPTER 1—DEFINITIONS


Sec.
1. Meaning of words and phrases.


CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 41, 45, 502, 702, 781, 802, 886, 1002, 1069 of this title; title 15 section 78fff; title 45 sections 701, 791.

### § 1. Meaning of words and phrases

The words and phrases used in this title and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

(1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition;

(2) "Adjudication" shall mean a determination, whether by decree or by operation of law, that a person is a bankrupt;

(3) "Appellate courts" shall include the United States courts of appeals and the Supreme Court of the United States;

(4) "Bankrupt" shall include a person against whom an involuntary petition or an application to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt;

(5) "Bona-fide purchaser" shall include a bona-fide encumbrancer or pledgee and the transferee, immediate or mediate, of any of them;

(5a) "Circuit" shall mean judicial circuit;

(6) "Clerk" shall mean the clerk of a court of bankruptcy;

(7) "Conceal" shall include secrete, falsify, and mutilate;

(7a) "Conference" shall mean the Judicial Conference of the United States;

(8) "Corporation" shall include all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint-stock companies, unincorporated companies

and associations, and any business conducted by a trustee or trustees wherein beneficial interest or ownership is evidenced by certificate or other written instrument;

(8a) "Council" shall mean the Judicial Council of the circuit;

(9) "Court" shall mean the judge or the referee of the court of bankruptcy in which the proceedings are pending;

(10) "Courts of bankruptcy" shall include the United States district courts and the district courts of the Territories and possessions to which this title is or may hereafter be applicable;

(11) "Creditor" shall include anyone who owns a debt, demand, or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy;

(12) "Date of adjudication" shall mean the date of the filing of any petition which operates as an adjudication, or the date of entry of a decree of adjudication, or if such decree is appealed from, then the date when such decree is finally confirmed or the appeal is dismissed;

(13) "Date of bankruptcy", "time of bankruptcy", "commencement of proceedings", or "bankruptcy", with reference to time, shall mean the date when the petition was filed;

(14) "Debt" shall include any debt, demand, or claim provable in bankruptcy;

(14a) "Director" shall mean the Director of the Administrative Office of the United States Courts;

(15) "Discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this title;

(16) "Document" shall include any book, deed, record, paper, or instrument in writing;

(17) "Farmer" shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations;

(18) "Holiday" shall include New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Christmas Day, and any day appointed as a holiday or as a day of public fasting or thanksgiving by the President or the Congress of the United States, or by the Governor or the Legislature of the State in which the proceeding under this title is filed or pending;

(19) A person shall be deemed insolvent within the provisions of this title whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts;

(20) "Judge" shall mean a judge of a court of bankruptcy, not including the referee;

(21) "Oath" shall include affirmation;

(22) "Officer" shall include clerk, marshal, receiver, custodian, referee, and trustee, and the imposing of a duty upon, or the forbidding of an act by, any officer shall include his successor and any person authorized by law to perform the duties of such officer;

(23) "Persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are forbidden under this title shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees or of other similar controlling bodies of corporations;

(24) "Petition" shall mean a document filed in a court of bankruptcy or with a clerk thereof initiating a proceeding under this title;

(25) "To record" shall include to register or to file for record or registration;

(26) "Referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred or anyone acting in his stead;

(27) "Relatives" shall mean persons related by affinity or consanguinity within the third degree as determined by the common law and shall include the spouse;

(28) "Secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this title or who owns such a debt for which some endorser, surety, or other person secondarily liable for the bankrupt has such security upon the bankrupt's assets;

(29) "States" shall include the Territories and possessions to which this title is or may hereafter be applicable, Alaska, and the District of Columbia;

(29a) Statutory lien shall mean a lien arising solely by force of statute upon specified circumstances or conditions, but shall not include any lien provided by or dependent upon an agreement to give security, whether or not such lien is also provided by or is also dependent upon statute and whether or not the agreement or lien is made fully effective by statute.

(30) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, assignment, payment, pledge, mortgage, lien, encumberance, gift, security, or otherwise; the retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by such debtor;

(31) "Trustee" shall include all of the trustees and "receiver" shall include all of the receivers of an estate;

(32) "Wage earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding $1,500 per year;

(33) Words importing the masculine gender may be applied to and include all persons;

(34) Words importing the plural number may be applied to and mean only a single person or thing; and

(35) Words importing the singular number may be applied to and mean several persons or things.

(July 1, 1898, ch. 541, § 1, 30 Stat. 544; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; May 27, 1926, ch. 406, § 1, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 840; June 28, 1946, ch. 512, § 1, 60 Stat. 323; July 7, 1952, ch. 579, § 1, 66 Stat. 420; June 23, 1959, Pub. L. 86-64, § 1, 73 Stat. 109; July 5, 1966, Pub. L. 89-495, § 1, 80 Stat. 268.)

CODIFICATION

"Veterans Day" was substituted for "Armistice Day" in par. (18) to conform to act June 1, 1954, ch. 250, 68 Stat. 168. See section 6103(a) of Title 5, Government Organization and Employees.

AMENDMENTS

1966—Par. (29a). Pub. L. 89-495 added par. (29a).

1959—Par. (2). Pub. L. 86-64, § 1(a), substituted "a determination, whether by decree or by operation of law, that a person is a bankrupt" for "a decree that a person is a bankrupt".

Par. (12). Pub. L. 86-64, § 1(b), included the date of the filing of any petition which operates as an adjudication within the definition of "date of adjudication".

1952—Pars. (3), (5a), (7a), (8a), (10), (14a), (24), and (30). Act July 7, 1952, redefined the terms contained within said paragraphs.

1946—Pars. (5a), (7a), (8a), and (14a). Act June 28, 1946, added pars. (5a), (7a), (8a), and (14a).

1938—Pars. (1), (6), (7), (14), (15), (19) to (21), (26), (28), (29), (32), and (35), formerly (1), (5), (22), (11), (12), (15) to (17), (21), (23), (24), (27), and (30), respectively, reenacted without change by act June 22, 1938.

Pars. (2) to (4), (8) to (11), (13), (16), (18), (22) to (24), (30), (31), (33), and (34), formerly (2) to (4), (6) to (9), (10), (13), (14), (18) to (20), (25), (26), (28), and (29), respectively, amended by act June 22, 1938.

Pars. (5), (12), (17), (25), and (27). Act June 22, 1938, added pars. (5), (12), (17), (25), and (27).

EFFECTIVE DATE OF 1952 AMENDMENT

Section 57 of act July 7, 1952, provided that; "This amendatory Act [Act July 7, 1952] shall take effect and be in force on and after three months from the date of its approval [July 7, 1952]."

EFFECTIVE DATE OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided in part that the amendment of this section by act June 28, 1946, should be effective on June 28, 1946.

REPEALS; SEPARABILITY OF PROVISIONS

Section 55 of act July 7, 1952, provided that:

"(a) All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [Act July 7, 1952] are hereby repealed.

"(b) If any provision of this amendatory Act [Act July 7, 1952] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act [Act July 7, 1952] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act [Act July 7, 1952] are declared to be severable."

EFFECT OF 1952 AMENDATORY ACT

Section 56 of act July 7, 1952, provided that:

"(a) Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act [Act July 7, 1952] is amendatory.

"(b) The provisions of this amendatory Act [Act July 7, 1952] shall govern proceedings so far as practicable and applicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act [Act July 7, 1952] are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto."

CHANDLER ACT; CONSTRUCTION; EFFECTIVE DATE

Sections 5 to 7 of act June 22, 1938, which act is popularly known as the "Chandler Act," provided that:

"SEC. 5. SEVERABILITY; HEADINGS.—a. If any provision of this amendatory Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act are declared to be severable.

"b. Sections and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate.

"SEC. 6. EFFECT OF THIS AMENDATORY ACT.—a. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory.

"b. Except as otherwise provided in this amendatory Act, the provisions of this amendatory Act shall govern proceedings so far as practicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto.

"SEC. 7. This amendatory Act shall take effect and be in force on and after three months from the date of its approval."

ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, upon the issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, upon the issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

CROSS REFERENCES

Arrangements, definition of "petition", "creditors", and "debts or claims", see sections 706 and 707 of this title.

Composition of indebtedness of local taxing agencies, definition of "creditor" and "petitioner" and singular number and masculine gender as including plural and feminine, see section 402 of this title.

Concealment of bankrupt's assets, see section 152 of Title 18, Crimes and Criminal Procedure.

Corporate reorganizations, definition of "claims", "corporation", "creditor", "debts", and "petition" see section 506 of this title.

Limitations, concealment of bankrupt's assets, see section 3284 of Title 18, Crimes and Criminal Procedure.

Railroad reorganizations, definition of "creditors", "claims", "Federal court", "railroad corporation", and "person", see section 205 of this title.

Real property arrangements by persons other than corporations, definition of "claims", "creditors", "debts", and "petition", see section 806 of this title.

Repeals, saving provisions, and effect of catchlines of act June 28, 1946, see note set out under section 62 of this title.

Wage earner defined for purposes of chapter 13, see section 1006 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78eee.

## CHAPTER 2—COURTS OF BANKRUPTCY

Sec.
11. Creation of courts of bankruptcy and their jurisdiction.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 41, 45, 502, 702, 781, 802, 886, 1002, 1069 of this title; title 15 section 78fff.

### § 11. Creation of courts of bankruptcy and their jurisdiction

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

(1) Adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdiction, or in any cases transferred to them pursuant to this title;

(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

(2A) Hear and determine, or cause to be heard and determined, any question arising as to the amount or legality of any unpaid tax, whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, and in respect to any tax, whether or not paid, when any such question has been contested and adjudicated by a judicial or administrative tribunal of competent jurisdiction and the time for appeal or review has not expired, to authorize the receiver or the trustee to prosecute such appeal or review;

(3) Appoint, upon the application of parties in interest, receivers or the marshals to take charge of the property of bankrupts and to protect the interests of creditors after the filing of the petition and until it is dismissed or the trustee is qualified; and to authorize such receiver, upon his application, to prosecute or defend any pending suit or proceeding by or against a bankrupt or to commence and prosecute any suit or proceeding in behalf of the estate, before any judicial, legislative, or administrative tribunal in any jurisdiction, until the petition is dismissed or the trustee is qualified: *Provided, however,* That the court shall be satisfied that such appointment or authorization is necessary to preserve the estate or to prevent loss thereto;

(4) Arraign, try, and punish persons for violations of this title, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

(5) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation for such services, as provided in section 76 of this title;

(6) Bring in and substitute additional persons or parties in proceedings under this title when necessary for the complete determination of a matter in controversy;

(7) Cause the estates of bankrupts to be collected, reduced to money, and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property in any estate whenever, under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest; and where in a controversy arising in a proceeding under this title an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction;

(8) Close estates, by approving the final accounts and discharging the trustees, whenever it appears that the estates have been fully administered or, if not fully administered, that the parties in interest will not furnish the indemnity necessary for the expenses of the proceeding or take the steps necessary for the administration of the estate; and reopen estates for cause shown;

(9) Confirm or reject arrangements or plans proposed under this title, set aside confirmations of arrangements or wage-earner plans and reinstate the proceedings and cases;

(10) Consider records, findings, and orders certified to the judges by referees, and confirm, modify, or reverse such findings and orders, or return such records with instructions for further proceedings;

(11) Determine all claims of bankrupts to their exemptions;

(12) Discharge or refuse to discharge bankrupts, set aside discharges, determine the dischargeability of debts, and render judgments thereon;

(13) Enforce obedience by persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

(14) Extradite bankrupts from their respective districts to other districts;

(15) Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this title: *Provided, however,* That an in-

junction to restrain a court may be issued by the judge only;

(16) Punish persons for contempts committed before referees;

(17) Approve the appointment of trustees by creditors or appoint trustees when creditors fail so to do; and, upon complaints of creditors or upon their own motion, remove for cause receivers or trustees upon hearing after notice;

(18) Tax costs, and render judgments therefor against the unsuccessful party, against the successful party for cause, in part against each of the parties, and against estates, in proceedings under this title;

(19) Transfer cases to other courts of bankruptcy;

(20) Exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy: *Provided, however,* That the jurisdiction of the ancillary court over a bankrupt's property which it takes into its custody shall not extend beyond preserving such property and, where necessary, conducting the business of the bankrupt, and reducing the property to money, paying therefrom such liens as the court shall find valid and the expenses of ancillary administration, and transmitting the property or its proceeds to the court of primary jurisdiction;

(21) Require receivers or trustees appointed in proceedings not under this title, assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property to deliver the property in their possession or under their control to the receiver or trustee appointed under this title or, where an arrangement or a plan under this title has been confirmed and such property has not prior thereto been delivered to a receiver or trustee appointed under this title, to deliver such property to the debtor or other person entitled to such property according to the provisions of the arrangement or plan, and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor: *Provided, however,* That such delivery and accounting shall not be required, except in proceedings under section 205 and chapters 10 and 12 of this title, if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property by such receiver, trustee, assignee, or agent, either to himself or to others, for services and expenses under such receivership, trusteeship, assignment, or agency, and shall, unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this title, surcharge such receiver, trustee, assignee, or agent the amount of any disbursement determined by the court to have been improper or excessive; and

(22) Exercise, withhold, or suspend the exercise of jurisdiction, having regard to the rights or convenience of local creditors and to all other relevant circumstances, where a bankrupt has been adjudged bankrupt by a court of competent jurisdiction without the United States.

(b) Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

(July 1, 1898, ch. 541, § 2, 30 Stat. 545; Apr. 12, 1900, ch. 191, § 34, 31 Stat. 84; Feb. 5, 1903, ch. 487, § 1, 32 Stat. 797; Mar. 3, 1909, ch. 269, § 1, 35 Stat. 838; June 25, 1910, ch. 412, §§ 1, 2, 36 Stat. 838, 839; May 27, 1926, ch. 406, § 2, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 842; July 7, 1952, ch. 579, § 2, 66 Stat. 420; Sept. 25, 1962, Pub. L. 87-681, §§ 1, 2, 76 Stat. 570; July 5, 1966, Pub. L. 89-496, § 1, 80 Stat. 270; Oct. 19, 1970, Pub. L. 91-467, § 1, 84 Stat. 990.)

AMENDMENTS

1970—Subd. (a)(12). Pub. L. 91-467 substituted "Discharge or refuse to discharge bankrupts, set aside discharges, determine the dischargeability of debts, and render judgments thereon" for "Discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases".

1966—Subd. (a)(2A). Pub. L. 89-496 added subd. (2A).

1962—Subd. (a)(1). Pub. L. 87-681, § 1, eliminated provision authorizing courts of bankruptcy to adjudge persons bankrupt who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction.

Subd. (a)(22). Pub. L. 87-681, § 2, added subd. (22).

1952—Subd. (a)(1). Act July 7, 1952, § 2(a), added "or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdictions, or in any cases transferred to them pursuant to this Act;".

Subd. (a)(7). Act July 7, 1952, § 2(b), added "and where in a controversy arising in a proceeding under this Act an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction;".

Subd. (a)(21). Act July 7, 1952, § 2(c), inserted "section 205" immediately preceding "chapters 10 and 12 of this title".

1938—Subd. (a)(21). Act June 22, 1938, added subd. (a)(21).

Subd. (a), opening paragraph and (1), (3), (4), (7) to (10), (13), (15), (17), (18), (20), formerly first paragraph and clauses thereof, amended by act June 22, 1938.

Subds. (a)(2), (5), (6), (11), (12), (14), (16), (19), formerly clauses of the first paragraph, and subd. (b), formerly the last paragraph, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 10 of Pub. L. 91-467 provided that: "The provisions of this amendatory Act [amending this section and sections 32, 33, 35, 66 and 94 of this title] shall take effect on and after sixty days from the date of its approval [Oct. 19, 1970] and shall govern proceedings in all cases filed after such date."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6 of Pub. L. 89-496 provided that: "This Act [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title] shall take

effect on the ninetieth day after the date of its enactment [July 5, 1966]."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SEPARABILITY OF PROVISIONS

Section 4 of Pub. L. 89-496 provided that: "If any provision of this Act, or any amendment made by it [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title], or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this Act, or other amendments made by it, or applications thereof which can be given effect without the invalid provision or application."

SAVINGS CLAUSE; PENDING PROCEEDINGS

Section 5 of Pub. L. 89-496 provided that:

"(a) Nothing in this Act, or in the amendments made by it [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title], shall operate to release or extinguish any penalty, forfeiture, or liability incurred under the Bankruptcy Act [this title] before the effective date of this Act [see Effective Date of 1966 Amendment note under this section].

"(b) The amendments made by this Act [adding subd. (a)(2A) of this section and amending sections 35(a)(1) and 104(a)(4) of this title] shall govern proceedings so far as applicable in cases pending when it takes effect."

CROSS REFERENCES

Jurisdiction and powers of bankruptcy courts in corporate reorganization, railroad reorganization, and arrangement proceedings, see sections 205, 511 to 517, 521, 711 to 716, and 811 to 816 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 76 of this title.

## CHAPTER 3—BANKRUPTS

Sec.
21. Acts of bankruptcy.
22. Who may become bankrupts.
23. Partners.
24. Exemptions of bankrupts.
25. Duties of bankrupts.
26. Death or insanity of bankrupts.
27. Protection of bankrupts.
28. Apprehension and extradition of bankrupts.
29. Suits by and against bankrupts.
30, 31. Transferred.
32. Discharges, when granted.
33. Discharges, when revoked.
34. Co-debtors, guarantors or sureties for bankrupts.
35. Dischargeability of debts.
(a) Debts not affected by discharge.
(b) Proceedings for debts dischargeable.
(c) Procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 41, 45, 502, 702, 781, 802, 886, 1002, 1069 of this title; title 15 section 78fff.

### § 21. Acts of bankruptcy

(a) Acts of bankruptcy by a person shall consist of his having (1) concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, or made or suffered a transfer of any of his property, fraudulent under the provisions of section 107 or 110 of this title; or (2) made or suffered a preferential transfer, as defined in subdivision (a) of section 96 of this title; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt.

(b) A petition may be filed against a person within four months after the commission of an act of bankruptcy. Such time with respect to the third act of bankruptcy shall expire four months after the date the lien through legal proceedings or distraint was obtained and, with respect to the first or fourth act of bankruptcy, such time shall not expire until four months after the date when the transfer or assignment became so far perfected that no bona fide purchaser from the debtor could thereafter have acquired any rights in the property so transferred or assigned superior to the rights of the transferee or assignee therein, and such time with respect to the second act of bankruptcy shall not expire until four months after the date when the transfer became perfected as prescribed in subdivision (a) of section 96 of this title. For the purposes of this section, it is sufficient if intent to hinder, delay or defraud under the first act of bankruptcy, where such intent is an element of such act, or if insolvency under the second act of bankruptcy, exists either at the time when the transfer was made or at the time when it became perfected, as hereinabove provided.

(c) It shall be a complete defense to any proceedings under the first act of bankruptcy to allege and prove that the party proceeded against was not insolvent as defined in this title at the time of the filing of the petition against him. If solvency at such date is proved by the alleged bankrupt, the proceedings shall be dismissed. In such proceedings the burden of proving solvency shall be on the alleged bankrupt.

(d) Whenever a person against whom a petition has been filed alleging the commission of the second, third, or fifth act of bankruptcy takes issue with and denies the allegation of his insolvency or his inability to pay his debts as they mature, he shall appear in court on the hearing, and prior thereto if ordered by the court, with his books, papers, and accounts, and submit to an examination and give testimony as to all matters tending to establish solvency or insolvency or ability or inability to pay his

debts as they mature and, in case of his failure so to do, the burden of proving solvency or ability to pay his debts as they mature shall rest upon him.

(July 1, 1898, ch. 541, § 3, 30 Stat. 546; Feb. 5, 1903, ch. 487, § 2, 32 Stat. 797; May 27, 1926, ch. 406, § 3, 44 Stat. 662; June 22, 1938, ch. 575, § 1, 52 Stat. 844; July 7, 1952, ch. 579, § 3, 66 Stat. 421.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, § 3(a), correlated the first two acts of bankruptcy as set out in this subdivision with sections 96, 107, and 110 of this title, and made a distraint under a landlord's warrant a legal proceeding.

Subd. (b). Act July 7, 1952, § 3(b), made for the purpose of the third act of bankruptcy, permitted a petition to be filed within a four month period from the date the lien was obtained, and made other clarifying and conforming changes.

1938—Subds. (a)(1) and (2). Act June 22, 1938, reenacted subds. (a)(1) and (2) without change.

Subd. (a)(3) (formerly (3) and (4), (4) and (5) formerly (5)), and (6) (formerly (6)), and subds. (b), (c), and (d), were amended by act June 22, 1938.

Former subd. (e) and the closing paragraph were not reenacted as parts of this section by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78eee.

### § 22. Who may become bankrupts

(a) Any person, except a municipal, railroad, insurance, or banking corporation or a building and loan association, shall be entitled to the benefits of this title as a voluntary bankrupt.

(b) Any natural person, except a wage earner or farmer, and any moneyed, business, or commercial corporation, except a building and loan association, a municipal, railroad, insurance, or banking corporation, owing debts to the amount of $1,000 or over, may be adjudged an involuntary bankrupt upon default or an impartial trial and shall be subject to the provisions and entitled to the benefits of this title. The bankruptcy of a corporation shall not release its officers, the members of its board of directors or trustees or of other similar controlling bodies, or its stockholders or members, as such, from any liability under the laws of a State or of the United States. The status of an alleged bankrupt as a wage earner or farmer shall be determined as of the time of the commission of the act of bankruptcy.

(July 1, 1898, ch. 541, § 4, 30 Stat. 547; Feb. 5, 1903, ch. 487, § 3, 32 Stat. 797; June 25, 1910, ch. 412, §§ 3, 4, 36 Stat. 839; Feb. 11, 1932, ch. 38, 47 Stat. 47; May 15, 1935, ch. 114, § 1, 49 Stat. 246; June 22, 1938, ch. 575, § 1, 52 Stat. 845.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, reenacted subd. (a) without change.

Subd. (b). Act June 22, 1938, consisting of former subd. (b) together with a concluding paragraph.

1935—Subd. (b). Act May 15, 1935, substituted "farmer" for "person engaged chiefly in farming or the tillage of the soil".

1932—Act Feb. 11, 1932, inserted references to building and loan association.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 806 of this title.

### § 23. Partners

(a) A partnership, including a limited partnership containing one or more general partners, during the continuation of the partnership business or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt either separately or jointly with one or more or all of its general partners.

(b) A petition may be filed by one or more or all of the general partners in the separate behalf of a partnership or jointly in behalf of a partnership and of the general partner or partners filing the same: *Provided, however,* That where a petition is filed in behalf of a partnership by less than all of the general partners, the petition shall allege that the partnership is insolvent. A petition may be filed separately against a partnership or jointly against a partnership and one or more or all of its general partners.

(c) The creditors of the bankrupt partnership shall appoint the trustee, who shall be the trustee of the individual estate of a general partner being administered in the proceeding: *Provided, however,* That the creditors of a general partner adjudged a bankrupt may, upon cause shown, be permitted to appoint their separate trustee for his estate. In other respects, so far as possible, the partnership estate shall be administered as herein provided for other estates.

(d) The court of bankruptcy which has jurisdiction of one of the general partners may have jurisdiction of all the general partners and of the administration of the partnership and individual property.

(e) The trustee or trustees shall keep separate accounts of the partnership property and of the property belonging to the individual general partners.

(f) The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

(g) The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts and the net proceeds of the individual estate of each general partner to the payment of his individual debts. Should any surplus remain of the property of any general partner after paying his individual debts, such surplus shall be added to the partnership

assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be distributed among the individual partners, general or limited, or added to the estates of the general partners, as the case may be, in the proportion of their respective interests in the partnership and in the order of distribution provided by the laws of the State applicable thereto.

(h) The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

(i) Where all the general partners are adjudged bankrupt, the partnership shall also be adjudged bankrupt. In the event of one or more, but not all of the general partners of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the general partner or partners not adjudged bankrupt; but such general partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit and account for the interest of the general partner or partners adjudged bankrupt.

(j) The discharge of a partnership shall not discharge the individual general partners thereof from the partnership debts. A general partner adjudged a bankrupt either in a joint or separate proceeding may, pursuant to the provisions of this title, obtain a discharge from both his partnership and individual debts.

(k) If a limited partnership is adjudged bankrupt, any limited partner who is individually liable under the laws of the United States or of any State for any of the partnership debts shall be deemed a general partner as to such debts and, if he is insolvent, shall be subject to the provisions and entitled to the benefits of this title, as in the case of a general partner.

(July 1, 1898, ch. 541, § 5, 30 Stat. 547; June 22, 1938, ch. 575, § 1, 52 Stat. 845.)

AMENDMENTS

1938—Subds. (b), (j), and (k). Act June 22, 1938, added subds. (b), (j), and (k).

Subds. (a), (d), (e), (g), and (i), formerly (a), (c), (d), (f), and (h), respectively, amended by act June 22, 1938.

Subds. (c), (f), and (h), formerly (b), (e), and (g), respectively, reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 24. Exemptions of bankrupts

This title shall not affect the allowance to bankrupts of the exemptions which are prescribed by the of the laws of the United States or by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months immediately preceding the filing of the petition, or for a longer portion of such six months than in any other State: *Provided, however,* That no such allowance shall be made out of the property which a bankrupt transferred or concealed and which is recovered or the transfer of which is avoided under this title for the benefit of the estate, except that, where the voided transfer was made by way of security only and the property recovered is in excess of the amount secured thereby, such allowance may be made out of such excess.

(July 1, 1898, ch. 541, § 6, 30 Stat. 548; June 22, 1938, ch. 575, § 1, 52 Stat. 847.)

AMENDMENTS

1938—Act June 22, 1938, allowed exemptions prescribed by the laws of the United States, reworded provision relating to portion of the domiciliary period, and added the proviso.

EFFECTIVE DATE AND CONSTRUCTION. OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 25. Duties of bankrupts

(a) The bankrupt shall (1) attend at the first meeting of his creditors, at the hearing upon objections, if any, to his application for a discharge and at such other times as the court shall order; (2) comply with all lawful orders of the court; (3) examine and report to his trustee concerning the correctness of all proofs of claim filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute and deliver to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt by his creditors or other persons to evade the provisions of this title coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within five days after adjudication, if an involuntary bankrupt, and with his petition, if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof and its money value, in detail; and a list of all his creditors, including all persons asserting contingent, unliquidated, or disputed claims, showing their residences or places of business, if known, or if unknown that fact to be stated, the amount due to or claimed by each of them, the consideration thereof, the security held by them, if any, and what claims, if any, are contingent, unliquidated or disputed; and a claim for such exemptions as he may be entitled to; all in triplicate, one copy for the clerk, one for the referee, and one for the trustee: *Provided, however,* That the court may for cause shown grant further time for the filing of such schedules if, with his petition in a voluntary proceeding or with his application to have such time extended in an involuntary proceeding, the bankrupt files a list of all such creditors and their addresses; (9) file in triplicate with the court at least five days prior to the first meeting of his creditors a statement of his affairs in such form as may be prescribed by

the Supreme Court; (10) at the first meeting of his creditors, at the hearing upon objections, if any, to his discharge and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate or the granting of his discharge; but no testimony, or any evidence which is directly or indirectly derived from such testimony, given by him shall be offered in evidence against him in any criminal proceeding, except such testimony as may be given by him in the hearing upon objections to his discharge: *Provided, however,* That when the bankrupt is required to attend for examination, except at the first meeting and at the hearing upon objections, if any, to his discharge, he shall be paid actual and necessary traveling expenses for any distance in excess of one hundred miles from his place of residence at the date of bankruptcy: *And provided further,* That the court may for cause shown, and upon such terms and conditions as the court may impose, permit the bankrupt to be examined at such place as the court may direct whether within or without the district in which the proceedings are pending; and (11) when required by the court, prepare, verify, and file with the court in duplicate a detailed inventory, showing the cost to him of his merchandise or of such other property as may be designated, as of the date of his bankruptcy.

(b) Where the bankrupt is a corporation, its officers, the members of its board of directors or trustees or of other similar controlling bodies, its stockholders or members, or such of them as may be designated by the court, shall perform the duties imposed upon the bankrupt by this title.

(July 1, 1898, ch. 541, § 7, 30 Stat. 548; May 27, 1926, ch. 406, § 4, 44 Stat. 663; June 22, 1938, ch. 575, § 1, 52 Stat. 847; July 7, 1952, ch. 579, § 4, 66 Stat. 422; Oct. 15, 1970, Pub. L. 91-452, title II, § 207, 84 Stat. 929.)

AMENDMENTS

1970—Subd. (a)(10). Pub. L. 91-452 added ", or any evidence which is directly or indirectly derived from such testimony," following "but no testimony".

1952—Subd. (a)(8). Act July 7, 1952, permitted the list of creditors to contain either their residence or place of business instead of only their residence as previously required.

1938—Subds. (a)(9), (11), and (b). Act June 22, 1938, added subds. (a)(9), (11), and (b).

Subds. (a)(1), (3), (5), (8) and (10) (formerly opening paragraph (9)), and closing paragraph, amended by act June 22, 1938.

Subds. (a)(2), (4), (6), and (7), formerly those clauses of the opening paragraph, reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

Effective date of amendment by Pub. L. 91-452, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SAVINGS CLAUSE

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as a note under section 6001 of Title 18, Crimes and Criminal Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 205 of this title.

### § 26. Death or insanity of bankrupts

The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided,* That in case of death, the bankrupt's right to exemption, if any, shall be preserved, and if the exempt property has not already been set off or awarded to him, it shall upon application be ordered set off and awarded to the spouse or dependent children surviving at his death to the exclusion of his personal representatives.

(July 1, 1898, ch. 541, § 8, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

AMENDMENTS

1938—Act June 22, 1938, substituted proviso for last sentence relating to widow's and children's rights to dower and allowance fixed by State laws.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 27. Protection of bankrupts

A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and when served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this title.

(July 1, 1898, ch. 541, § 9, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

AMENDMENTS

1938—Section, formerly subd. (a), reenacted without change by act June 22, 1938.

Former subd. (b) reenacted as subd. (a) of section 28 of this title by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 28. Apprehension and extradition of bankrupts**

(a) The court may, during the pendency of a proceeding in bankruptcy, upon application of the receiver, trustee, or a creditor and upon satisfactory proof by affidavit that the examination of such bankrupt is necessary for the proper administration of the estate and that there is reasonable cause to believe that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, or that he has evaded service of a subpena or of an order to attend for examination, or that, having been served with a subpena or order to attend for examination, he has willfully disobeyed the same, issue to the marshal a warrant directing him to bring such bankrupt forthwith before the court for examination. If, upon hearing the evidence of the parties, it shall appear to the court that the allegations are true and that it is necessary, the court shall fix bail conditioned for his appearance for examination, from time to time not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

(b) Whenever any warrant for the apprehension of a bankrupt shall have been issued under this title, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner as persons under indictment are now extradited from one district to another.

(c) Where the bankrupt is a corporation, "bankrupt" for the purposes of this section shall include its officers and the members of its board of directors or trustees or of other similar controlling bodies.

(July 1, 1898, ch. 541, § 10, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 848.)

AMENDMENTS

1938—Subd. (a), formerly subd. (b) of section 27, reenacted as a part of this section and amended by act June 22, 1938.

Subd. (b), formerly this entire section, amended by act June 22, 1938.

Subd. (c) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Extradition, see section 3181 et seq. of Title 18, Crimes and Criminal Procedure.

**§ 29. Suits by and against bankrupts**

(a) A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition; if such person is adjudged bankrupt, such action may be further stayed until the question of his discharge is determined by the court after a hearing, or by the bankrupt's filing a waiver of, or having lost, his right to a discharge, or, in the case of a corporation, by its failure to file an application for a discharge within the time prescribed under this title: *Provided, however,* That such stay shall be vacated by the court if, in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy, such person has been granted a discharge, or has had a composition confirmed, or has had an arrangement by way of composition confirmed, or has had a wage earner's plan by way of composition confirmed.

(b) The court may order the receiver or trustee to enter his appearance and defend any pending suit against the bankrupt.

(c) A receiver or trustee may, with the approval of the court, be permitted to prosecute as receiver or trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

(d) Suits shall not be brought against a person who has acted as a receiver or trustee of a bankrupt estate, upon any matter arising in connection with the administration thereof, subsequent to two years after the estate has been closed.

(e) A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in such proceeding or by applicable Federal or State law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period had not expired at the date of the filing of the petition in bankruptcy, the receiver or trustee of the bankrupt may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the bankrupt, within a period of sixty days subsequent to the date of adjudication or within such further period as may be permitted by the agreement, or in the proceeding or by applicable Federal or State law, as the case may be.

(f) The operation of any statute of limitations of the United States or of any State, affecting the debts of a bankrupt provable under this title, shall be suspended during the period from the date of the filing of the petition in bankruptcy (1) until the expiration of thirty days

after the date of the entry of an order denying his discharge; or (2) if he has waived or lost his right to a discharge, then until the expiration of thirty days after the filing of such waiver or loss of such right or, in the case of a corporation, if no application for a discharge is filed within the period of six months after the adjudication, then until the expiration of thirty days after the end of such period; or (3) until thirty days after the dismissal of the bankruptcy proceedings, whichever may first occur.

(July 1, 1898, ch. 541, § 11, 30 Stat. 549; June 22, 1938, ch. 575, § 1, 52 Stat. 849; July 7, 1952, ch. 579, § 5, 66 Stat. 422.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, deleted the proviso "has been adjudicated a bankrupt or" following "such person".

1938—Subds. (a) to (d) amended by act June 22, 1938.

Subds. (e), (f) added by act of June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 516, 714, 814, 1014 of this title.

### §§ 30, 31. Transferred

CODIFICATION

Section 30, acts July 1, 1898, ch. 541, § 12, 30 Stat. 549; June 25, 1910, ch. 412, § 5, 36 Stat. 839; May 27, 1926, ch. 406, § 5, 44 Stat. 663, and sections 31, 201, 202, 206, and 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840 (Chandler Act).

Subject matter of the various subdivisions comprising section 30 was distributed by said act June 22, 1938, as follows:

| Section 30, subdivisions: | Present sections |
|---|---|
| a | 721, 725, 735, 736, 813, 821, 825, 826, 834, 836, 906, 1024, 1025, and 1033. |
| b | 762, 866, 868, and 1052. |
| c | 737(3), 837(3) and 1033. |
| d | 761, 766, 867, and 1056. |
| e | 767, 776, 881, 882, and 1066. |

Section 31, act July 1, 1898, ch. 541, § 13, 30 Stat. 550, and sections 30, 201, 202, 206, and 207 of this title were amended and incorporated as chapters 10, 11, 12, 13, and 14, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840 (Chandler Act). Subject matter of section 31 is now contained in sections 786, 911, and 1071 of this title.

SAVINGS CLAUSE

Continuance of section 30 in force with respect to certain proceedings, see section 799 of this title.

### § 32. Discharges, when granted

(a) The adjudication of any person, except a corporation, shall operate as an application for a discharge: *Provided,* That the bankrupt may, before the hearing on such application, waive by writing, filed with the court, his right to a discharge. A corporation may, within six months after its adjudication, file an application for a discharge in the court in which the proceedings are pending.

(b)(1) The court shall make an order fixing a time for the filing of objections to the bankrupt's discharge and a time for the filing of applications pursuant to section 35(c)(2) of this title to determine the dischargeability of debts, which time or times shall be not less than thirty days nor more than ninety days after the first date set for the first meeting of creditors. Notice of such order shall be given to all parties in interest as provided in section 94(b) of this title. The Court may, upon its own motion or, for cause shown, upon motion of any party in interest, extend the time or times for filing such objections or applications.

(2) Upon the expiration of the time fixed in the order for filing objections or of any extension of such time granted by the court, the court shall discharge the bankrupt if no objection has been filed and if the filing fees required to be paid by this title have been paid in full; otherwise, the court shall hear such proofs and pleas as may be made in opposition to the discharge, by the trustee, creditors, the United States attorney, or such other attorney as the Attorney General may designate, at such time as will give the bankrupt and the objecting parties a reasonable opportunity to be fully heard.

(c) The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under section 152 of title 18; or (2) destroyed, mutilated, falsified, concealed, or failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case; or (3) while engaged in business as a sole proprietor, partnership, or as an executive of a corporation, obtained for such business money or property on credit or as an extension or renewal of credit by making or publishing or causing to be made or published in any manner whatsoever a materially false statement in writing respecting his financial condition or the financial condition of such partnership or corporation; or (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property with intent to hinder, delay, or defraud his creditors; or (5) in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy has been granted a discharge, or had a composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this title; or (6) in the course of a proceeding under this title refused to obey any lawful order of, or to answer any material question approved by, the court; or (7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities; or (8) has failed to pay the filing fees required to be paid by this title in full: *Provided,* That if, upon the hearing

of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this subdivision, would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt.

(d) When requested by the court, the United States attorney, located in the judicial district in which the bankruptcy proceeding is pending, or such other attorney as the Attorney General may designate, shall examine into the acts and conduct of the bankrupt and, if satisfied that probable grounds exist for the denial of the discharge and that the public interest so warrants, he shall oppose the discharge of such bankrupt in like manner as provided in the case of a trustee.

(e) If the bankrupt fails to appear at the hearing upon the objections to his application for a discharge, or having appeared refuses to submit himself to examination, or if the court finds after hearing upon notice that the bankrupt has failed without sufficient excuse to appear and submit himself to examination at the first meeting of creditors or at any meeting specially called for his examination, he shall be deemed to have waived his right to a discharge, and the court shall enter an order to that effect.

(f) An order of discharge shall—

(1) declare that any judgment theretofore or thereafter obtained in any other court is null and void as a determination of the personal liability of the bankrupt with respect to any of the following: (a) debts not excepted from the discharge under subdivision (a) of section 35 of this title; (b) debts discharged under paragraph (2) of subdivision (c) of section 35 of this title; and (c) debts determined to be discharged under paragraph (3) of subdivision (c) of section 35 of this title; and

(2) enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt.

(g) An order of discharge which has become final may be registered in any other district by filing therein a certified copy of such order and when so registered shall have the same effect as an order of the bankruptcy court of the district where registered and may be enforced in like manner.

(h) Within forty-five days after the order of discharge becomes final the court shall give notice of the entry thereof to all parties in interest as specified in subdivision (b) of section 94 of this title. Such notice shall also specify the debts, if any, theretofore determined by the court to be nondischargeable, the debts, if any, as to which applications to determine dischargeability are pending, and those contents of the order of discharge required by subdivision (f) of this section.

(July 1, 1898, ch. 541, § 14, 30 Stat. 550; Feb. 5, 1903, ch. 487, § 4, 32 Stat. 797; June 25, 1910, ch. 412, § 6, 36 Stat. 839; May 27, 1926, ch. 406, § 6, 44 Stat. 663; June 22, 1938, ch. 575, § 1, 52 Stat. 850; May 24, 1949, ch. 139, § 130, 63 Stat. 107; July 7, 1952, ch. 579, § 6, 66 Stat. 422; Sept. 2, 1957, Pub. L. 85-275, § 1, 71 Stat. 599; July 12, 1960, Pub. L. 86-621, § 1, 74 Stat. 408; Sept. 2, 1965, Pub. L. 89-166, 79 Stat. 646; Oct. 19, 1970, Pub. L. 91-467, §§ 2, 3, 84 Stat. 990, 991.)

AMENDMENTS

1970—Subd. (b). Pub. L. 91-467 § 2, split up existing provisions into pars. (1) and (2), and in pars. (1) and (2) as so designated, required the court to make orders fixing time for filing applications under section 35(c) of this title in addition to making orders fixing time for filing objections to the bankrupt's discharge, laid down a maximum time limit of 90 days after the first date set for the first meeting of creditors and struck out the limitation on the court's power that the time may be extended only for the purpose of the examination of the bankrupt.

Subds. (f) to (h). Pub. L. 91-467, § 3, added subds. (f) to (h).

1965—Subd. (b). Pub. L. 89-166 deleted the payment of filing fees as a prerequisite to the making of an order fixing a time for the filing of objections and made the payment of the filing fees a prerequisite to discharge.

Subd. (c). Pub. L. 89-166 added clause (8).

1960—Subd. (c)(3). Pub. L. 86-621 limited the use of false financial statements as a bar to discharge of bankrupts who furnished such false statements while engaged in business as a sole proprietor, partnership, or an executive of a corporation.

1957—Subd. (b). Pub. L. 85-275 substituted provisions requiring (1) the court, upon payment of required filing fees, to fix time for filing of objections to bankrupt's discharge, not less than thirty days after first date set for first meeting of creditors and (2) notice thereof to all parties in interest and permitting extension of time for filing objections, for provisions requiring (1) the court, after the bankrupt has been examined, either at first meeting of creditors or at meeting specially fixed for that purpose, to fix time for filing of objections to bankrupt's discharge; and (2) notice thereof to all parties in interest.

1952—Subd. (c)(5). Act July 7, 1952, § 6(a), made the six year period within which objection can be made to a discharge in a bankruptcy proceeding run from the date of the commencement of the prior proceeding rather than the date of the discharge or its equivalent.

Subd. (e). Act July 7, 1952, § 6(b), substituted "hearing upon the objection to his application for a discharge," in lieu of "hearing upon his application for a discharge".

1949—Subd. (c)(1). Act May 24, 1949, substituted "section 152 of title 18" for "this Act".

1938—Subd. (a) added by act June 22, 1938.

Subds. (b) and (c), formerly subd. (b), were relettered (b) and amended generally by act June 22, 1938. Former subd. (c), which related to effect of a confirmation of a composition as a discharge of bankrupt, was omitted from this section by act June 22, 1938.

Subds. (d) and (e) added by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-467, see section 10 of Pub. L. 91-467, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Adjudications, see section 41 of this title.
Arrangements, see section 701 et seq. of this title.
Concealment of assets; false oaths and claims; bribing, see section 152 of Title 18, Crimes and Criminal Procedure.
Debts not affected by discharge, see section 35 of this title.
Definitions of "Adjudication", "Bankrupt", "Creditor", and "Discharge", see section 1 of this title.
Duty of bankrupt to answer questions generally, see sections 25 and 44 of this title.
Duty of bankrupt to comply with lawful orders, see section 25 of this title.
Jurisdiction of referee to grant discharge, see section 66 of this title.
Meeting of creditors, see section 91 of this title.
Notices to creditors for filing objections to discharge, see section 94 of this title.
Refusal to obey lawful orders or to appear and testify, as contempt, see section 69 of this title.
Release of directors and stockholders from liability by discharge of corporation, see section 22 of this title.
Revocation of discharges, see section 33 of this title.
Trustee's duty to oppose discharges when advisable to do so, see section 75 of this title.
Wage earners' plans, see section 1001 et seq. of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Discharge in bankruptcy as affirmative defense, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35 of this title.

### § 33. Discharges, when revoked

The court may revoke a discharge upon the application of a creditor, the trustee, the United States attorney, or any other party in interest, who has not been guilty of laches, filed at any time within one year after a discharge has been granted, if it shall appear (1) that the discharge was obtained through the fraud of the bankrupt, that the knowledge of the fraud has come to the applicant since the discharge was granted, and that the facts did not warrant the discharge; or (2) that the bankrupt, before or after discharge, received or became entitled to receive property of any kind which is or which became a part of the bankrupt estate and that he knowingly and fraudulently failed to report or to deliver such property to the trustee; or (3) that the bankrupt during the pendency of the proceeding refused to obey any lawful order of, or to answer any material question approved by, the court. The application to revoke for such refusal may be filed at any time during the pendency of the proceeding or within one year after the discharge was granted, whichever period is longer.

(July 1, 1898, ch. 541, § 15, 30 Stat. 550; June 22, 1938, ch. 575, § 1, 52 Stat. 851; Oct. 19, 1970, Pub. L. 91-467, § 4, 84 Stat. 991.)

AMENDMENTS

1970—Pub. L. 91-467 designated as cl. (1) the existing enumeration of parties who can apply for the revocation of the discharge and added cls. (2) and (3).

1938—Act June 22, 1938, substituted "court" for "judge" and deleted "upon a trial" after "revoke it".

EFFECTIVE DATE OF 1970 AMENDMENT

Effective date of amendment by Pub. L. 91-467, see section 10 of Pub. L. 91-467, set out as a note under section 11 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Discharges, when granted, see section 32 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Relief from order procured by fraud, see rule 60, Title 28, Appendix, Judiciary and Judicial Procedure.

### § 34. Co-debtors, guarantors or sureties for bankrupts

The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

(July 1, 1898, ch. 541, § 16, 30 Stat. 550.)

CROSS REFERENCES

Action to proceed against bankrupt to save rights against sureties, see section 29 of this title.
Bankruptcy of partnerships and partners, see section 23 of this title.
Effect of discharge of corporations on liability of officers and stockholders, see section 22 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Discharge in bankruptcy as affirmative defense, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

### § 35. Dischargeability of debts

**(a) Debts not affected by discharge**

A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as

(1) are taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof within three years preceding bankruptcy: *Provided, however,* That a discharge in bankruptcy shall not release a bankrupt from any taxes (a) which were not assessed in any case in which the bankrupt failed to make a return required by law, (b) which were assessed within one year preceding bankruptcy in any case in which the bankrupt failed to make a return required by law, (c) which were not reported on a return made by the bankrupt and which were not assessed prior to bankruptcy by reason of a prohibition on assessment pending the exhaustion of administrative or judicial remedies available to the bankrupt, (d) with respect to which the bankrupt made a false or fraudulent return, or willfully attempted in any manner to evade or defeat, or (e) which the bankrupt has collected or withheld from others as required by the laws of the United States or any State or political subdivision thereof, but has not paid over; but a discharge shall not be a bar to any remedies available under applicable law to the United States or to any State or any subdivision thereof, against the exemption of the bankrupt allowed by law and duly set apart to

him under this title: *And provided further*, That a discharge in bankruptcy shall not release or affect any tax lien;

(2) are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive, or for willful and malicious conversion of the property of another;

(3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy;

(4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity;

(5) are for wages and commissions to the extent they are entitled to priority under subdivision (a) of section 104 of this title;

(6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment;

(7) are for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female or for breach of promise of marriage accompanied by seduction, or for criminal conversation; or

(8) are liabilities for willful and malicious injuries to the person or property of another other than conversion as excepted under clause (2) of this subdivision.

**(b) Proceedings for debts dischargeable**

The failure of a bankrupt or debtor to obtain a discharge in a prior proceeding under this title for any of the following reasons shall not bar the release by discharge in a subsequent proceeding under the title of debts that were dischargeable under subdivision (a) of this section in the prior proceeding: (1) discharge was denied in the prior proceeding solely under clause (5) or clause (8) of subdivision (c) of section 32 of this title; (2) the prior proceeding was dismissed without prejudice for failure to pay filing fees or to secure costs. If a bankrupt or debtor fails to obtain a discharge in a proceeding under this title by reason of a waiver filed pursuant to section 32(a) of this title or by reason of a denial on any ground under section 32(c) of this title other than clause (5) or clause (8) thereof, the debts provable in such proceeding shall not be released by a discharge granted in any subsequent proceeding under this title. A debt not released by a discharge in a proceeding under this title by reason of clause (3) of subdivision (a) of this section may nevertheless be dischargeable in a subsequent bankruptcy proceeding.

**(c) Procedure**

(1) The bankrupt or any creditor may file an application with the court for the determination of the dischargeability of any debt.

(2) A creditor who contends that his debt is not discharged under clause (2), (4), or (8) of subdivision (a) of this section must file an application for a determination of dischargeability within the time fixed by the court pursuant to paragraph (1) of subdivision (b) of section 32 of this title and, unless an application is timely filed, the debt shall be discharged. Notwithstanding the preceding sentence, no application need be filed for a debt excepted by clause (8) if a right to trial by jury exists and any party to a pending action on such debt has timely demanded a trial by jury or if either the bankrupt or a creditor submits a signed statement of an intention to do so.

(3) After hearing upon notice, the court shall determine the dischargeability of any debt for which an application for such determination has been filed, shall make such orders as are necessary to protect or effectuate a determination that any debt is dischargeable and, if any debt is determined to be nondischargeable, shall determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof. A creditor who files such application does not submit himself to the jurisdiction of the court for any purposes other than those specified in this subdivision.

(4) The provisions of this subdivision shall apply whether or not an action on a debt is then pending in another court and any party may be enjoined from instituting or continuing such action prior to or during the pendency of a proceeding to determine its dischargeability under this subdivision.

(5) Nothing in this subdivision shall be deemed to affect the right of any party, upon timely demand, to a trial by jury where such right exists.

(6) If a bankruptcy case is reopened for the purpose of obtaining the orders and judgments authorized by this subdivision, no additional filing fee shall be required.

(July 1, 1898, ch. 541, § 17, 30 Stat. 550; Feb. 5, 1903, ch. 487, § 5, 32 Stat. 798; Mar. 2, 1917, ch. 153, 39 Stat. 999; Jan. 7, 1922, ch. 22, 42 Stat. 354; June 22, 1938, ch. 575, § 1, 52 Stat. 851; Juiy 12, 1960, Pub. L. 86-621, § 2, 74 Stat. 409; July 5, 1966, Pub. L. 89-496, § 2, 80 Stat. 270; Oct. 19, 1970, Pub. L. 91-467, §§ 5-7, 84 Stat. 992.)

AMENDMENTS

1970—Subd. (a)(2). Pub. L. 91-467, § 5, substituted "malicious conversion of the property of another" for "malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation" in the list of liabilities.

Subd. (a)(5). Pub. L. 91-467, § 5, substituted "are for wages and commissions to the extent they are entitled to priority under subdivision (a) of section 104 of this title;" for "are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or".

Subd. (a)(6). Pub. L. 91-467, § 5, substituted a semicolon for a period at the end of cl. (6).

Subd. (a)(7). Pub. L. 91-467, § 6, added subd. (a)(7).

Subd. (a)(8). Pub. L. 91-467, § 6, added subd. (a)(8).

Subds. (b), (c). Pub. L. 91-467, § 7, added subds. (b), (c).

1966—Subd. (a)(1). Pub. L. 89-496 made dischargeable in bankruptcy debts for taxes which became le-

gally due and owing more than three years preceding bankruptcy, provided certain exceptions to such a discharge for failure to make returns, omissions from returns, false or fraudulent returns, and nonpayment of taxes collected or withheld from others, and provided that discharge shall not bar any remedies available against the exemption of the bankrupt allowed by law or affect tax liens.

1960—Pub. L. 86-621 inserted the prohibition against discharge in bankruptcy from debts which are liabilities for obtaining money or property on credit or obtaining an extension or a renewal of credit by furnishing false financial statements in clause (2).

1938—Opening clause. Act June 22, 1938, inserted "whether allowable in full or in part" after "provable debts".

Clause (1). Act June 22, 1938, substituted "or any State" for "the State" and deleted "in which he resides" after "municipality".

Clause (2). Act June 22, 1938, inserted "money or" before "property".

Clauses (3), (4), and (6) reenacted without change by act June 22, 1938.

Clause (5) amended generally by act June 22, 1938, which among other changes inserted "on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt" after "traveling or city salesmen".

EFFECTIVE DATE OF 1970 AMENDMENT

Effective date of amendment by Pub. L. 91-467, see section 10 of Pub. L. 91-467, set out as a note under section 11 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Debts which may be proved, see section 103 of this title.

Discharge, when granted, see section 32 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 94, 771, 876, 1060, 1061 of this title; title 26 section 7430.

## CHAPTER 4—COURTS AND PROCEDURE THEREIN

Sec.
41. Process; pleadings; and adjudications.
42. Jury trials.
43. Oaths; affirmations.
44. Evidence.
45. Reference of petitions.
46. Jurisdiction of controversies between receivers and trustees and adverse claimants.
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52, 53. Repealed.
54. Computation of time.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 41, 45, 502, 702, 781, 802, 886, 1002, 1069 of this title; title 15 section 78fff.

### § 41. Process; pleadings; and adjudications

(a) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpena, shall be made upon the person therein named as defendant. Upon the filing of a voluntary petition in behalf of a partnership by less than all of the general partners, service thereof, with a writ of subpena, shall be made upon the general partner or partners not parties to the filing of such petition. Such service shall be returnable within ten days, unless the court shall, for cause shown, fix a longer time, and shall be made at least five days prior to the return day, and in other respects shall be made in the same manner that service of summons is had upon the commencement of a civil action in the courts of the United States; but in case personal service cannot be made within the time allowed, then notice shall be given by publication in the same manner as provided by law for notice by publication in suits to enforce a legal or equitable lien in courts of the United States, except that, unless the court shall otherwise direct, the order shall be published only once and the return day shall be five days after such publication.

(b) The bankrupt and, in the case of a petition against a partnership, any general partner or, in the case of a petition in behalf of a partnership, any general partner not joining therein, may appear and plead to the petition within five days after the return day or within such further time as the court may allow.

(c) Petitions for both voluntary and involuntary bankruptcy shall be verified under oath.

(d) If a party entitled to appear and plead shall appear, within the time limited, and controvert the facts alleged in the petition, the court shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury except in cases where a jury trial is given by this title, and make the adjudication or dismiss the petition.

(e) If on the last day within which pleadings may be filed none is filed, the court shall on the next day, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

(f) The filing of a voluntary petition under chapters 1 to 7 of this title, other than a petition filed in behalf of a partnership by less than all of the partners, shall operate as an adjudication with the same force and effect as a decree of adjudication.

(July 1, 1898, ch. 541, § 18, 30 Stat. 551; Feb. 5, 1903, ch. 487, § 6, 32 Stat. 798; June 22, 1938, ch. 575, § 1, 52 Stat. 851; July 7, 1952, ch. 579, § 7, 66 Stat. 423; June 23, 1959, Pub. L. 86-64, § 2, 73 Stat. 109; Sept. 21, 1959, Pub. L. 86-293, 73 Stat. 571.)

AMENDMENTS

1959—Subd. (c). Pub. L. 86-293 substituted "Petitions for both voluntary and involuntary bankruptcy" for the words "All pleadings setting up matters of fact".

Subd. (f). Pub. L. 86-64, § 2(b), redesignated former subd. (g) as (f), and substituted provisions requiring the filing of a voluntary petition under chapters 1 to 7 of this title, other than a petition filed in behalf of a partnership by less than all of the partners, to operate as an adjudication, for provisions which required a judge to hear the petition and to make the adjudication or dismiss the petition, and eliminated provisions which required the clerk to refer the case to a referee if at the time of the filing of the petition the judge is absent from the district or division in which the petition was filed. Former subd. (f), which related to refer-

ral of cases by the clerk when the judge was absent, was repealed by Pub. L. 86-64, § 2(a).

Subd. (g). Pub. L. 86-64, § 2(b), redesignated former subd. (g) as (f).

1952—Subd. (a). Act July 7, 1952, amended subsec. (a) to conform to the Federal Rules of Civil Procedure.

1938—Subd. (a). Act June 22, 1938, among other changes, provided for service of subpoena upon a partner or partners not parties to the filing of a partnership petition; reduced from fifteen to ten days the return date in cases of personal service and from ten to five days the return date in cases of notice by publication.

Subd. (b). Act June 22, 1938, substituted "and, in the case of a petition against a partnership, any general partner or, in the case of a petition in behalf of a partnership, any general partner not joining therein" for "or any creditor" after "bankrupt".

Subd. (c) reenacted without change by act June 22, 1938.

Subd. (d). Act June 22, 1938, substituted "a party entitled to appear and plead" for "the bankrupt, or any of his creditors" after "If" and "court" for "judge" after "petition".

Subd. (e). Act June 22, 1938, substituted "is" for "are" after "none", "court" for "judge" and omitted "by the bankrupt or any of his creditors" after "filed", and "if present" after "next day".

Subd. (f). Act June 22, 1938, substituted "has" for "have" after "none", omitted "by the bankrupt or any of his creditors" after "filed" and inserted "if the case has not already been referred" after "shall".

Subd. (g). Act June 22, 1938, inserted "other than a petition filed in behalf of a partnership by less than all of the partners" after "voluntary petition".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Definitions of "Adjudication", "Bankrupt", "Court", "Creditor", and "Petition", see section 1 of this title.

Designation of newspapers, see section 51 of this title.

Domicile, residence, or place of business of bankrupt as affecting jurisdiction, see section 11 of this title.

Jurisdiction and power to issue process, see section 11 of this title.

Jury trial, see section 42 of this title.

Petition in corporate reorganization proceedings, see section 526 et seq. of this title.

Reference of petitions, see section 45 of this title.

Who may—

Become bankrupt, see section 22 of this title.

File and dismiss petitions, see section 95 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 533 of this title.

### § 42. Jury trials

(a) A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury in respect to the question of his insolvency, except as herein otherwise provided, and of any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

(b) If a jury is not in attendance upon the court, one may be specially summoned for the trial or the case may be postponed.

(c) The right to submit to a jury matters in controversy or an alleged offense under this title shall be determined and enjoyed, except as provided by this title, according to the laws of the United States now in force or such as may be hereafter enacted in relation to trials by jury.

(July 1, 1898, ch. 541, § 19, 30 Stat. 551; Mar. 3, 1911, ch. 231, § 289, 36 Stat. 1167; June 22, 1938, ch. 575, § 1, 52 Stat. 852.)

AMENDMENTS

1938—Subds. (a) and (b) reenacted without change by act June 22, 1938.

Subd. (c). Act June 22, 1938, inserted "to a jury" after "submit".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Acts of bankruptcy, see section 21 of this title.

Insolvency defined, see section 1 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Jury trial in civil actions, see rules 38 and 39, Title 28, Appendix, Judiciary and Judicial Procedure.

### § 43. Oaths; affirmations

(a) Oaths required by this title, except upon hearing before a judge, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

(b) Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

(July 1, 1898, ch. 541, § 20, 30 Stat. 551; June 22, 1938, ch. 575, § 1, 52 Stat. 852.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, substituted "hearing before a judge" for "hearings in court".

Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Consular officer authorized to administer oath or affirmation, see section 1195 of Title 22, Foreign Relations and Intercourse.

False oaths and claim in bankruptcy proceedings, see section 152 of Title 18, Crimes and Criminal Procedure.

Perjury generally, see section 1621 of Title 18, Crimes and Criminal Procedure.

Persons authorized to administer oaths, see section 2903 of Title 5, Government Organization and Employees.

Proof of claim under oath, see section 93 of this title.

§ 44. Evidence

(a) The court may, upon application of any officer, bankrupt, or creditor, by order require any designated persons, including the bankrupt and his or her spouse, to appear before the court or before the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt: *Provided,* That the spouse may be examined only touching business transacted by such spouse or to which such spouse is a party and to determine the fact whether such spouse has transacted or been a party to any business of the bankrupt: *And provided further,* That the spouse may be so examined, any law of the United States or of any State to the contrary notwithstanding.

(b) Except as herein otherwise provided, the right to take depositions in proceedings under this title shall be determined and enjoyed according to the laws of the United States now in force, or such as may be hereafter enacted, relating to the taking of depositions.

(c) Notice of the taking of depositions shall be filed with the court and a copy of such notice shall be served upon the adverse party in every case.

(d) Certified copies of proceedings before a referee, or of papers, when issued by the clerk, referee, or an employee of the referee designated by his order, which shall be filed in the office of the clerk, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

(e) A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of his appointment and qualification.

(f) A certified copy of any order or decree entered in a proceeding under this title shall be evidence of the jurisdiction of the court, the regularity of the proceedings, the fact that the order or decree was made, and the contents thereof, and, if recorded, shall impart the same notice that a deed or other instrument affecting property, if recorded, would impart.

(g) A certified copy of the petition with the schedules omitted, of the decree of adjudication or of the order approving the trustee's bond may be recorded at any time in the office where conveyances of real property are recorded, in every county where the bankrupt owns or has an interest in real property. Such certified copy may be recorded by the bankrupt, trustee, receiver, custodian, referee, or any creditor, and the cost of such recording shall be paid out of the estate of the bankrupt as part of the expenses of administration. Unless a certified copy of the petition, decree, or order has been recorded in such office, in any county wherein the bankrupt owns or has an interest in real property in any State whose laws authorize such recording, the commencement of a proceeding under this title shall not be constructive notice to or affect the title of any subsequent bona-fide purchaser or lienor of real property in such county for a present fair equivalent value and without actual notice of the pendency of such proceeding: *Provided, however,* That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. The exercise by any court of the United States or of any State of jurisdiction to authorize or effect a judicial sale of real property of the bankrupt within any county in any State whose laws authorize the recording aforesaid shall not be impaired by the pendency of such proceeding unless such copy be recorded in such county, as aforesaid, prior to the consummation of such judicial sale: *Provided, however,* That this subdivision shall not apply to the county in which is kept the record of the original proceedings under this title.

(h) A certified copy of an arrangement or wage-earner plan and of the order confirming it shall constitute evidence of the revesting in the debtor of title to the property dealt with by the arrangement or wage-earner plan, or of the vesting of title to such property in such other person as may be provided by the arrangement or wage-earner plan, and if recorded shall impart the same notice that an instrument of transfer from the trustee to the debtor or to such person if recorded would impart.

(i) A communication by a creditor, by the receiver or the trustee of a bankrupt, by the attorney for any of them, or by the referee to a creditor, to the receiver or trustee of the bankrupt, to the attorney for any of them, to the referee or to the bankrupt or his attorney, uttered in good faith and with reasonable grounds for belief in its truth, concerning the conduct, acts, or property of the bankrupt, shall be privileged and the creditor, receiver, trustee, attorney, or referee so uttering the same shall not be held liable therefor.

(j) In any proceeding or controversy, or in any plenary suit, brought under this title, if it shall appear that the interest of a witness is adverse to the party calling him, such witness may be examined as if under cross-examination and the party calling him shall not be bound by such testimony.

(k) In all proceedings under this title, the parties in interest shall be entitled to all rights and remedies granted by the Rules of Civil Procedure for the United States District Courts established from time to time by the Supreme Court pertaining to discovery, interrogatories, inspection and production of documents, and to the admission of execution and genuineness of instruments: *Provided, however,* That the limitations of time therein prescribed may be shortened by the court to expedite hearings.

(*l*) In any proceeding under this title against a bankrupt for an accounting by him for his property or the disposition thereof, or to compel a turn-over of property by him, if his books, records, and accounts shall fail to disclose the cost to him of such property sold by him during any period under consideration, it shall be presumed, until the contrary shall appear, that such property was sold at a price not less than the cost thereof to him.

(July 1, 1898, ch. 541, § 21, 30 Stat. 552; Feb. 5, 1903, ch. 487, § 7, 32 Stat. 798; May 27, 1926, ch. 406, § 7, 44 Stat. 664; June 22, 1938, ch. 575, § 1,

52 Stat. 852; July 7, 1952, ch. 579, § 8, 66 Stat. 423; Sept. 25, 1962, Pub. L. 87-681, § 3, 76 Stat. 570.)

AMENDMENTS

1962—Subd. (d). Pub. L. 87-681 substituted "clerk, referee" for "clerk or referee" and inserted "or an employee of the referee designated by his order, which shall be filed in the office of the clerk" preceding "shall be admitted as evidence".

1952—Subd. (k). Act July 7, 1952, made certain Federal Rules of Civil Procedure applicable to proceedings under this title.

1938—Subd. (a). Act June 22, 1938, substituted "spouse" for "wife" in the first proviso, and added the second proviso.

Subd. (b). Act June 22, 1938, inserted "otherwise" after "herein" in the proviso, and placed such proviso at the beginning of the subdivision.

Subd. (c) amended generally by act June 22, 1938, which among other changes, omitted provision relating to depositions taken in opposition to a discharge.

Subd. (e). Act June 22, 1938, substituted "his appointment and qualification", for provisions relating to vesting of title in the trustee and imparting of notice if the copy is recorded.

Subd. (f) amended generally by act June 22, 1938.

Subd. (g) added by act June 22, 1938. Former subd. (g) redesignated (h).

Subd. (h), formerly (g), amended generally by act June 22, 1938, which, among other changes, substituted "an arrangement and wage-earner plan" for "composition". Former subd. (h) redesignated (i).

Subd. (i), formerly (h), redesignated (i) by act June 22, 1938.

Subds. (j) to (*l*) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Contempt, see section 69 of this title.
Court defined, see section 1 of this title.
Examination of bankrupt, see section 25 of this title.
Referee authorized to employ stenographer, see section 66 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 44 on this section, see note by Advisory Committee under that rule, Title 28, Appendix, Judiciary and Judicial Procedure.
Proof of official record, see rule 44, Title 28, Appendix.
Reference to master in civil actions, see rule 53, Title 28, Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 110 of this title.

### § 45. Reference of petitions

(a) Unless the judge or judges direct otherwise, the clerk shall refer to a referee all cases filed under chapters 1 to 7, chapter 11, and chapter 13 of this title.

(b) The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

(July 1, 1898, ch. 541, § 22, 30 Stat. 552; June 22, 1938, ch. 575, § 1, 52 Stat. 854; June 23, 1959, Pub. L. 86-64, § 3, 73 Stat. 109.)

AMENDMENTS

1959—Subd. (a). Pub. L. 86-64 substituted provisions requiring the clerk, unless the judge or judges direct otherwise, to refer all cases filed under chapters 1 to 7, chapter 11, and chapter 13 of this title for provisions which permitted the judge at any stage of a proceeding to refer it to a referee, either generally or specially.

1938—Subd. (a) amended generally by act June 22, 1938, which among other changes omitted provision relating to reference to a referee within the territorial jurisdiction of the court.

Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Duties and compensation of referees, see sections 67 and 68 of this title.
Powers of referee, see section 66 of this title.
Proceedings referable to referee—
Arrangements, see section 731 of this title.
Corporate reorganization, see section 517 of this title.
Real property arrangements, see section 831 of this title.
Wage earners' plans, see section 1031 of this title.
Referee not to practice as an attorney in any proceeding, see section 67 of this title.
Restriction on compensation of referee, see section 112 of this title.

### § 46. Jurisdiction of controversies between receivers and trustees and adverse claimants

(a) The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings under this title, between receivers and trustees as such and adverse claimants, concerning the property acquired or claimed by the receivers or trustees, in the same manner and to the same extent as though such proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

(b) Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this title had not been instituted, unless by consent of the defendant, except as provided in sections 96, 107, and 110 of this title.

(July 1, 1898, ch. 541, § 23, 30 Stat. 552; Feb. 5, 1903, ch. 487, § 8, 32 Stat. 798; June 25, 1910, ch. 412, § 7, 36 Stat. 840; May 27, 1926, ch. 406, § 8, 44 Stat. 664; June 22, 1938, ch. 575, § 1, 52 Stat. 854.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, substituted "under this title" for "in bankruptcy" after "proceedings", and inserted "receivers and" after "between", and "receivers or" after "claimed by the".

Subd. (b). Act June 22, 1938, inserted "the receiver and" after "Suits by" and substituted "under this title" for "in bankruptcy" after "proceedings".

1926—Subd. (a). Act May 27, 1926, substituted "district" for "circuit" after "The United States".

Subd. (d). Act May 27, 1926, inserted "only" after "prosecuted".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Ancillary jurisdiction in aid of receiver or trustee, see section 11 of this title.

Authority of receivers to prosecute or defend proceedings, see section 11 of this title.

Concurrent jurisdiction of plenary proceedings—
- Recovery or avoidance of preferences, see section 96 of this title.
- Recovery or avoidance of liens and fraudulent transfers, see section 107 of this title.
- Recovery or avoidance of transfer or obligation, see section 110 of this title.

Duties of trustee, see section 75 of this title.

Exclusive jurisdiction—
- Arrangement proceedings, see section 711 of this title.
- Corporate reorganization proceedings, see section 511 of this title.
- Real property arrangement proceedings, see section 811 of this title.
- Wage earners' plans proceedings, see section 1011 of this title.

Jurisdiction—
- Action involving diversity of citizenship, see section 1332 of Title 28, Judiciary and Judicial Procedure.
- Bankruptcy courts generally, see section 11 of this title.
- To enter turn-over orders, see section 11 of this title.

Summary jurisdiction to determine rights of lienholders, see section 107 of this title.

Title to bankrupts' property vested in trustee, see section 110 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Civil action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 502 of this title.

### § 47. Jurisdiction of appellate courts

(a) The United States courts of appeals, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy, either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact: *Provided, however,* That the jurisdiction upon appeal from a judgment on a verdict rendered by a jury shall extend to matters of law only: *And provided further,* That when any order, decree, or judgment involves less than $500, an appeal therefrom may be taken only upon allowance of the appellate court.

(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal.

(c) The Supreme Court of the United States is vested with jurisdiction to review judgments, decrees, and orders of the United States courts of appeals in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted.

(July 1, 1898, ch. 541, § 24, 30 Stat. 553; May 27, 1926, ch. 406, § 9, 44 Stat. 664; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 854; June 25, 1948, ch. 646, § 32(a), 62 Stat. 992; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 7, 1952, ch. 579, § 9, 66 Stat. 423.)

AMENDMENTS

1952—Subds. (a) and (c). Act July 7, 1952, deleted reference to United States court of appeals for the District of Columbia since such court is contained within the reference "United States courts of appeals".

1938—Subds. (a), (formerly (a) and part of (b)), and (b), (formerly part of (b)), amended generally by act June 22, 1938, which among other changes added after "matters of fact" the two provisos in subd. (a).

Subd. (c), formerly subd. (c) of section 48 of this title, amended generally by act June 22, 1938, which act did not reenact former subd. (c) as a part of this section. See subd. (a) of section 48 of this title for provisions on that subject.

1926—Subd. (a). Act May 27, 1926, inserted "the Court of Appeals of the District of Columbia" after "the circuit courts of appeal of the United States" and deleted the last sentence.

Subd. (b) amended generally by act May 27, 1926, which among other changes inserted "and the Court of Appeals of the District of Columbia" after "circuit courts of appeal" and the last sentence reading "Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 25 to be allowed in the discretion of the appellate court.

Subd. (c). Act May 27, 1926, added subd. (c).

CHANGE OF NAME

Act June 25, 1948, § 32(a), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" and "United States Court of Appeals for the District of Columbia" for "United States Circuit Court of Appeals for the District of Columbia".

Act June 7, 1934, changed the name of "Court of Appeals of the District of Columbia" to "United States Circuit Court of Appeals for the District of Columbia".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

REPEALS

Act Mar. 3, 1911, ch. 231, § 128(c), as added by act Feb. 13, 1925, ch. 229, § 1, 43 Stat. 936, was repealed by act June 25, 1948. Said act of 1925 provided that: "The circuit courts of appeal shall also have an appellate and supervisory jurisdiction under sections 24 and 25 of the Bankruptcy Act of July 1, 1898 [this section and section 48 of this title], over all proceedings, controversies, and cases had or brought in the district courts under that Act or any of its amendments, and shall exercise the same in the manner prescribed in those sections; and the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit in this regard shall cover

the courts of bankruptcy in Alaska and Hawaii, and that of the Circuit Court of Appeals for the First Circuit shall cover the court of bankruptcy in Porto Rico."

Act Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941, provided for the repeal of so much of sections 24 and 25 [this section and section 48 of this title] "as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named."

CROSS REFERENCES

Final decisions of district court appealable to courts of appeals, see section 1291 of Title 28, Judiciary and Judicial Procedure.

Interlocutory decisions of district courts appealable to courts of appeals, see section 1292 of Title 28.

Jurisdiction of Supreme Court to review cases from courts of appeals, see section 1254 of Title 28.

Time for appeal from bankruptcy judgment, order or decree, see section 48 of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Appeals by allowance in bankruptcy proceedings, see rule 6, Title 28, Appendix, Judiciary and Judicial Procedure.

Notice of appeal, see rules 3, 4, Title 28, Appendix.

### § 48. Practice on appeals

(a) Appeals under this title to the United States courts of appeals shall be taken within thirty days after written notice to the aggrieved party of the entry of the judgment; order or decree complained of, proof of which notice shall be filed within five days after service or, if such notice be not served and filed, then within forty days from such entry.

(b) Receivers and trustees shall not be required in any case to give bond when they take appeals.

(July 1, 1898, ch. 541, § 25, 30 Stat. 553; May 27, 1926, ch. 406, § 10, 44 Stat. 665; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 855; June 25, 1948, ch. 646, §§ 23, 32(a), 39, 62 Stat. 990, 992; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 7, 1952, ch. 579, § 10, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, deleted reference to the United States Court of Appeals for the District of Columbia since such court is now contained within the reference to "United States courts of appeals".

1948—Sections 23, 39 of act June 25, 1948, eff. Sept. 1, 1948, repealed act Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54, and substituted appeal for writ of error.

1938—Subd. (a), formerly subd. (c) of section 47 of this title, amended generally by act June 22, 1938, which among other changes provided for the time of filing proof of notice of appeal.

Subd. (b). Act June 22, 1938 inserted "Receivers and" preceding "trustees".

1926—Subd. (a). Act May 27, 1926, inserted "and the Court of Appeals of the District of Columbia and to the Supreme Courts of the Territories" after "circuit courts of appeals" in the first sentence and substituting "thirty" for "ten" preceding "days" in the last sentence.

CHANGE OF NAME

Act June 25, 1948, § 32(a), eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" and "United States Court of Appeals for the District of Columbia" for "United States Circuit Court of Appeals for the District of Columbia".

Act June 7, 1934, changed the name of "Court of Appeals of the District of Columbia" to "United States Circuit Court of Appeals for the District of Columbia".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

REPEALS

Act Feb. 13, 1925, ch. 229, § 13, 43 Stat. 941, provided for the repeal of so much of sections 24 and 25 [section 47 of this title and this section] "as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named".

CROSS REFERENCES

Damages and costs on affirmance, see section 1912 of Title 28, Judiciary and Judicial Procedure.

Fees and costs against the United States, see section 2412 of Title 28.

Fees and costs in courts of appeals, see section 1913 of Title 28.

Security not required of United States, see section 2408 of Title 28.

Time for—

Appeal to court of appeals in civil cases, see section 2107 of Title 28.

Filing petition for review of order of referee to judge, see section 67 of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Appeals by allowance in bankruptcy proceedings, see rule 6, Title 28, Appendix, Judiciary and Judicial Procedure.

Bonds for costs on appeal in civil cases, see rule 7, Title 28, Appendix.

Notice of appeal, see rules 3, 4, Title 28, Appendix.

Record on appeal, see rule 10. Title 28, Appendix.

Stay or injunction pending appeal, see rule 8, Title 28, Appendix.

### § 49. Arbitration of controversies

(a) The receiver or trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

(b) Three arbitrators shall be chosen by mutual consent, or one by the receiver or trustee, one by the other party to the controversy, and the third by the two so chosen or, if they fail to agree in five days after their appointment, the court shall appoint the third arbitrator.

(c) The written finding of the arbitrators or of a majority of them as to the issues presented may be filed in court and shall have like force and effect as the verdict of a jury.

(July 1, 1898, ch. 541, § 26, 30 Stat. 553; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, inserted "receiver or" preceding "trustee".

Subd. (b). Act June 22, 1938, inserted "receiver or" preceding "trustee".

Subd. (c). Act June 22, 1938, reenacted subd. (c) without change.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 50. Compromises

The receiver or trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interest of the estate.

(July 1, 1898, ch. 541, § 27, 30 Stat. 553; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

AMENDMENTS

1938—Act June 22, 1938, inserted "receiver or" preceding "trustee".

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Notice to creditors of proposed compromise, see section 94 of this title.

### § 51. Designation of newspapers

The judges of courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

(July 1, 1898, ch. 541, § 28, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 855.)

AMENDMENTS

1938—Act June 22, 1938, inserted "the judges of" preceding "courts of bankruptcy" and omitted "required to be published by this Act" after "in which notices", in the first sentence.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78fff.

### § 52. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862

Section, acts July 1, 1898, ch. 541, § 29, 30 Stat. 554; May 27, 1926, ch. 406, § 11, 44 Stat. 665; June 22, 1938, ch. 575, § 1, 52 Stat. 856, relating to offenses, is now covered by sections 151 to 154, 3057, and 3284 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 1, 1948, see section 20 of act June 25, 1948.

### § 53. Repealed. Pub. L. 88-623, § 3, Oct. 3, 1964, 78 Stat. 1001

Section, act July 1, 1898, ch. 541, § 30, 30 Stat. 554, empowered the Supreme Court to prescribe and amend all rules, forms, and orders to effectuate the provisions of this title, and is now covered by section 2075 of Title 28, Judiciary and Judicial Procedure.

RULES, FORMS AND ORDERS PRESCRIBED PRIOR TO OCTOBER 3, 1964

Section 3 of Pub. L. 88-623 provided that: "Section 30 of the Bankruptcy Act [this section] is repealed but its repeal shall not operate to invalidate or repeal rules, forms, or orders prescribed under the authority of that section by the Supreme Court prior to the enactment of this Act [Oct. 3, 1964]."

### § 54. Computation of time

Whenever time is enumerated by days in this title or in any proceeding thereunder the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a holiday.

(July 1, 1898, ch. 541, § 31, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 857.)

AMENDMENTS

1938—Act June 22, 1938, deleted "legal" preceding "holiday" at end of section.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 55. Transfer of cases

(a) In the event petitions are filed by or against the same person or by or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall, by order of the court first acquiring jurisdiction, be transferred to and consolidated in the court which can proceed with the same for the greatest convenience of parties in interest.

(b) Where venue in any case filed under this title is laid in the wrong court of bankruptcy, the judge may, in the interest of justice, upon timely and sufficient objection to venue being made, transfer the case to any other court of bankruptcy in which it could have been brought.

(c) The judge may transfer any case under this title to a court of bankruptcy in any other district, regardless of the location of the principal assets of the bankrupt, or his principal place of business, or his residence, if the interests of the parties will be best served by such transfer.

(July 1, 1898, ch. 541, § 32, 30 Stat. 554; June 22, 1938, ch. 575, § 1, 52 Stat. 857; July 7, 1952, ch. 579, § 11, 66 Stat. 424.)

AMENDMENTS

1952—Act July 7, 1952, designated former section as subd. (a) and added subds. (b) and (c).

1938—Act June 22, 1938 inserted "by or" preceding "against" in two instances and provided for transfer and consolidation by order of court first acquiring ju-

risdiction instead of by court relinquishing jurisdiction.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## CHAPTER 5—OFFICERS, THEIR DUTIES AND COMPENSATION

Sec.

61. Creation of two offices.
62. Appointment, reappointment, and removal of referees.
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81. Statistics.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 41, 45, 502, 702, 781, 802, 886, 1002, 1069 of this title; title 15 section 78fff.

### § 61. Creation of two offices

The offices of referee and trustee are created.

(July 1, 1898, ch. 541, § 33, 30 Stat. 555.)

### § 62. Appointment, reappointment, and removal of referees

**(a) Appointment**

The judges of the several courts of bankruptcy shall appoint referees. Where there is more than one judge of a court of bankruptcy, or where the territory to be served by a referee includes territory in more than one judicial district, the appointment, whether an original appointment or a reappointment, shall be by the concurrence of a majority of all the judges of such court or of the courts of bankruptcy of such judicial districts, and where there is no such concurrence, then by the chief judge. Except as otherwise provided in section 65 of this title, each appointment and reappointment shall be for a term of six years. Upon the expiration of his term, a referee in bankruptcy shall continue to perform the duties of his office until his successor is appointed and qualifies provided the filling of the vacancy has been authorized as provided in subdivision (b) of section 71 of this title.

**(b) Removal**

Removal of a referee during the term for which he is appointed shall be only for incompetency, misconduct, or neglect of duty: *Provided, however,* That, in the case of a part-time referee, an additional cause for removal shall be that his services are not needed. Any cause for removal in respect of any referee coming to the knowledge of the Director shall be reported by him to the judge or judges of the judicial district or districts in which such referee serves, and a copy of such report shall at the same time be transmitted to the council and to the referee. Such judge or judges may, upon receipt of such report, or upon their own motion, remove the referee for any one or more of the above mentioned causes; where there is more than one judge, such removal shall be by a concurrence of a majority of the judges, and where there is no such concurrence, then by the council. Before any order of removal shall be entered, except in the case of a part-time referee where the cause for removal is that his services are not needed, a full specification of the charges shall be furnished to the referee, and he shall be accorded by the removing judge or judges an opportunity to be heard on the charges.

(July 1, 1898, ch. 541, § 34, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 2, 60 Stat. 324; May 16, 1951, ch. 81, 65 Stat. 42; Aug. 7, 1959, Pub. L. 86-144, § 2, 73 Stat. 297.)

AMENDMENTS

1959—Subd. (a). Pub. L. 86-144 substituted "chief" for "senior" and deleted "by the Conference" following "authorized".

1951—Subd. (a). Act May 16, 1951, added last sentence providing that upon the expiration of bankruptcy referee's term of office he shall continue to serve until a successor is appointed.

1946—Act June 28, 1946, amended section generally to provide that where there is more than one district judge in a territory, the appointments of referees are to be made by a concurrence of a majority, to extend the term of office from 2 to 6 years, and to provide for removal during term of office, only for incompetency, misconduct, or neglect of duty, except in the case of a part-time referee who may be removed at any time if his services are no longer needed.

1938—Act June 22, 1938, amended section generally, and, among other changes, inserted provision which related to territorial limits of referees' jurisdiction.

EFFECTIVE DATES OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided:

"Sections 1 and 10 of this amendatory Act [amending section 1(5a), (7a), (8a), (14a), of this title and repealing section 82 of this title] and so much of section 4 of this amendatory Act as amends subdivision (b) of section 37 of the Act entitled 'An Act to establish a

uniform system of bankruptcy throughout the United States', approved July 1, 1898, as amended [subd. (b) of section 65 of this title], shall be effective upon approval of this amendatory Act [June 28, 1946]. All other provisions of this amendatory Act [amending sections 62, 63, 65(a), 67(b), 68, 71, 79(2), (5), 80(a), 102(a), (b), 104(a)(1), 112, 517, 1024(3), 1033(2), 1059(1), (3) of this title] shall become effective sixty days after promulgation of the determinations of the conference, as provided in the said subdivision (b) of section 37, as amended by this amendatory Act [subd. (b) of section 65 of this title]: *Provided, however,* That the references contained in paragraph (1) of subdivision (b) of section 37 as amended by this amendatory Act [subd. (b) of section 65 of this title] to 'subdivision (a) of this section, and required for subdivisions (a) and (c) of section 40 [section 68 of this title], paragraph (2) of section 633 [section 1033 of this title], and paragraph (3) of section 659 of this Act' [section 1059 of this title] are intended to refer to those subdivisions and paragraphs as they will be amended when sections 6, 16, and 17 of this amendatory Act [sections 68, 1033, and 1059 of this title] become effective, and section 4 of this amendatory Act [section 65 of this title] becomes fully effective."

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

REPEALS; SAVINGS CLAUSE; SECTION AND SUBDIVISION CATCHLINES

Section 19 of act June 28, 1946, provided:

"a. All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [amending sections 1(5a), (7a), (8a), (14a), 62, 63, 65(a), (c), 67(b), 68, 71, 79(2), (5), 80(a), 102(a), (b), 104(a)(1), 112, 517, 1024(3), 1033(2), 1059(1), (3) of this title and repealing section 82 of this title] are hereby repealed.

"b. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act [said sections] is amendatory.

"c. If any provision of this amendatory Act [said sections] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act [said sections] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act [said sections] are declared to be severable.

"d. Section and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 65 of this title.

## § 63. Qualifications of referees

Individuals shall not be eligible to appointments as referees unless they are (1) competent to perform the duties of a referee in bankruptcy; (2) not holding any office of profit or emolument under the laws of the United States or of any State or subdivision thereof other than conciliation commissioner or special master under this title: *Provided, however,* That part-time referees may be commissioners of deeds, United States magistrates, justices of the peace, masters in chancery, notaries public, retired officers and retired enlisted personnel of the Regular and Reserve components of the Army, Navy, Marine Corps, and Coast Guard, members of the Reserve components of the Army, Navy, Marine Corps, and Coast Guard, members of the National Guard of the United States and of the National Guard of a State, Territory, or the District of Columbia, except the National Guard disbursing officers who are on a full time salary basis, or either conciliation commissioners or supervising conciliation commissioners but not both; (3) at the time when originally appointed not relatives of any of the judges of the courts of bankruptcy or of the justices or judges of the appellate courts of the districts wherein they may be appointed; (4) resident and have their offices within the judicial district of the court or one of the courts of bankruptcy under which they are to hold appointment: *Provided, however,* That where a referee shall be temporarily transferred or permanently appointed to another judicial district, residence or office in such other district shall not be requisite for eligibility; and *Provided further,* That referees serving the District of Columbia shall reside in the District of Columbia, or within twenty miles thereof; and (5) members in good standing at the bar of the district court of the United States in which they are first appointed or, if appointed to serve in territory within more than one judicial district, at the bar of one of such district courts: *Provided, however,* That the requirement of membership at such bar shall not apply to referees holding office on the date when this amendatory Act takes effect.

(July 1, 1898, ch. 541, § 35, 30 Stat. 555; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 3, 60 Stat. 324; June 30, 1947, ch. 182, 61 Stat. 213; Aug. 5, 1953, ch. 327, 67 Stat. 366; Pub. L. 90-578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118.)

REFERENCES IN TEXT

"This amendatory Act", referred to in the text, refers to act June 28, 1946.

AMENDMENTS

1953—Act Aug. 5, 1953, provided for residential qualification for referees in District of Columbia.

1947—Act June 30, 1947, enlarged the category of official and quasi-official positions, the holding of which would not bar an appointment as a part-time referee to include retired officers and enlisted men of the Regular and Reserve components of the Army, Navy, etc. including the National Guard.

1946—Act June 28, 1946, prohibited a referee from holding any office other than a conciliation commissioner or special master under this title, but allowed a part-time referee to be a United States commissioner, justice of peace, master in chancery, notary public or either a conciliation commissioner or supervising conciliation commissioner, but not both, and made conforming changes in clauses (4) and (5).

1938—Clauses (1), (3), and (4) amended by act June 22, 1938.

Clause (2) reenacted without change by act June 22, 1938.

Clause (5) added by act June 22, 1938.

1911—Act Mar. 3, 1911, substituted "district court" for "circuit court".

CHANGE OF NAME

"United States magistrates" was substituted for "United States commissioners" pursuant to Pub. L. 90-578, title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE AND CONSTRUCTION OF AMENDMENTS

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 64. Oaths of referees**

Referees shall take the same oath of office as that prescribed for judges of United States courts.

(July 1, 1898, ch. 541, § 36, 30 Stat. 555.)

CROSS REFERENCES

Oaths of judges of United States courts, see section 453 of Title 28, Judiciary and Judicial Procedure.

**§ 65. Number and territories of referees**

(a) The Director shall recommend to the district judges, the councils and the conference the number of referees to hold appointment and the territory which each shall serve, after he has made a careful study of conditions throughout the country as a whole, and of local conditions, including the estimated amount of funds available for salaries, the areas and the populations to be served, the transportation and communication facilities, the previous types and amount of business under this title in such areas and where such business is centered, the existing personnel, and any other material factors. The territory of a referee may, if it is deemed advisable, lie within more than one judicial district, but shall be within one circuit: *Provided, however,* That the jurisdiction of a referee in any matter referred to him shall not be restricted to the territory to be served by him but shall, unless otherwise provided in this title, be coextensive with the territorial jurisdiction of the court or courts of bankruptcy whose judges participated in appointing him.

(b)(1) The Director shall, within one year immediately following June 28, 1946, make the initial surveys required by subdivision (a) of this section, and required for subdivisions (a) and (c) of section 68 of this title, paragraph (2) of section 1033 of this title, and paragraph (3) of section 1059 of this title. Thereafter, the Director shall, from time to time, make such surveys, general or local, as the conference shall deem expedient. In the course of such surveys, the Director shall give consideration to suggestions from any interested parties, including district judges, referees, bar associations, trade associations, and the like. The surveys shall be made with a view toward creating and maintaining a system of full-time referees. However, should the Director find, as a result of any such surveys, any area in which the employment of a full-time referee would not be feasible because of the small amount of business under this title and the extent of the territory to be served, he shall also report separately thereon, with a statement of all the pertinent facts and data and his recommendations and the reasons therefor. Upon the completion of the initial surveys, the Director shall report to the district judges, the councils and the conference concerning the number of referees, their respective territories, the amounts of their respective salaries, and the schedules of additional fees to be charged in asset, arrangement and wage-earner cases. The district judges shall advise their respective councils, and the councils shall advise the conference, in respect thereto, stating their recommendations and their reasons therefor. The conference shall determine, in the light of the recommendations of the Director and of the councils, the number of referees, full-time and part-time, to be appointed, the respective territories which they shall serve, including the regular place of office and the places at which courts shall be held, their respective salaries, and schedules of graduated additional fees to be charged in asset, arrangement and wage-earner cases, and such determinations shall become effective sixty days after they are promulgated by the conference.

(2) The Director shall upon such promulgation divide by lot the total number of referees first to be appointed as equally as possible into three classes. The initial terms of the referees in the first class shall expire at the end of the second year, in the second class at the end of the fourth year, and in the third class at the end of the sixth year.

(3) Thereupon the Director shall report in writing to the judge or judges of the several courts of bankruptcy the number of referees to be appointed by them in each of the three classes above specified, the respective territories which such referees shall serve, and the respective salaries to be paid to them. The judge or judges shall thereupon appoint, pursuant to subdivision (a) of section 62 of this title such referees in each of the specified classes for terms commencing sixty days after such promulgation of the determinations of the conference, and shall select them as far as practicable from the referees then in office within their respective judicial districts.

(c) Except as otherwise provided in this title, the conference may, from time to time, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, change the number of referees and the extent of the respective territories to be served by them, as the expeditious transaction of the business of the several courts of bankruptcy may require.

(July 1, 1898, ch. 541, § 37, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 857; June 28, 1946, ch. 512, § 4, 60 Stat. 325.)

AMENDMENTS

1946—Act June 28, 1946, amended section generally to authorize the Director of the Administrative Office to make a survey of the entire country within one year in order to ascertain the number of referees needed and the territories they are to serve, and to stagger the initial terms of the first appointees so that one-third will expire every two years but that all subsequent appointments shall be for a full term.

1938—Section, as amended by act June 22, 1938, provided: "Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy, but, insofar as possible, the number shall be limited with a view to employment of referees on a full-time basis."

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Section 18 of act June 28, 1946, provided in part that subd. (b) of this section, as amended by said act June 28, 1946, should be effective on June 28, 1946. Said section 18 further provided that subds. (a) and (c) of this section should become effective sixty days after June 28, 1946.

Repeals, saving provisions, and effect of catchlines of act June 28, 1946, see section 19 of act June 28, 1946, set out as a note under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 68, 91 of this title.

**§ 66. Jurisdiction of referees**

Referees are invested, subject always to a review by the judge, with jurisdiction to (1) consider all petitions referred to them and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or showing his sickness or inability to act; (4) grant, deny, or revoke discharges, determine the dischargeability of debts, and render judgments thereon; (5) confirm or refuse to confirm arrangements or wage-earner plans, or set aside the confirmation of arrangements or wage-earner plans and reinstate the proceedings or cases; (6) perform such of the duties as are by this title conferred on courts of bankruptcy, including those incidental to ancillary jurisdiction, and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (7) during the examination of the bankrupt, or during other proceedings, authorize the employment of stenographers for reporting and transcribing proceedings at such reasonable expense to the estate as the court may fix.

(July 1, 1898, ch. 541, § 38, 30 Stat. 555; May 27, 1926, ch. 406, § 12, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 857; Oct. 19, 1970, Pub. L. 91-467, § 8, 84 Stat. 993.)

AMENDMENTS

1970—Cl. (4). Pub. L. 91-467 added the determination of dischargeability and the rendering of judgments thereon to the powers of the referees.

1938—Clauses (1), (6), and (7), formerly (1), (4), and (5), respectively, amended by act June 22, 1938.

Clauses (2) and (3) reenacted without change by act June 22, 1938.

Clauses (4) and (5) added by act June 22, 1938.

1926—Act May 27, 1926 struck out provision requiring that, in order to authorize the employment of stenographers, the trustee have made application therefor, and substituted reasonable expense for compensation not to exceed 10 cents per folio as the expense which the estate had to bear for reporting and transcribing proceedings.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-467, see section 10 of Pub. L. 91-467, set out as a note under section 11 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 67. Duties of referees; prohibition against practice of law and acting as trustees or receivers; review of orders**

(a) Referees shall (1) give notice to creditors and other parties in interest, as provided in this title; (2) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts or cause the same to be done when the bankrupts fail, refuse, or neglect to do so; (3) examine all schedules of property, lists of creditors, and statements of affairs, filed as provided under this title, and cause such as are incomplete and defective to be amended; (4) furnish or cause to be furnished such information concerning proceedings before them as may be requested by parties in interest; (5) declare dividends and cause to be prepared dividend sheets showing the dividends declared and to whom payable; (6) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts and secure the return of such papers after they have been used, or, if it be impractical to transmit the original papers, transmit certified copies thereof by mail; (7) upon application of any party in interest, preserve the evidence taken, or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; (8) prepare promptly and transmit to the clerks certificates on petitions for review of orders made by them, together with a statement of the questions presented, the findings and orders thereon, the petition for review, a transcript of the evidence or a summary thereof, and all exhibits; and (9) safely keep, perfect, and transmit to the clerks, when the cases are concluded, the records herein required to be kept by them.

(b) Referees shall not (1) act in cases in which they are directly or indirectly interested; or (2) purchase, directly or indirectly, any property of an estate in any proceeding under this title. Active full-time referees shall not exercise the profession or employment of counsel or attorney, or be engaged in the practice of law; nor act as trustee or receiver in any proceeding under this title. Active parttime referees, and referees receiving benefits under paragraph (1) of subdivision (d) of section 68 of this title, shall not practice as counsel or attorney nor act as trustee or receiver in any proceeding under this title.

(c) A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court upon petition filed within such ten-day period may for cause shown allow, file with the referee a

petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. Such petition shall set forth the order complained of and the alleged errors in respect thereto. Unless the person aggrieved shall petition for review of such order within such ten-day period, or any extension thereof, the order of the referee shall become final. Upon application of any party in interest, the execution or enforcement of the order complained of may be suspended by the court upon such terms as will protect the rights of all parties in interest.

(July 1, 1898, ch. 541, § 39, 30 Stat. 555; June 22, 1938, ch. 575, § 1, 52 Stat. 858; June 28, 1946, ch. 512, § 5, 60 Stat. 326; July 7, 1952, ch. 579, § 12, 66 Stat. 424; June 23, 1959, Pub. L. 86-49, 73 Stat. 80; July 14, 1960, Pub. L. 86-662, 74 Stat. 528; May 10, 1966, Pub. L. 89-414, 80 Stat. 135.)

AMENDMENTS

1966—Subd. (b). Pub. L. 89-414 prohibited full-time referees, part-time referees, and retired referees from acting as trustees or receivers in bankruptcy proceedings.

1960—Subd. (c). Pub. L. 86-662 required the petition for extension of time to be filed within the ten-day period, and provided that the order of the referee shall become final unless the person aggrieved shall petition for review of such order within the ten-day period, or any extension thereof.

1959—Subd. (a). Pub. L. 86-49 repealed former clause (9) that required transmittal of papers by referees to the clerk of the court, and redesignated former clause (10) as (9).

1952—Subd. (a)(9). Act July 7, 1952, clarified the duties of referees.

1946—Subd. (b). Act June 28, 1946, prohibited full-time referees from practicing law, but permitted part-time referees and retired referees to practice law except in proceedings under this title.

1938—Subd. (a) amended by act June 22, 1938. Clause (9) added. Clauses (1), (3), (4), (5), (6), (8), and (10), formerly (4), (2), (3), (1), (8), (5), and (7), respectively, amended. Clauses (2) and (7), formerly (6) and (9), respectively, reenacted without change. Former clause (10) was not reenacted as part of this section.

Subd. (b). Act June 22, 1938, reenacted subd. (b) without change.

Subd. (c). Act June 22, 1938, added subd. (c).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 68. Compensation of referees; referees' salary and expense fund; retirement of referees**

(a) The compensation of referees in bankruptcy shall be as follows:

(1) Each full-time referee in bankruptcy shall receive a salary of $37,800 per annum, subject to adjustment in accordance with sections 351 to 361 of title 2 and section 461 of title 28.

(2) Each part-time referee in bankruptcy shall receive a salary of not more than $18,900 per annum, subject to adjustment in accordance with sections 351 to 361 of title 2 and section 461 of title 28 and subject to further adjustment by the conference, in the light of recommendations of the councils, made after advising with the district judges of their respective circuits, and the Director. In fixing the amount of the salary to be paid to a part-time referee, consideration shall be given to the average number and types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the part-time referee is to serve, during the last preceding period of ten years, and to such other factors as may be material.

(3) Disbursement of salaries of referees shall be made monthly by or pursuant to order of the Director.

(b) The conference, in light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease the salary of any part-time referee, within the limit prescribed in subdivision (a)(2) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries.

(c)(1) Except as otherwise provided in this title, there shall be deposited with the clerk, at the time the petition is filed in each case, and at the time an ancillary proceeding is instituted, $37 for each estate for the referees' salary and expense fund, as herein below established: *Provided, however,* That in cases of voluntary bankruptcy such fee, as well as the filing fees of the clerk and trustee, may be paid in installments, if so authorized by General Order of the Supreme Court of the United States.

(2) Additional fees for the referees' salary and expense fund shall be charged, in accordance with the schedule fixed by the conference (a) against each estate wholly or partially liquidated in a bankruptcy proceeding, and be computed upon the net proceeds realized; (b) against each case in an arrangement confirmed under chapter 11 of this title, and be computed upon the amount to be paid to the unsecured creditors upon confirmation of the arrangement and thereafter, pursuant to the terms of the arrangement, and where under the arrangement any part of the consideration to be distributed is other than money, upon the amount of the fair value of such consideration; and (c) against each case in a wage earner plan confirmed under chapter 13 of this title, and be computed upon the payments actually made by or for a debtor under the plan. Such schedule of fees may be revised by the Director, with the approval of the conference, not more than once during each calendar year, so that the total amount of fees, allowances, and charges collected and to be collected from all sources for the referees' salary and expense fund will, as near as may be equal the total amount of salaries paid and to be paid to referees in active service, and the total amount of their expenses: *Provided, however,* That such schedule of fees

shall not be so revised for any year that the total collections estimated by the Director for such year shall exceed by more than 10 per centum the total collections in the preceding year. The Director, with the approval of the conference, may make, and from time to time amend, rules and regulations prescribing methods for determining net proceeds realized in asset cases, fair values of considerations, other than money, distributable in arrangement cases, and payments actually made by or for a debtor under the plan in wage earner cases; prescribing the procedure for collection by the clerk of fees and allowances for the referees' salary and expense fund; and providing for the effective administration of the provisions of this paragraph (2).

(3) Charges for the expense of special services relating to or in connection with proceedings before referees shall be made and collected by the referees in accordance with regulations to be prescribed by the Director, with the approval of the conference, and the proceeds shall be paid by the referees to the clerk for transmission to the Treasury of the United States for deposit in the referees' expense fund.

(4) A referees' salary and expense fund shall be established in the Treasury of the United States, and the amounts of the various fees and allowances collected by the clerks for the services of referees, and for their expenses, including the fees, allowances and charges for their services and expenses as conciliation commissioners and as special masters under this title, shall be covered into the Treasury of the United States for the account of such salary and expense funds. The salaries of the referees in active service and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such salary and expense fund by the United States. Any deficiencies of such salary and expense fund shall be paid out of any funds in the Treasury of the United States not otherwise appropriated, and appropriations to pay such deficiencies are authorized: *provided, however,* That there shall be covered into miscellaneous receipts of the Treasury of the United States in any subsequent year so much of the surplus, if any, arising in the salary and expense fund as may be necessary to reimburse the Treasury of the United States for payments made on account of such fund in any prior year.

(5) As of the day preceding the date when the referees, as provided by paragraph (2) of subdivision (b) of section 65 of this title, are to take office, an allocation shall be made by the judge or judges of the several courts of bankruptcy of all filing and other fees, commissions, and allowances, and of all expense funds, due the then existing referees for services rendered and expenses incurred in the cases pending before them, whether as referee, conciliation commissioner, or special master under this title. The balances of such filing and other fees, commissions, and allowances and the expense surpluses shall be covered into the Treasury of the United States by the referees and the clerks, to be deposited to the credit of the salary and expense fund. All cases pending before outgoing referees shall be referred, and no additional filing fees shall be required, but additional salary and expense charges may be assessed in such cases in such amounts as the judge or judges of the several courts of bankruptcy may deem equitable, taking into consideration the schedules of additional fees fixed by the Director and the payments previously made therein.

(d)(1) All referees in bankruptcy and employees in the offices of such referees shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 of title 5.

(2) Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision may, if called upon by a judge of a court of bankruptcy, perform such duties of a referee, conciliation commissioner, or special master under this title, within the jurisdiction of the court, as he may be able and willing to undertake. The retired referee shall receive as compensation for his services, either full or part time, the salary authorized for the referee serving the territory to which the retired referee is assigned. However, the rate of compensation of a retired referee assigned to serve on a full-time basis in the territory of a part-time referee shall be the rate of full-time service. Salaries authorized under this paragraph shall be subject to the provisions of section 8344(a) of title 5.

(July 1, 1898, ch. 541, § 40, 30 Stat. 556; Feb. 5, 1903, ch. 487, § 9, 32 Stat. 799; June 22, 1938, ch. 575, § 1, 52 Stat. 859; June 28, 1946, ch. 512, § 6, 60 Stat. 326; July 7, 1952, ch. 580, 66 Stat. 438; May 10, 1956, ch. 257, 70 Stat. 151; July 28, 1959, Pub. L. 86-110, § 1, 73 Stat. 259; Sept. 19, 1962, Pub. L. 87-677, 76 Stat. 559; Aug. 14, 1964, Pub. L. 88-426, title IV, § 402(d), 78 Stat. 434; Nov. 28, 1967, Pub. L. 90-161, § 1, 81 Stat. 518; Dec. 16, 1967, Pub. L. 90-206, title II, § 225(h), 81 Stat. 644; Dec. 27, 1973, Pub. L. 93-200, 87 Stat. 838; Aug. 9, 1975, Pub. L. 94-82, title II, § 205(b)(8), 89 Stat. 423; Feb. 27, 1976, Pub. L. 94-217, §§ 1, 2, 90 Stat. 192.)

CODIFICATION

In subd. (d), references to "subchapter III of chapter 83 of title 5" and "section 8344(a) of title 5" were substituted for "the Civil Service Retirement Act" and "section 13(b) of the Civil Service Retirement Act", respectively, on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1976—Subd. (a). Pub. L. 94-217, § 1, in revising the text, incorporated existing first sentence in provisions designated as pars. (1) and (2), first sentence, prescribing compensation of $37,800 and $18,910 for full-time and part-time referees in such pars.; incorporated existing second sentence as the second sentence of provisions designated as par. (2), restricting the provision to a part-time referee; and incorporated existing third sentence in provisions designated as par. (3).

Subd. (b). Pub. L. 94-217, § 1, limited the provision to part-time referees and deleted proviso prohibiting reduction during the tenure of any full-time referee his salary below that at which he was originally appointed under this amendatory Act and prohibiting reduction during any term of any such referee his salary below the salary fixed for him at the beginning of that term.

Subd. (d)(2). Pub. L. 94-217, § 2, substituted in next to last sentence, "shall be the rate of full-time service"

for "shall be the minimum rate established by the Judicial Conference of the United States for full-time service".

1975—Subd. (a). Pub. L. 94-82 substituted "at rates, in the case of full-time referees, not more than the rate determined for such referees under sections 351 to 361 of title 2, as adjusted under section 461 of title 28, and in the case of part-time referees, not more than one-half of such rate, as so adjusted" for "at rates not more than $36,000 per annum for full-time referees, and not more than $18,000 per annum for part-time referees".

1973—Subd. (b). Pub. L. 93-200 struck out proviso that no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250.

1969—Salaries of full-time referees and part-time referees increased respectively from maximums of $22,500 and $11,000 to maximums of $36,000 and $18,000 per annum, commencing February 14, 1969, upon recommendation of the President of the United States, pursuant to Pub. L. 90-206. See note set out under section 358 of title 2, The Congress.

1967—Subd. (c)(1). Pub. L. 90-161 substituted "$37" for "32".

1964—Subd. (a). Pub. L. 88-426 substituted "$22,500" and "$11,000" for "$15,000" and "$7,500", respectively.

1962—Subd. (d)(1). Pub. L. 87-677 substituted "Civil Service Retirement Act" for "section 693 of title 5".

Subd. (d)(2). Pub. L. 87-677 inserted provisions respecting the compensation of retired referees for their services.

1959—Pub. L. 86-110, § 1(a), substituted "referees' salary and expense fund" for "referees' salary and expense funds" in the section catchline.

Subd. (c)(1). Pub. L. 86-110, § 1(b), substituted "$32 for each estate for the referees' salary and expense fund, as herein below established" and "such fee" for "(a) $17 for each estate for the referees' salary fund, and (b) $15 for each estate for the referees' expense fund, as hereinbelow established" and "such fees".

Subd. (c)(2). Pub. L. 86-110, § 1(c), substituted "referees' salary and expense fund" for "referees' salary fund and for the referees' expense fund" in the first and second sentences and for "referees' salary fund and the referees' expense fund" in the third sentence and "schedule" for "schedules" in two instances and deleted "for each fund, respectively," following "equal".

Subd. (c)(4). Pub. L. 86-110, § 1(d), substituted "referees' salary and expense fund" and "salary and expense fund" for "referee's salary fund and a referee's expense fund" and "salary fund and expense fund" in the first sentence: "The salaries of the referees in active service and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such salary and expense fund by the United States" for "The salaries of the referees in active service shall be paid out of annual appropriations from such salary fund, and the expenses of the referees, including the salaries of their clerical assistants, shall be paid out of annual appropriations from such expense fund, by the United States"; "salary and expense fund" for "salary fund or expense fund" in the third sentence, and for "salary fund or expense fund respectively" in the proviso.

Subd. (c)(5). Pub. L. 86-110, § 1(e), substituted "salary and expense fund" for "respective salary and expense funds".

1956—Subd. (a). Act May 10, 1956, substituted "$15,000" for "$12,500", and "$7,500" for "$6,000".

1952—Subd. (a). Act July 7, 1952, increased salaries of full-time referees from $10,000 to $12,500 per annum, and part-time referees from $5,000 to $6,000 per annum.

1946—Act June 28, 1946, amended section generally to place all referees upon a salary basis, to simplify the charges for referees' expenses and compensation so that they will be easily computed and uniform, and to finance the bankruptcy system on a national basis instead of having each referee responsible for the financing of his office as an individual unit.

1938—Subd. (a). Act June 22, 1938, among other changes, inserted provision for commissions of one-half of 1 per centum on debts extended or paid in full from estates administered by referees.

Subds. (b) and (c) reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 3 of Pub. L. 90-161 provided that: "This amendatory Act [amending this section and section 80(a) of this title] shall take effect on the thirtieth day following the date of its approval [Nov. 28, 1967]."

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88-426, see section 501 of Pub. L. 88-426.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 8 of Pub. L. 86-110 provided that: "This amendatory Act [amending this section and sections 79, 104, 112, 1024, 1033, and 1059 of this title] shall take effect on the first day of the fiscal year following the date of its approval."

EFFECTIVE DATES; REPEALS; ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

INCREASES IN COMPENSATION

Salaries of full-time referees and part-time referees increased respectively to maximums of $48,500 and $24,200 per annum, upon recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of full-time referees increased to $39,600 effective on the first day of the first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, set out as a note under section 5332 of Title 5, Government Organization and Employees. Ex. Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $37,800.

Salaries of full-time referees increased to $37,800 effective on the first day of the first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091.

JUDICIAL CONFERENCE SCHEDULE OF SPECIAL CHARGES

The Judicial Conference, at its session on Sept. 14, 1973, acting under the authority of provisions of this section, prescribed the following schedule of special charges, eff. Nov. 1, 1973, to be charged and collected by bankruptcy judges for deposit to the referees' salary and expense fund:

"1. For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Act, in excess of 30 notices per set, 25 cents for each additional notice on the first 10,000 and 15 cents per notice on the balance, provided, that in no proceeding administered in straight bankruptcy shall the total charge for this special service exceed 25 percent of the net proceeds realized.

"2. For each set of objections filed to a discharge or confirmation of an arrangement, or plan, $10.00 to be paid by the objecting creditor provided that no such charge shall be made for filing objections to a discharge by the United States Attorney. Where objec-

tions to a discharge are filed by the trustee, the charge shall be paid from the estate of the bankrupt unless waived by the court.

"3. For filing petitions for review, for filing petitions for reclamation of property, and for filing petitions for leave to foreclose a mortgage, $10.00 for each petition filed, to be paid at the time of filing by the petitioner, provided that no charge shall be made for petitions for review or for reclamation of property or for leave to foreclose filed on behalf of the United States.

"4. For making a typed copy of any record or paper, $1.00 per page of 250 words or a fraction thereof. For reproducing any record or paper by any means other than typing, 50 cents per page. These fees do not include certification.

"5. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, $1.00.

"6. For clerical aid on all claims filed in excess of 10, for filing, recording, computing and distributing dividend, 25 cents each in asset cases and cases filed under the relief chapters of the Act.

"7. For reporting performed by a regularly employed member of the referee's staff, a charge may be made for transcripts not exceeding the rates charged by the regular court reporter. The charge shall be paid from the estate of the bankrupt or by the parties requesting that the stenographic record be made and the proceeds shall be transmitted to the clerk for deposit to the credit of the Referees' Salary and Expense Fund.

"8. For amendments to bankrupt's schedules of creditors after notice to creditors, $10.00 for each amendment, provided that the referee may, for good cause, waive the charge in any case.

"9. For searching the records of the referee's office and furnishing information regarding any bankrupt or debtor, $1.00.

"10. For each application for determination of nondischargeability of debts filed by creditors, a fee of $10.00."

CROSS REFERENCES

Compensation of referee in,
- Corporate reorganization proceeding where petition filed in pending bankruptcy proceeding, judge not restricted by this section, see section 645 of this title.
- Real property arrangements where petition filed in pending bankruptcy proceeding, judge not restricted by this section, see section 894 of this title.

Compensation of referees and,
- Special masters in composition proceedings of local taxing agencies not governed by this section, see section 403 of this title.
- Trustees in,
  - Corporate reorganization proceedings not governed by this section and section 76 of this title, see section 641 of this title.
  - Real property arrangements not governed by this section and section 76 of this title, see section 891 of this title.

Limitation of compensation of officers of court, see section 112 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 65, 67, 76, 79, 403, 641, 645, 891, 894, 1024, 1033, 1059 of this title; title 28 section 634.

### § 69. Contempts before referees

(a) A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpenaed, or, upon appearing, refuse to take the oath as a witness, or having taken the oath, refuse to be examined according to law: *Provided,* That a person other than a bankrupt or, where the bankrupt is a corporation, its officers, or the members of its board of directors or trustees or of other similar controlling bodies, shall not be required to attend as a witness before a referee at a place more than one hundred miles from such person's place of residence or unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

(b) The referee shall forthwith certify the facts to the judge, if any person shall do any of the things forbidden in this section, and he may serve or cause to be served upon such person an order requiring such person to appear before the judge upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before him, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of the court of bankruptcy or in the presence of the judge.

(July 1, 1898, ch. 541, § 41, 30 Stat. 556; June 22, 1938, ch. 575, § 1, 52 Stat. 859.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, among other changes, limited attendance as witnesses of persons other than bankrupt, corporate officers and directors, and trustees at a place more than one hundred miles from such person's residence, instead of limitation that no person shall be required to attend as a witness outside the State of his residence and more than one hundred miles from such residence.

Subd. (b). Act June 22, 1938, among other changes, inserted provision for service of show cause order by such person should not be adjudged in contempt.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

### § 70. Records of referees

(a) The records of all proceedings in each case before a referee shall be kept in the manner as prescribed by the Supreme Court of the United States.

(b) A separate record shall be kept of the proceedings in each case and shall, together with the papers on file, constitute the records of the case.

(c) The record of the proceedings shall, when the case is concluded before the referee, be certified to by him and shall, together with such papers as are on file before him, be transmitted to the clerk and shall remain until no longer needed in conducting current business in the office of the clerk as a part of the records of the court.

(July 1, 1898, ch. 541, § 42, 30 Stat. 556; June 22, 1938, ch. 575, § 1, 52 Stat. 860; Oct. 25, 1951, ch. 562, § 2(2), 65 Stat. 639; July 7, 1952, ch. 579, § 13, 66 Stat. 424.)

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, provided that records of referees shall be kept in the manner prescribed by the United States Supreme Court.

1951—Subd. (c). Act Oct. 25, 1951, inserted "until no longer needed in conducting current business".

1938—Subd. (a). Act June 22, 1938, substituted "are kept" for "were kept on July 1, 1898".

Subd. (b). Act June 22, 1938, substituted "A separate record shall be kept of the proceedings in each case" for "A record of the proceedings in each case shall be kept in a separate book or books".

Subd. (c). Act June 22, 1938, substituted reference to record of proceedings for book or books containing record of proceedings, provided for transmission to clerk instead of to the court of bankruptcy, and for records to remain in office of clerk instead of the court.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Management and disposition of records, see sections 2901 et seq. and 3101 et seq. of Title 44, Public Printing and Documents.

### § 71. Vacancies; referee's absence or disability

(a) Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the clerk of the district court in which the territory or any part of the territory served by such referee is located shall immediately notify the Director of such fact.

(b) A vacancy in the office of referee may be filled without any changes in the salary or arrangements upon the recommendations of the Director, the district judge or judges, and the circuit council that the office be so continued. If a change in the salary or arrangements is recommended by the Director, the district judge or judges, or the circuit council, a vacancy shall not be filled until the Conference has acted thereon.

(c) Whenever the office of a referee is vacant or its occupant is temporarily absent or disqualified to act, or whenever the expeditious transaction of the business of the court or courts of bankruptcy may require, the judge, or any one of the judges, may act; or the judge or the chief judge of the district may designate and assign temporarily any referee of the district to act; or the chief judge of the circuit may designate and assign temporarily one or more referees within the circuit to act upon presentation of a certificate of necessity by the judge or chief judge of the district wherein the need arises, or the chief judge of the circuit may order that pending cases be rereferred and future cases referred to one or more referees within the circuit; or the Chief Justice of the United States may designate and assign temporarily a referee from another circuit to act upon presentation of a certificate of necessity by the chief judge of the circuit wherein the need arises. No designation and assignment shall be made without the consent of the chief judge or judicial council of the circuit from which a referee is to be designated and assigned. All designations and assignments of referees shall be filed with the clerks and entered on the minutes of the courts from and to which made. The Chief Justice of the United States or a chief judge of a circuit or a judge or chief judge of a district may make new designations and assignments in accordance with the provisions of this subdivision, and may revoke those previously made by him.

(July 1, 1898, ch. 541, § 43, 30 Stat. 557; June 28, 1946, ch. 512, § 7, 60 Stat. 328; Sept. 19, 1950, ch. 954, 64 Stat. 866; Aug. 7, 1959, Pub. L. 86-144, § 1, 73 Stat. 296.)

AMENDMENTS

1959—Subd. (b). Pub. L. 86-144 substituted provision permitting a vacancy in the office of a referee to be filled, without any changes in the salary or arrangements, when recommended by the Director, the district judge or judges, and the circuit council that the office be continued, without recommendation to the Conference or its approval for provision that when the office is vacant, the Director shall recommend to the district judges, the councils and the Conference whether a new appointment should be made and no such appointment shall be made until authorized by the Conference.

1950—Subd. (c). Act Sept. 19, 1950, provided for temporary designations and assignments of referees by the judge or chief justice of the district, the chief judge of the circuit, and the Chief Justice of the United States, instead of the judge or a majority of judges of the district, the council, and the conference, respectively, to provide for consent of the chief judge or judicial council of the circuit, and to provide for filing and entry of designations and assignments.

1946—Act June 28, 1946, provided for the notification to the Director of the Administrative Office by the clerk of the court of any vacancy, absence, or disqualification of a referee, to provide for the designation of another referee from the same or another circuit, and to prohibit the filling of a permanent vacancy unless authorized by the conference of judges.

EFFECTIVE DATE, REPEALS, ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 62 of this title.

### § 72. Trustees; creditors' committees; and attorneys

(a) The creditors of a bankrupt, exclusive of the bankrupt's relatives or, where the bankrupt is a corporation, exclusive of its stockholders or members, its officers, and the members of its board of directors or trustees or of other similar controlling bodies, shall, at the first meeting of creditors after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, appoint a trustee or three trustees of such estate. If the creditors do not appoint a trustee or if the trustee so appointed fails to qualify as herein provided, the court shall make the appointment. If the bankrupt is a face-amount certifi-

cate company, as defined in section 80a-4 of title 15, the court alone shall make the appointment; but the court shall not make such appointment without first notifying the Securities and Exchange Commission and giving it an opportunity to be heard.

(b) Such creditors may, at their first meeting, also appoint a committee of not less than three creditors, which committee may consult and advise with the trustee in connection with the administration of the estate, make recommendations to the trustee in the performance of his duties and submit to the court any question affecting the administration of the estate.

(c) An attorney shall not be disqualified to act as attorney for a receiver or trustee merely by reason of his representation of a general creditor.

(July 1, 1898, ch. 541, § 44, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860; Aug. 22, 1940, ch. 686, title I, § 29(b), 54 Stat. 835.)

AMENDMENTS

1940—Subd. (a). Act Aug. 22, 1940, inserted last sentence relating to appointment of trustees for face-amount certificate company.

1938—Subd. (a), formerly entire section, amended generally by act June 22, 1938.

Subds. (b) and (c) added by act June 22, 1938.

EFFECTIVE DATE OF 1940 AMENDMENT

Effective date of act Aug. 22, 1940, see section 80a-52 of Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out as a note under section 78d of Title 15, Commerce and Trade.

CROSS REFERENCES

Nepotism in appointment of receiver or trustee, see section 1910 of Title 18, Crimes and Criminal Procedure.

Partnership bankruptcy trustees, see section 23 of this title.

Title, rights, powers, and duties of trustee in,

Corporate reorganization proceeding same as trustee appointed under this section, see sections 586 and 587 of this title.

Real property arrangements same as trustee appointed under this section, see sections 841 and 842 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 586, 587, 638, 841, 842 of this title; title 15 section 78fff.

### § 73. Receivers and trustees; qualifications

Receivers and trustees shall be (1) individuals who are competent to perform their duties and who reside or have an office in the judicial district within which they are appointed; or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

(July 1, 1898, ch. 541, § 45, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

AMENDMENTS

1938—Act June 22, 1938, inserted "Receivers and" preceding "trustees" and made other changes in phraseology.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Nepotism in appointment of receiver or trustee, see section 1910 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 556 of this title.

### § 74. Death or removal of receiver or trustee

The death or removal of a receiver or trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint receiver or joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint receiver or joint trustee alone or by such successor.

(July 1, 1898, ch. 541, § 46, 30 Stat. 557; June 22, 1938, ch. 575, § 1, 52 Stat. 860.)

AMENDMENTS

1938—Act June 22, 1938 included receiver.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Removal for cause of receivers and trustees, see section 11 of this title.

### § 75. Trustees; duties

(a) Trustees shall (1) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estates as expeditiously as is compatible with the best interests of the parties in interest; (2) deposit all money received by them in designated depositories initially in demand deposits; and subsequently, if authorized by the court, in interest-bearing savings deposits, time certificates of deposit, or time deposits-open account; (3) account for and pay over to the estates under their control all interest received by them upon funds belonging to such estates; (4) disburse money only by check or draft on such depositories; (5) keep records and accounts showing all amounts and items of property received and from what sources, all amounts expended and for what purposes and all items of property disposed of;

(6) set apart the bankrupts' exemptions allowed by law, if claimed, and report the items and estimated value thereof to the courts as soon as practicable after their appointment; (7) examine the bankrupts (a) at the first meetings of creditors or at other meetings specially fixed for that purpose, unless they shall already have been fully examined by the referees, receivers, or creditors, and (b) upon the hearing of objections, if any, to their discharges, unless otherwise ordered by the court; (8) examine all proofs of claim and object to the allowance of such claims as may be improper; (9) oppose at the expense of estates the discharges of bankrupts when they deem it advisable to do so; (10) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (11) pay dividends within ten days after they are declared by the referees; (12) report to the courts in writing the condition of the estates, the amounts of money on hand, and such other details as may be required by the courts within the first month after their appointment and every two months thereafter; unless otherwise ordered by the courts; (13) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; and (14) lay before the final meetings of the creditors detailed statements of the administration of the estates.

(b) Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

(c) The trustee shall, within ten days after his qualification, record a certified copy of the order approving his bond in the office where conveyances of real estate are recorded in every county where the bankrupt owns real property or an interest therein, not exempt from execution, and pay the fee for such filing. He shall receive a compensation of 50 cents for each copy so filed which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the expenses of administration.

(July 1, 1898, ch. 541, § 47, 30 Stat. 557; Feb. 5, 1903, ch. 487, § 10, 32 Stat. 799; June 25, 1910, ch. 412, § 8, 36 Stat. 840; June 22, 1938, ch. 575, § 1, 52 Stat. 860; May 8, 1963, Pub. L. 88-16, 77 Stat. 14.)

AMENDMENTS

1963—Subd. (a)(2). Pub. L. 88-16 provided for deposits initially in demand deposits and subsequently, when authorized by the court, in interest-bearing savings deposits, time certificates of deposit, or time deposits-open account.

1938—Subd. (a) amended by act June 22, 1938. Clauses 1 to 6, formerly 2, 3, 1, 4, 6, and 11, respectively, amended. Clauses 7 to 9 added. Clauses 10 to 14 formerly 5, 9, 10, 8, and 7, respectively, reenacted without change.

Subd. (b) reenacted without change by act June 22, 1938.

Subd. (c) amended generally by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Preferences, avoidance by trustee, see section 96 of this title.

Title to property, vestment in trustee, see section 110 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 1342.

**§ 76. Receivers; marshals, and trustees; compensation**

**(a) Receivers**

The compensation of receivers appointed under this title, for their services payable after they are rendered, shall be as follows:

**(1) As custodians**

Receivers appointed pursuant to clause (3) of subdivision (a) of section 11 of this title who serve as mere custodians shall receive such amount as may be allowed by the court, but in no event to exceed 2 per centum on the first $1,000 or less and one-half of 1 per centum on all above $1,000 on moneys disbursed by them or turned over by them to any persons, including lienholders and also upon moneys turned over by them to the trustees and on money subsequently realized from property turned over by them in kind to the trustee.

**(2) With full powers**

Receivers appointed pursuant to clause (3) of subdivision (a) of section 11 of this title who serve otherwise than as mere custodians shall receive compensation by way of commissions upon the moneys disbursed or turned over to any persons, including lienholders, by them and also upon the moneys turned over by them or afterward realized by the trustees from property turned over in kind by them to the trustees, such amount as the court may allow, but in no event to exceed 6 per centum on the first $500 or less, 4 per centum on all in excess of $500 but not more than $1,500, 2 per centum on all above $1,500 and not more than $10,000, and 1 per centum on all above $10,000.

**(3) Conducting business**

Receivers appointed pursuant to clause (3) of subdivision (a) of section 11 of this title who conduct the business of the bankrupt as provided in clause (5) of subdivision (a) of section 11 of this title, shall receive such amount as may be allowed by the court, but in no event to exceed twice the maximum allowance permitted by paragraph (2) of this subdivision.

**(4) Ancillary receivers**

The compensation of ancillary receivers appointed pursuant to this title shall be such amount as may be allowed by the court of ancillary jurisdiction, but in no event to exceed the maximum compensation permitted by paragraphs (1), (2), or (3) of this subdivision, as the case may be, based upon assets in such ancillary jurisdiction.

**(b) Marshals**

The compensation of marshals, payable after their services are rendered, shall be such

amount as may be allowed by the court, but in no event to exceed the maximum allowance permitted for receivers for like services.

**(c) Trustees**

The compensation of trustees for their services, payable after they are rendered, shall be a fee of $10 for each estate, deposited with the clerk at the time the petition is filed in each case, except where installment payments may be authorized pursuant to section 68 of this title, and such further sum as the court may allow, as follows:

**(1) Normal administration**

When the trustee does not conduct the business of the bankrupt, such sum as the court may allow, but in no event to exceed 10 per centum on the first $500 or less, 6 per centum on moneys in excess of $500 and not more than $1,500, 3 per centum on moneys in excess of $1,500 and not more than $10,000, 2 per centum on moneys in excess of $10,000 and not more than $25,000, and 1 per centum on moneys in excess of $25,000, upon all moneys disbursed or turned over by them to any persons, including lienholders: *Provided, however,* That in any case, after the trustee has paid all expenses of administration and has realized upon all available assets, the maximum compensation allowable to him hereunder does not exceed $150, the court may of its own motion allow the trustee a fee which with the commissions, if any, paid or to be paid him shall not exceed $150.

**(2) Conducting business**

Trustees who conduct the business of the bankrupts as provided in clause (5) of subdivision (a) of section 11 of this title shall receive such amount as may be allowed by the court, but in no event to exceed twice the maximum allowance permitted by paragraph (1) of this subdivision.

**(d) Apportionment of fees**

In the event of the appointment, concurrently or successively, of more than one receiver of an estate or of more than one ancillary receiver in the same jurisdiction, or in the event of the administration of an estate by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions among such receivers, ancillary receivers, or trustees, as the case may be, according to the services actually rendered, so that there shall not be paid to any such group a greater amount than that to which one receiver, ancillary receiver, or trustee, respectively, would be entitled.

**(e) Withholding compensation**

The court may, in its discretion, withhold all compensation from any receiver, trustee, attorney, or any other person who has been removed from office or dismissed because of the unlawful sharing of fees or for any other cause.

**(f) Arrangements**

In the case of an arrangement confirmed under this title, the compensation of a marshal, receiver, or trustee in a prior pending bankruptcy proceeding superseded by the arrangement proceeding, or of a receiver appointed in an original proceeding for an arrangement under this title, shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services. Such compensation shall be computed upon all moneys disbursed or turned over by him to any persons, including lienholders, upon all moneys to be paid to unsecured creditors upon the confirmation of the arrangement and thereafter, pursuant to the terms of the arrangement, and where under the arrangement any part of the consideration to be paid is other than money, upon the amount of the fair value of such consideration: *Provided, however,* That the court may, in respect to all moneys to be paid to such unsecured creditors after the confirmation of the arrangement, prescribe such time for the payment of the compensation computed thereon as in the particular case may be fair and equitable.

**(g) Plans of reorganization**

In the case of a plan of reorganization confirmed under this title, the compensation of a marshal, receiver, or trustee, in a prior pending bankruptcy proceeding superseded by the reorganization proceeding shall be the same as hereinabove provided for a marshal, receiver, or trustee, as the case may be, for like services. Such compensation shall be computed upon all moneys disbursed or turned over by him to any persons, including lienholders, upon all moneys to be paid to unsecured creditors upon the consummation of the plan of reorgnization and thereafter, pursuant to the terms of the plan of reorganization, and where under the plan of reorganization any part of the consideration to be paid to unsecured creditors is other than money, upon the amount of the fair value of such consideration: *Provided, however,* That the court may, in respect to the moneys to be paid to such unsecured creditors after the consummation of the plan of reorganization, prescribe such time for the payment of the compensation computed thereon as in the particular case may be fair and equitable.

(July 1, 1898, ch. 541, § 48, 30 Stat. 557; Feb. 5, 1903, ch. 487, § 11, 32 Stat. 799; June 25, 1910, ch. 412, § 9, 36 Stat. 840; June 22, 1938, ch. 575, § 1, 52 Stat. 861; May 28, 1956, ch. 330, § 1, 70 Stat. 216; June 11, 1960, Pub. L. 86-504, § 1, 74 Stat. 198; Sept. 25, 1962, Pub. L. 87-681, § 4, 76 Stat. 570.)

AMENDMENTS

1962—Subd. (c). Pub. L. 87-681 substituted "where installment payments may be authorized pursuant to section 68 of this title" for "when a fee is not required from a voluntary bankrupt".

1960—Subd. (c). Pub. L. 86-504 increased closing fee from $5 to $10.

1956—Subd. (c)(1). Act May 28, 1956, increased rates of compensation allowable by courts to trustees by substituting per centum figures "10" for "6", "6" for "4", "3" for "2", and "2" for "1"; added "and not more than $25,000, and 1 per centum on moneys in excess of $25,000", and substituted "$150" for "$100" in two places in the proviso.

1938—Act June 22, 1938, amended section generally.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act May 28, 1956, provided that: "The provisions of this Act [amending subd. (c)(1) of this section] shall apply to all cases in which the petition initiating the proceeding under the Bankruptcy Act is filed subsequent to the date of the enactment of this act [May 28, 1956]."

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Compensation of referees and trustees in,
Corporate reorganization proceedings not governed by this section and section 68 of this title, see section 641 of this title.
Real property arrangements not governed by this section and section 68 of this title, see section 891 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 641, 644, 891, 893 of this title.

**§ 76a. Receivers and trustees; apportionment of appointments; disqualification; compensation**

In the administration of this title the district court or any judge thereof shall, in its or his discretion, so apportion appointments of receivers and trustees among persons, firms, or corporations, or attorneys therefor, within the district, eligible thereto, as to prevent any person, firm, or corporation from having a monopoly of such appointments within such district. No person shall be appointed as a receiver or trustee who is a near relative of the judge of the court making such appointment. The compensation allowed a receiver or trustee or an attorney for a receiver or trustee shall in no case be excessive or exorbitant, and the court in fixing such compensation shall have in mind the conservation and preservation of the estate of the bankrupt and the interests of the creditors therein.

(June 7, 1934, ch. 424, § 3, 48 Stat. 923.)

CODIFICATION

Section was not enacted as a part of the Bankruptcy Act which comprises this title.

CROSS REFERENCES

Nepotism in appointment of receiver or trustee generally, see section 1910 of Title 18, Crimes and Criminal Procedure.

**§ 77. Receivers and trustees; accounts and papers**

The accounts and papers of receivers and trustees shall be open to the inspection of officers and all parties in interest.

(July 1, 1898, ch. 541, § 49, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 863.)

AMENDMENTS

1938—Act June 22, 1938, included receivers.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 302.

**§ 78. Bonds**

(a) Repealed, Pub. L. 92-310, title II, § 222(a)(1), June 6, 1972, 86 Stat. 205.

(b) Receivers and trustees, before entering upon the performance of their official duties and within five days after their appointment or within such further time, not to exceed five days, as the court may permit, shall qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

(c) The court shall fix the amount of receivers' and trustees' bonds and may increase or decrease the amounts at any time when cause therefor appears.

(d) The court shall require evidence as to the actual value of the property of sureties.

(e) There shall be at least two sureties upon each bond, except as provided in subdivision (g) of this section.

(f) The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

(g) Corporations organized for the purpose of becoming sureties on bonds or authorized by law to do so may be accepted as sole sureties upon the bonds of receivers, and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h) Bonds of receivers, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be proceeded upon in the name of the United States for the use of any person injured by a breach of their conditions or may be enforced as provided in subdivision (n) of this section.

(i) Receivers or trustees shall not be liable personally or on their bonds to the United States for any penalties or forfeitures incurred by the bankrupts under this title of whose estates they are receivers or trustees.

(j) Joint receivers or trustees may give joint or several bonds.

(k) If any receiver, or trustee shall fail to give bond as herein provided and within the time limited, he shall be deemed to have declined his appointment and such failure shall create a vacancy in his office.

(*l*) Repealed. Pub. L. 92-310, title II, § 222(a)(5), June 6, 1972, 86 Stat. 206.

(m) Proceedings upon receivers' or trustees' bonds shall not be brought subsequent to two years after their respective discharges.

(n) In the event of the breach of any obligation of a bond furnished pursuant to this title, the court may, upon application of any party in interest and after notice, summarily determine the damages and by appropriate process enforce the collection thereof from those liable on the bond.

(July 1, 1898, ch. 541, § 50, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 863; June 6, 1972, Pub. L. 92-310, title II, § 222(a), 86 Stat. 205.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92-310, § 222(a)(1), repealed subd. (a) which required referees to enter into bonds not exceeding $5,000.

Subd. (g). Pub. L. 92-310, § 222(a)(2), eliminated bonds of referees.

Subd. (h). Pub. L. 92-310, § 222(a)(3), eliminated bonds of referees.

Subd. (k). Pub. L. 92-310, § 222(a)(4), eliminated reference to referee.

Subd. (*l*). Pub. L. 92-310, § 222(a)(5), repealed subd. (*l*) which related to the period during which proceedings could be brought upon referees' bonds.

1938—Subds. (a), (d), and (e) reenacted without change by act June 22, 1938.

Subds. (b), (c), (e), and (g) to (m) amended generally by act June 22, 1938.

Subd. (n) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

LIMITATIONS ON PROCEEDINGS UPON REFEREES' BONDS PROCURED BEFORE JUNE 6, 1972

Section 222(b) of Pub. L. 92-310 provided that: "Notwithstanding the amendment made by subsection (a)(5) of this section [to subd. (*l*) of this section] proceedings upon referees' bonds procured before the date of enactment of this act [June 6, 1972] and in effect on such date may be brought at any time during the period ending two years after the alleged breach of the bond, but not thereafter."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 109 of this title.

### § 79. Clerks; duties

Clerks shall (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk and trustee and the fees for the referees' salary and expense fund provided in paragraph (1) of subdivision (c) of section 68 of this title in each case instituted before filing the petition, except where installment payments may be authorized pursuant to section 68 of this title, and collect the various other fees, allowances and charges for the services of referees and for their expenses, including their services and expenses as conciliation commissioners and as special masters under this title; (3) collect the fees of the clerk and referee in each ancillary proceeding before filing the petition whereby the ancillary proceeding is instituted; (4) deliver to the referees all papers which may be referred to them or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail and in like manner return papers which were received from such referees after they have been used; and (5) transmit to the Treasury of the United States all fees, allowances and charges collected for the referees' salary and expense fund, and transmit to the trustee, within ten days after a case had been closed the fee collected for him at the time of the filing of the petition.

(July 1, 1898, ch. 541, § 51, 30 Stat. 558; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 8, 60 Stat. 329; July 28, 1959, Pub. L. 86-110, § 2, 73 Stat. 260.)

AMENDMENTS

1959—Clause (2). Pub. L. 86-110, § 2(a), substituted "referees' salary and expense fund" for "referees' salary fund and referees' expense fund".

Clause (5). Pub. L. 86-110, § 2(b), substituted "referees' salary and expense fund" for "referees' salary fund and the referees' expense fund".

1946—Act June 28, 1946, amended clauses (2) and (5) to place upon the clerk the duty of collecting the various fees and allowances for the compensation and expenses of referees, and of covering them into the Treasury for the respective salary and expense funds.

1938—Clauses (1), (2), and (5), formerly (1), (2), and (4), respectively, reenacted without change by act June 22, 1938.

Clause (3) added by act June 22, 1938.

Clause (4), formerly (3), amended by act June 22, 1938.

EFFECTIVE DATE OF 1959 AMENDMENT

Effective date of amendment by Pub. L. 86-110, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATES, REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 80. Clerks and marshals; compensation

(a) Clerks shall charge and collect for their services to each estate, whether in a court of primary or ancillary jurisdiction, a filing fee of $3. The clerk may collect this amount in installments when such installment payments have been authorized by General Order of the Supreme Court of the United States.

(b) Marshals shall charge the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to charge for the performance of the same or similar services in other cases in accordance with laws in force on July 1, 1898, or such as may be thereafter enacted, fixing the compensation of marshals.

(July 1, 1898, ch. 541, § 52, 30 Stat. 559; Feb. 26, 1919, ch. 49, § 1, 40 Stat. 1182; Feb. 11, 1921, ch. 46, 41 Stat. 1099; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 8, 60 Stat. 329; Nov. 28, 1967, Pub. L. 90-161, § 2, 81 Stat. 518.)

AMENDMENTS

1967—Subd. (a). Pub. L. 90-161 substituted "$3" for "$8".

1946—Subd. (a). Act June 28, 1946, reduced the filing fee from $10 to $8, omitted "except when a fee is not required from a voluntary bankrupt" and added provision concerning installments.

1938—Subd. (a). Act June 22, 1938, omitted "respectively" preceding "charge and collect", inserted "in a court of primary or ancillary jurisdiction" preceding "a filing fee", and added a provision requiring payment of fee into United States Treasury.

Subd. (b). Act June 22, 1938, omitted "respectively" preceding "charge the estate".

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90-161, see section 3 of Pub. L. 90-161, set out as a note under section 68 of this title.

EFFECTIVE DATES, REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Compensation of marshals, see section 76 of this title.

Fees of clerks of district courts, see sections 1914, 1917 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1024 of this title.

### § 81. Statistics

The Director annually shall lay before Congress statistical tables which will accurately reflect the business transacted by the several bankruptcy courts, a statement of the amounts received and disbursed for the referees' salary fund and referees' expense fund, and all other pertinent data.

(July 1, 1898, ch. 541, § 53, 30 Stat. 559; June 22, 1938, ch. 575, § 1, 52 Stat. 864; June 28, 1946, ch. 512, § 9, 60 Stat. 329.)

AMENDMENTS

1946—Act June 28, 1946, imposed upon the Director of the Administrative Office the duty to gather all statistics with regard to the operation of this title, and to submit annual reports to Congress.

1938—Act June 22, 1938, amended section generally.

EFFECTIVE DATES, REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 82. Repealed. June 28, 1946, ch. 512, § 10, 60 Stat. 329

Section, act July 1, 1898, ch. 541, § 54, 30 Stat. 559, required officers to furnish information for statistical purposes. For effective date of repealing act, see note under section 62 of this title.

## CHAPTER 6—CREDITORS

Sec.
91. Meetings of creditors.
92. Voters at creditors' meeting.
93. Proof and allowance of claims.
93a. Omitted.
94. Notices.
95. Who may file and dismiss petitions.
96. Preferred creditors.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 41, 45, 502, 702, 781, 802, 886, 1002, 1069 of this title; title 15 section 78fff.

### § 91. Meetings of creditors

(a) The court shall cause the first meeting of the creditors of a bankrupt to be held not less than ten nor more than thirty days after the adjudication, at the place or at one of the places designated by the conference pursuant to paragraph (1) of subdivision (b) of section 65 of this title as a place at which court shall be held within the judicial district in which the proceeding is pending or if that place would be unreasonably inconvenient as a place of meeting for the parties in interest, the court shall fix a place for the meeting within said judicial district which is not unreasonably inconvenient for the parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date as soon as may be thereafter, when it shall be held.

(b) At the first meeting of creditors, the judge or referee shall preside and, before proceeding with other business, may allow or disallow the claims of creditors there presented, and shall publicly examine the bankrupt or cause him to be examined, and may permit creditors to examine him.

(c) The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this title.

(d) The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proved their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

(e) Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered: *Provided, however,* That a no-asset case may be closed without ordering such final meeting.

(July 1, 1898, ch. 541, § 55, 30 Stat. 559; June 22, 1938, ch. 575, § 1, 52 Stat. 865; May 16, 1951, ch. 82, 65 Stat. 42.)

AMENDMENTS

1951—Subd. (a) amended generally by act May 16, 1951, to permit the court to fix the place for the holding of the first meeting of the creditors.

1938—Subds. (b) and (e), formerly (b) and (f), respectively, amended by act June 22, 1938.

Subds. (a), (c), and (d), formerly (a), (c), and (e), respectively, reenacted without change by act June 22, 1938.

Former subd. (d), which related to subsequent meeting on consent of all creditors with allowed claims, was not reenacted as a part of this section by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Examination of bankrupt, see section 25 of this title.

**§ 92. Voters at creditors' meeting**

(a) Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and who are present, except as herein otherwise provided.

(b) Except as otherwise provided in this title, creditors holding claims which are secured or have priority shall not in respect to such claims be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

(c) Claims of $50 or less shall not be counted in computing the number of creditors voting or present at creditors' meetings, but shall be counted in computing the amount.

(July 1, 1898, ch. 541, § 56, 30 Stat. 560; June 22, 1938, ch. 575, § 1, 52 Stat. 865.)

AMENDMENTS

1938—Subd. (a). Act June 22, 1938, reenacted subd. (a) without change.

Subd. (b). Act June 22, 1938, inserted "Except as otherwise provided in this title," at the beginning.

Subd. (c) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Claims which may be proved and allowed, see section 103 of this title.

Trustee, voting for, see section 72 of this title.

**§ 93. Proof and allowance of claims**

(a) A proof of claim shall consist of a statement, in writing and signed by a creditor, setting forth the claim; the consideration therefor; whether any and, if so, what securities are held therefor; and whether any and, if so, what payments have been made thereon; and that the claim is justly owing from the bankrupt to the creditor. A proof of claim filed in accordance with the requirements of this title, the General Orders of the Supreme Court, and the official forms, even though not verified under oath, shall constitute prima facie evidence of the validity and amount of the claim.

(b) Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court upon leaving a copy thereof on file with the claim.

(c) Proofs of claim may, for the purpose of allowance, be filed by the claimants in the court of bankruptcy where the proceedings are pending or before the referee if the case has been referred.

(d) Claims which have been duly proved shall be allowed upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest or unless their consideration be continued for cause by the court upon its own motion: *Provided, however,* That an unliquidated or contingent claim shall not be allowed unless liquidated or the amount thereof estimated in the manner and within the time directed by the court; and such claim shall not be allowed if the court shall determine that it is not capable of liquidation or of reasonable estimation or that such liquidation or estimation would unduly delay the administration of the estate or any proceeding under this title.

(e) Claims of secured creditors and those who have priority may be temporarily allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be thus temporarily allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

(f) Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

(g) The claims of creditors who have received or acquired preferences, liens, conveyances, transfers, assignments or encumbrances, void or voidable under this title, shall not be allowed unless such creditors shall surrender such preferences, liens, conveyances, transfers, assignments, or encumbrances.

(h) The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors, or by such creditors and the trustee by agreement, arbitration, compromise or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance. Such determination shall be under the supervision and control of the court.

(i) Whenever a creditor whose claim against a bankrupt estate is secured, in whole or in part, by the individual undertaking of a person, fails to prove and file that claim, that person may do so in the creditor's name, and he shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by him in the creditor's name, to the extent that he discharges the undertaking except that in absence of an agreement to the contrary, he shall not be entitled to any dividend until the amount paid to the creditor on the undertaking plus the dividends paid to the creditor from the bankrupt estate on the claim equal the amount of the entire claim of the creditor. Any excess

received by the creditor shall be held by him in trust for such person.

(j) Debts owing to the United States or to any State or any subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued on the amount of such loss according to law.

(k) Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part according to the equities of the case, before but not after the estate has been closed.

(*l*) Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part, and the trustee may also recover any excess dividend paid to any creditor. The court shall have summary jurisdiction of a proceeding by the trustee to recover any such dividends.

(m) The claim of any estate which is being administered in bankruptcy against any like estate may be proved and filed by the receiver or trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

(n) Except as otherwise provided in this title, all claims provable under this title, including all claims of the United States and of any State or any subdivision thereof, shall be proved and filed in the manner provided in this section. Claims which are not filed within six months after the first date set for the first meeting of creditors shall not be allowed: *Provided, however,* That the court may, upon application before the expiration of such period and for cause shown, grant a reasonable fixed extension of time for the filing of claims by the United States or any State or any subdivision thereof: *Provided further,* That the right of infants and insane persons without guardians, without notice of the bankruptcy proceedings, may continue six months longer: *And provided further,* That a claim arising in favor of a person by reason of the recovery by the trustee from such person of money or property, or the avoidance by the trustee of a lien held by such person, may be filed within thirty days from the date of such recovery or avoidance, but if the recovery is by way of a proceeding in which a final judgment has been entered against such person, the claim shall not be allowed if the money is not paid or the property is not delivered to the trustee within thirty days from the date of the rendering of such final judgment, or within such further time as the court may allow. When in any case all claims which have been duly allowed have been paid in full, claims not filed within the time hereinabove prescribed may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case.

(July 1, 1898, ch. 541, § 57, 30 Stat. 560; Feb. 5, 1903, ch. 487, § 12, 32 Stat. 799; May 27, 1926, ch. 406, § 13, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 866; July 7, 1952, ch. 579, § 14, 66 Stat. 424; June 12, 1960, Pub. L. 86-519, § 1, 74 Stat. 217; Sept. 25, 1962, Pub. L. 87-681, § 5, 76 Stat. 570.)

REFERENCES IN TEXT

The "General Orders of the Supreme Court", referred to in subd. (a), were abrogated, with the exception of General Order 49, by Orders of the Supreme Court of the United States dated: Apr. 24, 1973, Mar. 18, 1974, and Apr. 28, 1975.

AMENDMENTS

1962—Subd. (i). Pub. L. 87-681 provided that the security be in whole or in part, inserted the clause "whether the claim has been filed by the creditor or by him in the creditor's name" and added the provisions for payment of dividends and for trustee status of creditor.

1960—Subd. (a). Pub. L. 86-519 deleted words "under oath" which followed "statement", and inserted sentence which provides that a proof of claim filed in accordance with the requirements of this title, the General Orders, and the official forms, even though not verified under oath, shall constitute prima facie evidence of the validity and amount of the claim.

1952—Subd. (j). Act July 7, 1952, § 14(a), clarified the fact that the limitation on interest "up to the date of bankruptcy" relates only to interest on "pecuniary loss".

Subd. (n). Act July 7, 1952, § 14(b), deleted "except proceedings under chapters 10-13 of this title" preceding "the right of infants" in the second proviso.

1938—Subds. (a), (c) to (e), (g) to (j), and (*l*) to (n) amended generally by act June 22, 1938.

Subds. (b), (f), and (k) reenacted without change by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Expenses of administration, claims for, see section 102 of this title.

Provable claims, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 107, 108, 502, 638, 778, 802, 883, 1044 of this title; title 15 section 78fff; title 26 section 7430.

### § 93a. Omitted

CODIFICATION

Section, act June 5, 1936, ch. 512, § 2, 49 Stat. 1476, related to proving claims at any time within 60 days after June 5, 1936.

### § 94. Notices

(a) Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt or as afterward filed with the papers in the case by the creditors, of (1) all examinations of the bankrupt, if the court so directs; (2) all hearings upon applications for the confirmation of arrangements and wage-earner plans; (3)

all meetings of creditors; (4) all proposed sales of property: *Provided,* That the court may, upon cause shown, shorten such time or order an immediate sale without notice; (5) the filing of all accounts of the receiver and trustee, for which confirmation is asked, and the time when they will be examined and passed upon; (6) the proposed compromise of a controversy unless the court, for cause shown, directs that notice be not sent; (7) the proposed dismissal of the proceedings, in cases where notice is required by subdivision (g) of section 95 of this title; and (8) all applications by receivers, ancillary receivers, marshals, trustees, committees, and attorneys for compensation from the estate for services rendered, specifying the amount and by whom made: *Provided, however,* That where a creditors' committee has been appointed pursuant to this title, the notice required by clauses (1), (4), and (6) of this subdivision shall be sent only to such committee and to the creditors who have filed with the court a demand that all notices under this subdivision be mailed to them.

(b) The court shall give at least thirty days' notice by mail of the last day fixed by its order for the filing of objections to a bankrupt's discharge and for the filing of applications pursuant to paragraph (2) of subdivision (c) of section 35 of this title to determine the dischargeability of debts (1) to the creditors in the manner prescribed in subdivision (a) of this section; (2) to the trustee, if any, and his attorney, if any, at their respective addresses as filed by them with the court; and (3) to the United States attorney of the judicial district wherein the proceeding is pending. The court shall also give at least thirty days' notice by mail of the time and place of a hearing upon objections to a bankrupt's discharge (1) to the bankrupt, at his last known address as appears in his petition, schedules, list of creditors, or statement of affairs, or, if no address so appears, to his last known address as furnished by the trustee or other party after inquiry; (2) to the bankrupt's attorney, if any, at his address as filed by him with the court; and (3) to the objecting parties and their attorneys, at their respective addresses as filed by them with the court.

(c) All notices shall be given by the referee unless otherwise ordered by the judge. Any notice required by this title may be waived in writing by any person entitled thereto.

(d) Notices to creditors may be published as the court shall direct.

(e) The court shall, in every case instituted under any provisions of this title, mail or cause to be mailed a copy of the notice of the first meeting of creditors to the district director of internal revenue for the district in which the court is located. In cases involving a bankrupt where it clearly appears on the face of the petition that the bankrupt is or was engaged in the business of transporting persons or property, the court also shall mail, or cause to be mailed, a copy of such notice to the Comptroller General of the United States. Whenever the schedules of the bankrupt, or the list of creditors of the bankrupt, or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof (except for any internal revenue obligation payable to the Secretary of the Treasury or his delegate), a notice of the first meeting shall be mailed as well to the head of such department, agency, or instrumentality.

(July 1, 1898, ch. 541, § 58, 30 Stat. 561; June 25, 1910, ch. 412, § 9½, 36 Stat. 841; June 22, 1938, ch. 575, § 1, 52 Stat. 867; July 3, 1951, ch. 205, 65 Stat. 114; July 7, 1952, ch. 579, § 15, 66 Stat. 425; Aug. 2, 1956, ch. 893, 70 Stat. 955; Sept. 2, 1957, Pub. L. 85-275, § 2, 71 Stat. 599; July 12, 1960, Pub. L. 86-631, § 2, 74 Stat. 466; Sept. 25, 1962, Pub. L. 87-681, § 6, 76 Stat. 570; Oct. 19, 1970, Pub. L. 91-467, § 9, 84 Stat. 993.)

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1970—Subd. (b). Pub. L. 91-467 extended the requirement that the court give at least thirty days' notice by mail of the last day fixed by its order to the filing of applications pursuant to section 35(c)(2) of this title to determine the dischargeability of debts.

1962—Subd. (a)(6). Pub. L. 87-681 substituted "the proposed compromise of a controversy unless the court, for cause shown, directs that notice be not sent" for "the proposed compromise of any controversy in which the amount claimed by either party in money or value exceeds $1,000".

1960—Subd. (e). Pub. L. 86-631 provided for the mailing of notices of the first meeting of creditors to the Comptroller General only in cases involving a bankrupt where it clearly appeared on the face of the petition that the bankrupt is or was engaged in the business of transporting persons or property.

1957—Subd. (b). Pub. L. 85-275 added in clause (2) of the first sentence the words "if any" after the word "trustee" and after the word "attorney".

1956—Subd. (e). Act Aug. 2, 1956, eliminated requirement for mailing to the Commissioner of Internal Revenue and the Comptroller General of the United States a certified copy of every order of adjudication upon its entry and to the Commissioner a copy of the notice of the first meeting of creditors, substituted "district director" for "collector," and inserted the parenthetical clause excepting any internal revenue obligation payable to the Secretary of the Treasury or his delegate.

1952—Subd. (a)(8). Act July 7, 1952, made section applicable to "committees".

1951—Subd. (d). Act July 3, 1951, made publication of notices of first meeting of creditors discretionary instead of mandatory.

Subd. (e). Act of July 3, 1951, required the mailing of a copy of the notice of first meeting of creditors to Comptroller General and to the head of any department, agency, or instrumentality of the United States disclosed to be a creditor as well as to the Commissioner of Internal Revenue.

1938—Subd. (a) amended by act June 22, 1938. Opening clause amended and in part reenacted as a portion of subd. (c). Clauses (1), (2), (4), and (5 to 7), formerly (1), (2), (4), and (6 to 8), amended. Clause (3) reenacted without change. Former clause (5) was not reenacted as a part of this section. Clause (9) added, and former clause (9) reenacted in subd. (b).

Subd. (b), formerly clause (9) of subd. (a), amended by act June 22, 1938.

Subd. (c), formerly subd. (c) and part of opening clause of subd. (a), amended by act June 22, 1938.

Subd. (d), formerly subd. (b), reenacted without change by act June 22, 1938.

Subd. (e) added by act June 22, 1938.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-467, see section 10 of Pub. L. 91-467, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952, effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The district director of internal revenue referred to in this section, is an official of the Treasury Department.

CROSS REFERENCES

Designation of newspapers, see section 51 of this title.

Duty of referee to give notice, see section 67 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 95, 792, 1077 of this title.

**§ 95. Who may file and dismiss petitions**

(a) Any qualified person may file a petition to be adjudged a voluntary bankrupt.

(b) Three or more creditors who have provable claims not contingent as to liability against a person, amounting in the aggregate to $500 in excess of the value of any securities held by them, or, if all of the creditors of the person are less than twelve in number, then one or more of the creditors whose claim or claims equal that amount, may file a petition to have him adjudged a bankrupt; but the claim or claims, if unliquidated, shall not be counted in computing the number and the aggregate amount of the claims of the creditors joining in the petition, if the court determines that the claim or claims cannot be readily determined or estimated to be sufficient, together with the claims of the other creditors, to aggregate $500, without unduly delaying the decision upon the adjudication.

(c) Petitions shall be filed in triplicate, one copy for the clerk, one for service on the bankrupt, and one for the referee.

(d) If it be averred in the petition that the creditors of the bankrupt, computed as provided in subdivision (e) of this section, are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses and a brief statement of the nature of their claims and the amounts thereof, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that the parties in interest shall have an opportunity to be heard. If upon such hearing it shall appear that a sufficient number of qualified creditors have joined in such petition or, if prior to or during such hearing, a sufficient number of qualified creditors shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

(e) In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, there shall not be counted (1) such creditors as were employed by the bankrupt at the time of the filing of the petition; (2) creditors who are relatives of the bankrupt or, if the bankrupt is a corporation, creditors who are stockholders or members, officers or members of the board of directors or trustees or of other similar controlling bodies of such bankrupt corporation; (3) creditors who have participated, directly or indirectly, in the act of bankruptcy charged in the petition; (4) secured creditors whose claims are fully secured; and (5) creditors who have received preferences, liens, or transfers void or voidable under this title.

(f) Creditors other than the original petitioners may at any time enter their appearance and join in the petition.

(g) A voluntary or involuntary petition shall not be dismissed upon the application of the petitioner or petitioners, or for want of prosecution, or by consent of parties, until after notice to the creditors as provided in section 94 of this title, and to that end the court shall, upon entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, shall cause such notice to be sent to the creditors of the pendency of such application and shall delay the hearing thereon for a reasonable time to allow all creditors and parties in interest an opportunity to be heard. If the bankrupt shall fail to file such list within the time fixed by the court, such list may be filed by the petitioning creditors according to the best of their knowledge, information, and belief: *Provided, however,* That in the case of a dismissal for failure to pay the costs of the bankruptcy proceedings, such notice of dismissal shall not be required.

(h) A creditor shall not be estopped to act as a petitioning creditor because he participated in any prior matter or judicial proceeding, having for its purpose the adjustment or settlement of the affairs of the debtor or the liquidation of his property, or to allege such prior matter or proceeding as an act of bankruptcy, unless he has consented thereto in writing with knowledge of the facts, if any, which would be a bar to the discharge of the debtor under this title.

(July 1, 1898, ch. 541, § 59, 30 Stat. 561; June 25, 1910, ch. 412, § 10, 36 Stat. 841; June 22, 1938, ch. 575, § 1, 52 Stat. 868; July 7, 1952, ch. 579, § 16, 66 Stat. 425; Sept. 25, 1962, Pub. L. 87-681, § 7, 76 Stat. 571.)

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1962—Subd. (b). Pub. L. 87-681 excluded unliquidated claims from the computation of the number and aggregate amount of the claims of the creditors joining in the petition where the court determined that the claims could not be readily determined or estimated to be sufficient, together with the claims of the other

creditors, to aggregate $500, without unduly delaying the decision upon the adjudication.

1952—Subd. (b). Act July 7, 1952, substituted "not contingent" in lieu of "fixed" following "amount".

1938—Subd. (a) reenacted without change by act June 22, 1938.

Subds. (b) to (g) amended generally by act June 22, 1938.

Subd. (h) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952, effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Time of filing petition, see section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 94 of this title.

**§ 96. Preferred creditors**

(a)(1) A preference is a transfer, as defined in this title, of any of the property of a debtor to or for the benefit of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition initiating a proceeding under this title, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class.

(2) For the purposes of subdivisions (a) and (b) of this section, a transfer of property other than real property shall be deemed to have been made or suffered at the time when it became so far perfected that no subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee. A transfer of real property shall be deemed to have been made or suffered when it became so far perfected that no subsequent bona fide purchase from the debtor could create rights in such property superior to the rights of the transferee. If any transfer of real property is not so perfected against a bona fide purchase, or if any transfer of other property is not so perfected against such liens by legal or equitable proceedings prior to the filing of a petition initiating a proceeding under this title, it shall be deemed to have been made immediately before the filing of the petition.

(3) The provisions of paragraph (2) of this subdivision shall apply whether or not there are or were creditors who might have obtained such liens upon the property other than real property transferred and whether or not there are or were persons who might have become bona fide purchasers of such real property.

(4) A lien obtainable by legal or equitable proceedings upon a simple contract within the meaning of paragraph (2) of this subdivision is a lien arising in ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(5) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee or a purchase could create rights superior to the rights of a transferee within the meaning of paragraph (2) of this subdivision, if such consequences would follow only from the lien or purchase itself, or from such lien or purchase followed by any step wholly within the control of the respective lien holder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become so superior and such a purchase could not create such superior rights for the purposes of paragraph (2) of this subdivision through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action, or ruling.

(6) The recognition of equitable liens where available means of perfecting legal liens have not been employed is declared to be contrary to the policy of this section. If a transfer is for security and if (A) applicable law requires a signed and delivered writing, or a delivery of possession, or a filing or recording, or other like overt action as a condition to its full validity against third persons other than a buyer in the ordinary course of trade claiming through or under the transferor and (B) such overt action has not been taken, and (C) such transfer results in the acquisition of only an equitable lien, then such transfer is not perfected within the meaning of paragraph (2) of this subdivision. Notwithstanding the first sentence of paragraph (2) of this subdivision, it shall not suffice to perfect a transfer which creates an equitable lien such as is described in the first sentence of this paragraph, that it is made for a valuable consideration and that both parties intend to perfect it and that they take action sufficient to effect a transfer as against liens by legal or equitable proceedings on a simple contract: *Provided, however,* That where the debtor's own interest is only equitable, he can perfect a transfer thereof by any means appropriate fully to transfer an interest of that character: *And provided further,* That nothing in this paragraph shall be construed to be contrary to the provisions of paragraph (7) of this subdivision.

(7) Any provision in this subdivision (a) to the contrary notwithstanding if the applicable law requires a transfer of property other than real property for or on account of a new and contemporaneous consideration to be perfected by recording, delivery, or otherwise, in order that no lien described in paragraph (2) of this subdivision could become superior to the rights of the transferee therein, or if the applicable law requires a transfer of real property for such a consideration to be so perfected in order that no bona fide purchase from the debtor could create rights in such property superior to the rights of the transferee, the time of transfer shall be determined by the following rules:

I. Where (A) the applicable law specifies a stated period of time of not more than twenty-one days after the transfer within which recording, delivery, or some other act is required, and compliance therewith is had within such stated period of time; or where (B) the applicable law specifies no such stated period of time or where such stated period of time is more than twenty-one days, and compliance therewith is had within twenty-one days after the transfer, the transfer shall be deemed to be made or suffered at the time of the transfer.

II. Where compliance with the law applicable to the transfer is not had in accordance with the provisions of subparagraph I of this paragraph, the transfer shall be deemed to be made or suffered at the time of compliance therewith, and if such compliance is not had prior to the filing of the petition initiating a proceeding under this title, such transfer shall be deemed to have been made or suffered immediately before the filing of such petition.

(8) If no such requirement of applicable law specified in paragraph (7) of this subdivision exists, a transfer wholly or in part, for or on account of a new and contemporaneous consideration shall, to the extent of such consideration and interest thereon and the other obligations of the transferor connected therewith, be deemed to be made or suffered at the time of the transfer. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(b) Any such preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby or his agent acting with reference thereto has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent. Where the preference is voidable, the trustee may recover the property or, if it has been converted, its value from any person who has received or converted such property, except a bona-fide purchaser from or lienor of the debtor's transferee for a present fair equivalent value: *Provided, however,* That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. Where a preference by way of lien or security title is voidable, the court may on due notice order such lien or title to be preserved for the benefit of the estate, in which event such lien or title shall pass to the trustee. For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(c) If a creditor has been preferred, and afterward in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estate, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

(d) If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney at law, for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the trustee or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

If, whether before or after filing, a debtor shall agree orally or in writing to pay money or transfer property to an attorney at law after the filing, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the bankrupt made prior to discharge and shall be held valid only to the extent of a reasonable amount to be determined by the court, and any excess obligation shall be canceled, or if excess payment or transfer has been made, returned to the bankrupt.

(e)(1) Where the bankrupt is a stockbroker, the following definitions and provisions of this subdivision shall apply: "Property" shall include cash, securities, whether or not negotiable, and all other property of similar character; "customers" of a stockbroker shall include persons who have claims on account of securities received, acquired, or held by the stockbroker from or for the account of such persons (a) for safekeeping, or (b) with a view to sale, or (c) to cover consummated sales, or (d) pursuant to purchases, or (e) as collateral security, or (f) by way of loans of securities by such persons to the stockbroker, and shall include persons who have claims against the stockbroker arising out of sales or conversions of such securities; "cash customers" shall mean customers entitled to immediate possession of such securities without the payment of any sum to the stockbroker; the same person may be a cash customer with reference to certain securities and not a cash customer with reference to other securities; the "net equity" of a customer's account shall be determined by excluding any specifically identifiable securities reclaimable by the customer and by subtracting the indebtedness of the customer to the stockbroker from the sum which would have been owing by the stockbroker to the customer had the stockbroker liquidated, by sale or purchase on the date of bankruptcy, the remaining securities or security commitments of the customer.

(2) All property at any time received, acquired, or held by a stockbroker from or for the account of customers, except cash customers who are able to identify specifically their property in the manner prescribed in paragraph (4) of this subdivision and the proceeds of all customers' property rightfully transferred or unlawfully converted by the stockbroker, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the date of bankruptcy: *Provided, however,*

That such fund shall to the extent approved by the court be subject to the priority of payment of the costs and expenses enumerated in clauses (1) and (2) of subdivision (a) of section 104 of this title. If such fund shall not be sufficient to pay in full the claims of such class of creditors, such creditors shall be entitled, to the extent only of their respective unpaid balances, to share in the general estate with the general creditors.

(3) Any property remaining after the liquidation of a pledge made by a stockbroker shall be apportioned between his general estate and such single and separate fund in the proportion in which the general property of the stockbroker and the property of his customers contributed to such pledge.

(4) No cash received by a stockbroker from or for the account of a customer for the purchase or sale of securities, and no securities or similar property received by a stockbroker from or for the account of a cash customer for sale and remittance or pursuant to purchase or as collateral security, or for safekeeping, or any substitutes therefor or the proceeds thereof, shall for the purposes of this subdivision (e) be deemed to be specifically identified, unless such property remained in its identical form in the stockbroker's possession until the date of bankruptcy, or unless such property or any substitutes therefor or the proceeds thereof were, more than four months before bankruptcy or at a time while the stockbroker was solvent, allocated to or physically set aside for such customer, and remained so allocated or set aside at the date of bankruptcy.

(5) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a stockbroker of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of this title. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the stockbroker and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. If any securities received or acquired by a stockbroker from a cash customer are transferred by the stockbroker, such customer shall not have any specific interest in or specific right to any securities of like kind on hand at the time of bankruptcy, but such securities of like kind or the proceeds thereof shall become part of such single and separate fund: *Provided, however,* That a customer shall have a specific title to securities (a) which have been physically set aside by a stockbroker, more than four months before his bankruptcy or while solvent, in safekeeping for such customer, and so retained until the date of bankruptcy, regardless of the name in which such securities are registered, or (b) which a stockbroker, more than four months before his bankruptcy or while solvent, caused to be registered in the name of such customer.

(July 1, 1898, ch. 541, § 60, 30 Stat. 562; Feb. 5, 1903, ch. 487, § 13, 32 Stat. 799; June 25, 1910, ch. 412, § 11, 36 Stat. 842; May 27, 1926, ch. 406, § 14, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 869; Mar. 18, 1950, ch. 70, § 1, 64 Stat. 25; May 8, 1963, Pub. L. 88-17, 77 Stat. 14.)

AMENDMENTS

1963—Subd. (d). Pub. L. 88-17 authorized the court to examine transactions on its own motion, provided for examinations instead of reexaminations by the court on petition of trustee, changed "attorney and counselor at law" to "attorney at law", deleted following such term "solicitor in equity, or proctor in admiralty", substituted "for services rendered or to be rendered" for "for services to be rendered" and added par. for examination into the reasonableness of amount for legal services, cancellation and return of any excess to the bankrupt.

1950—Subd. (a). Act Mar. 18, 1950, clarified its provisions, eliminated confusions that have arisen by reason of certain court decisions, and removed doubts existing among banks, factors, and other extenders of credit regarding the validity of security taken in good faith and for present value.

1938—Subds. (a) and (b) amended generally by act June 22, 1938.

Subds. (c) and (d) reenacted without change by act June 22, 1938.

Subd. (e) added by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

REPEALS; SEPARABILITY OF PROVISIONS OF 1950 AMENDMENT

Section 3 of act Mar. 18, 1950, provided that:

"a. All Acts or parts of Acts inconsistent with any provisions of this amendatory Act [sections 96 and 110 of this title] are hereby repealed.

"b. If any provision of this amendatory Act [sections 96 and 110 of this title] or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this amendatory Act [sections 96 and 110 of this title] which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory Act are declared to be severable."

EFFECT OF 1950 AMENDMENT

Section 4 of act Mar. 18, 1950, provided that:

"a. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory [sections 96 and 110 of this title].

"b. The provisions of this amendatory Act [sections 96 and 110 of this title] shall govern proceedings so far as practicable and applicable in cases pending when it takes effect; but proceedings in cases then pending to which the provisions of this amendatory Act [sections 96 and 110 of this title] are not applicable shall be disposed of conformably to the provisions of said Act approved July 1, 1898 [this title], and the Acts amendatory thereof and supplementary thereto."

CROSS REFERENCES

Attorney fees as expenses, see section 102 of this title.

Insolvency, definition of, see section 1 of this title.

Preference as act of bankruptcy, see section 21(a) of this title.

Railroad reorganizations, section as applicable, see section 205 of this title.

Recovery of property transferred generally in fraud—

Of creditors, see section 110 of this title.

Within the four months' period, see section 107 of this title.

Statutory liens arising within four months' period as valid, see section 107 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 46, 107, 205, 405 of this title; title 15 section 78fff.

## CHAPTER 7—ESTATES

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101. Depositories for money.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 41, 45, 502, 702, 781, 802, 886, 1002, 1069 of this title; title 15 section 78fff.

### § 101. Depositories for money

The judges of the several courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of estates under this title, as convenient as may be to the residences of receivers and trustees, and shall require from each such banking institution a good and sufficient bond with surety, to secure the prompt repayment of the deposit. Said judges may, in accordance with the provisions of, and the authority conferred in section 15 of title 6, accept the deposit of the securities therein designated, in lieu of a surety or sureties upon such bond and may, from time to time as occasion may require, by like order increase or decrease the number of depositories or the amount of any bond or other security or change such depositories: *Provided,* That no security in the form of a bond or otherwise shall be required in the case of such part of the deposits as are insured under section 1821 of title 12: *And provided further,* That depository banks shall place such securities, accepted for deposit in lieu of a surety or sureties upon depository bonds, in the custody of Federal Reserve banks or branches thereof designated by the judges of the several courts of bankruptcy, subject to the orders of such judges. All national banking associations designated as depositories, pursuant to the provisions of this section, are authorized to give such security as may be required. All pledges of securities heretofore made for the purposes herein named are ratified, validated, and approved.

(July 1, 1898, ch. 541, § 61, 30 Stat. 562; Aug. 23, 1935, ch. 614, § 340, 49 Stat. 721; June 22, 1938, ch. 575, § 1, 52 Stat. 872; July 7, 1952, ch. 579, § 16a, 66 Stat. 425.)

AMENDMENTS

1952—Act July 7, 1952, substituted "section 1821 of title 12" for "section 264 of title 12."

1938—Act June 22, 1938, amended section generally and added the last proviso.

1935—Act Aug. 23, 1935, added the first proviso.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Bonds and notes of United States in lieu of sureties, see section 15 of Title 6, Surety Bonds.

Duty of trustee to deposit money in designated depositories, see section 75 of this title.

Insurance of deposits of insured banks by Federal Deposit Insurance Corporation, see section 1821 of Title 12, Banks and Banking.

### § 101a. Omitted

CODIFICATION

Section, act Mar. 3, 1933, ch. 204, § 3, 47 Stat. 1482, authorized deposits of bankrupt funds in postal savings depositories, and is omitted since the postal savings system was discontinued on the 30th day following March 28, 1966, by Pub. L. 89-377, § 1, Mar. 28, 1966, 80 Stat. 92.

### § 102. Expenses of administering estates; unauthorized sharing of fees; withholding allowances

(a)(1) The actual and necessary costs and expenses incurred by officers, other than referees, in the administration of estates shall, except where other provisions are made for their payment, be reported in detail under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

(2) The actual and necessary office and other expenses of referees shall be allowed when authorized and approved by the Director, including compensation of clerical, stenographic and other assistants of referees at rates to be fixed by the Director, taking into consideration the rates for comparable services prevailing in the respective offices of the clerks of the several district courts, and the costs of establishing and maintaining their offices with equipment and supplies adequate for their efficient and economical operation, including mechanical equipment and devices and law libraries. Such expenses may be allowed when authorized by a judge of the judicial district or districts in which a referee serves in cases of emergency where it is not feasible to secure prior authorization of the Director. The Director, with the approval of the conference, may prescribe such rules and regulations as may be necessary for the purpose of carrying out the provisions of this paragraph.

(3) When, in the opinion of the Director, the public interest requires it, he may, on the recommendation of a referee, which recommendation shall state facts showing the necessity for the same, allow the referee to employ necessary clerical, stenographic, and other assistants. The referee may at his pleasure remove any assistant in his employ. If the office of a referee shall become vacant, the employment of his assistants shall not thereupon be terminated:

*Provided, however,* That during such vacancy the Director may terminate the employment of any assistant, if, in his opinion, the services of such assistant are no longer needed.

(4) Referees and special masters under this title shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices in proceedings under this title.

(b)(1) When authorized and approved by the Director, the actual expenses of travel, and the actual expenses for lodging and subsistence not to exceed $7 per day, shall be allowed a referee while absent from his regular place of office on official business.

(2) When authorized and approved by the Director, the assistants of referees shall be entitled to the same travel allowances as are provided for employees of the executive branch of the United States Government under the standardized Government travel regulations issued by the President, while absent from their regular place of employment on official business.

(3) Payment of the expenses allowed or per diem granted under this subdivision and paragraph (2) of subdivision (a) of this section shall be by or pursuant to the order of the Director.

(c) A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, rendering services in a proceeding under this title or in connection with such proceeding, shall not in any form or guise share or agree to share his compensation for such services with any person not contributing thereto, or share or agree to share in the compensation of any person rendering services in a proceeding under this title or in connection with such proceeding, to which services he has not contributed: *Provided, however,* That an attorney-at-law may share such compensation with a law partner or with a forwarding attorney-at-law, and may share in the compensation of a law partner.

(d) A receiver or trustee or the attorney for any of them, or any other attorney, seeking compensation for services rendered by him in a proceeding under this title or in connection with such proceeding, shall file with the court his petition setting forth the value and extent of the services rendered, the amount requested, and what allowances, if any, have theretofore been made to him. Such petition shall be accompanied by his affidavit stating whether an agreement or understanding exists between the petitioner and any other person for a division of compensation and, if so, the nature and particulars thereof. If satisfied that the petitioner has, in any form or guise, shared or agreed to share his compensation or in the compensation of any other person contrary to the provisions of subdivision (c) of this section, the court shall withhold all compensation from such petitioner.

(July 1, 1898, ch. 541, § 62, 30 Stat. 562; June 22, 1938, ch. 575, § 1, 52 Stat. 872; June 28, 1946, ch. 512, § 11, 60 Stat. 329; July 7, 1952, ch. 579, § 17, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (d). Act July 7, 1952, substituted "subdivision (c) of this section" for "this subdivision".

1946—Subd. (a). Act June 28, 1946, brought all expenditures within the jurisdiction of the Director of the Administrative Office in order to secure uniform supervision together with standard auditing and bookkeeping procedures, and provides for the hiring of clerical assistants by the referee.

Subd. (b). Act June 28, 1946, provided for a maximum of $7 per day for travel and subsistence allowance for referees, makes all expenditures subject to the authorization and approval of the Director, and provides for travel and subsistence allowances for assistants.

1938—Subd. (a), formerly entire section, amended by act June 22, 1938.

Subds. (b) to (d) added by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATES, REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

INCREASES IN COMPENSATION RATES

Increases in compensation rates fixed under subd. (a)(2) of this section, see notes under section 603 of Title 28, Judiciary and Judicial Procedure.

CROSS REFERENCES

Attorney's fees—
Corporate reorganization expenses, see section 641 et seq. of this title.
Provable debts, see section 103 of this title.
Compensation of receivers, custodians, and trustees, see section 76 of this title.
Cost of recording as expense of administration, see section 44 of this title.
Priority—
Administration expenses, see section 104 of this title.
Attorney's fees for payment of debts, see section 104 of this title.
Proof and allowance of claims, see section 93 of this title.
Referee's salary and expense funds, see section 68 of this title.
Subsistence expenses of officers and employees traveling on official business, per diem allowance, see section 5701 et seq. of Title 5, Government Organization and Employees.
Trustees' expenses as part of expense of administration, see section 75 of this title.

### § 103. Debts which may be proved

(a) Debts of the bankrupt may be proved and allowed against his estate which are founded upon (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition by or against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) costs taxable against a bankrupt who was at the time of the filing of the petition by or against him plaintiff in a cause of action which would pass to the

trustee and which the trustee declines to prosecute after notice; (3) a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a probable[1] debt; (4) an open account, or a contract express or implied; (5) provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments; (6) an award of an industrial-accident commission, body, or officer of any State having jurisdiction to make awards of workmen's compensation in case of injury or death from injury, if such injury occurred prior to adjudication; (7) the right to recover damages in any action for negligence instituted prior to and pending at the time of the filing of the petition in bankruptcy; (8) contingent debts and contingent contractual liabilities; or (9) claims for anticipatory breach of contracts, executory in whole or in part, including unexpired leases of real or personal property: *Provided, however,* That the claim of a landlord for damages for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall in no event be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after bankruptcy, plus an amount equal to the unpaid rent accrued, without acceleration, up to such date: *And provided further,* That in the case of an assignment of any such claim for damages, the court shall, in determining the amount thereof, examine the circumstances of the assignment and the consideration paid or to be paid therefor, and may allow the claim of the assignee in such amount, subject to the provisions of the foregoing proviso of this clause, as will be fair and equitable.

(b) In the interval after the filing of an involuntary petition and before the appointment of a receiver or the adjudication, whichever first occurs, a claim arising in favor of a creditor by reason of property transferred or services rendered by the creditor to the bankrupt for the benefit of the estate shall be provable to the extent of the value of such property or services.

(c) Notwithstanding any State law to the contrary, the rejection of an executory contract or unexpired lease, as provided in this title, shall constitute a breach of such contract or lease as of the date of the filing of the petition initiating a proceeding under this title.

(d) Where any contingent or unliquidated claim has been proved, but, as provided in subdivision (d) of section 93 of this title, has not been allowed, such claim shall not be deemed provable under this title.

(July 1, 1898, ch. 541, § 63, 30 Stat. 562; June 7, 1934, ch. 424, § 4(a), 48 Stat. 923; June 18, 1934, ch. 580, 48 Stat. 991; June 5, 1936, ch. 512, § 1, 49 Stat. 1475; June 22, 1938, ch. 575, § 1, 52 Stat. 873; July 7, 1952, ch. 579, § 18, 66 Stat. 426.)

[1] So in original. Probably should read "provable".

AMENDMENTS

1952—Subd. (c). Act July 7, 1952, substituted "this title" for "chapters 10, 11, 12 or 13 of this title".

1938—Subd. (a) amended by act June 22, 1938. Clause (7) was formerly (6½). Clause (8) was added. Clause (9) was formerly (7).

Subds. (b) and (c) added by act June 22, 1938.

Subd. (d), formerly (b), amended by act June 22, 1938.

1936—Subd. (a). Act June 5, 1936, inserted proviso in former clause (6½).

1934—Subd. (a). Act June 18, 1934, added last clause of last proviso in former clause (7).

Subd. (a). Act June 7, 1934, added former clauses (6), (6½), and (7).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Arrangement proceedings, claims, see sections 707 and 751 et seq. of this title.

Corporate reorganization proceedings, claims, see sections 506 and 596 et seq. of this title.

Discharge releasing all provable claims, see section 35 of this title.

Proof and allowance of claims, see section 93 of this title.

Real property arrangement proceedings, claims, see sections 806 and 851 et seq. of this title.

Time for filing claims, see section 93 of this title.

Wage earners' plans, proceedings, claims, see sections 1006 and 1041 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 506, 638, 707, 778, 806, 883, 1006, 1044 of this title.

### § 103a. Omitted

CODIFICATION

Section, act June 7, 1934, ch. 424, § 4(b), 48 Stat. 924, related to priority of workmen's compensation claims. It was omitted from this title in the general amendment thereof by act June 22, 1938, ch. 575, 52 Stat. 840. It provided that: "The provisions of clause (6) of section 103(a) of this title shall apply to estates pending on June 7, 1934, and claims provided for in such clause (6) shall have the priority provided for in clause (7) of section 104(b) of this title."

### § 104. Debts which have priority

(a) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the costs and expenses of administration, including the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the fees for the referees' salary and expense fund; the filing fees paid by creditors in involuntary cases or by persons other than the bankrupts in voluntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, is recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable

costs and expenses of such recovery; the trustee's expenses in opposing the bankrupt's discharge or in connection with the criminal prosecution of an offense punishable under chapter 9 of title 18, or an offense concerning the business or property of the bankrupt punishable under other laws, Federal or State; the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the bankrupt in voluntary and involuntary cases, and to the petitioning creditors in involuntary cases, and if the court adjudges the debtor bankrupt over the debtor's objection or pursuant to a voluntary petition filed by the debtor during the pendency of an involuntary proceeding, for the reasonable costs and expenses incurred, or the reasonable disbursements made, by them, including but not limited to compensation of accountants and appraisers employed by them, in such amount as the court may allow. Where an order is entered in a proceeding under any chapter of this title directing that bankruptcy be proceeded with, the costs and expenses of administration incurred in the ensuing bankruptcy proceeding, including expenses necessarily incurred by a debtor in possession, receiver, or trustee in preparing the schedule and statement required to be filed by section 638, 778, or 883 of this title, shall have priority in advance of payment of the unpaid costs and expenses of administration, including the allowances provided for in such chapter, incurred in the superseded proceeding and in the suspended bankruptcy proceeding, if any; (2) wages and commissions, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen, servants, clerks, or traveling, or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; and for the purposes of this clause, the term "traveling or city salesman" shall include all such salesmen, whether or not they are independent contractors selling the products or services of the bankrupt on a commission basis, with or without a drawing account or formal contract; (3) where the confirmation of an arrangement or wage earner plan or the bankrupt's discharge has been refused, revoked, or set aside upon the objection and through the efforts and at the cost and expense of one or more creditors, or, where through the efforts and at the cost and expense of one or more creditors, evidence shall have been adduced resulting in the conviction of any person of an offense under chapter 9 of title 18, the reasonable costs and expenses of such creditors in obtaining such refusal, revocation, or setting aside, or in adducing such evidence; (4) taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof which are not released by a discharge in bankruptcy: *Provided, however,* That no priority over general unsecured claims shall pertain to taxes not included in the foregoing priority: *And provided further,* That no order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court; and (5) debts other than for taxes owing to any person, including the United States, who by the laws of the United States is entitled to priority, and rent owing to a landlord who is entitled to priority by applicable State law or who is entitled to priority by paragraph (2) of subdivision (c) of section 107 of this title. *Provided, however,* That such priority for rent to a landlord shall be restricted to the rent which is legally due and owing for the actual use and occupancy of the premises affected, and which accrued within three months before the date of bankruptcy.

(b) Repealed. July 7, 1952, ch. 579, § 19(b), 66 Stat. 426.

(July 1, 1898, ch. 541, § 64, 30 Stat. 563; Feb. 5, 1903, ch. 487, § 14, 32 Stat. 800; June 15, 1906, ch. 3333, 34 Stat. 267; May 27, 1926, ch. 406, § 15, 44 Stat. 666; June 22, 1938, ch. 575, § 1, 52 Stat. 874; June 28, 1946, ch. 512, § 12, 60 Stat. 330; May 24, 1949, ch. 139, § 131, 63 Stat. 108; July 7, 1952, ch. 579, § 19, 66 Stat. 426; July 30, 1956, ch. 784, § 1, 70 Stat. 725; July 28, 1959, Pub. L. 86-110, § 3, 73 Stat. 260; Sept. 25, 1962, Pub. L. 87-681, § 8, 76 Stat. 571; July 5, 1966, Pub. L. 89-495, § 2, 80 Stat. 268; July 5, 1966, Pub. L. 89-496, § 3, 80 Stat. 271; Nov. 28, 1967, Pub. L. 90-157, § 1, 81 Stat. 511.)

AMENDMENTS

1967—Subd. (a)(1). Pub. L. 90-157 inserted ", including expenses necessarily incurred by a debtor in possession, receiver, or trustee in preparing the schedule and statement required to be filed by section 638, 778, or 883 of this title,".

1966—Subd. (a)(4). Pub. L. 89-496 limited the priority accorded to taxes in the distribution of bankrupt's estates to those taxes which became legally due and owing by the bankrupt and which were not released by a discharge in bankruptcy and provided that no priority over general unsecured claims shall pertain to taxes not included in the foregoing priority.

Subd. (a)(5). Pub. L. 89-495 inserted "other than for taxes" following "debts" and "or who is entitled to priority by paragraph (2) of subdivision (c) of section 107 of this title".

1962—Subd. (a)(1). Pub. L. 87-681 transposed to the beginning of cl. (1) the words "the costs and expenses of administration, including", formerly appearing preceding "the trustee's expenses in opposing the bankrupt's discharge or in connection with the criminal prosecution of an offense punishable under chapter 9 of title 18" and included as an item of such costs and expenses of administration the reasonable costs and expenses incurred or reasonable disbursements made where court adjudged the debtor bankrupt over the debtor's objection or pursuant to a voluntary petition filed by the debtor during the pendency of an involuntary proceeding, including compensation of accountants and appraisers.

1959—Subd. (a)(1). Pub. L. 86-110 substituted "referees' salary and expense fund" for "referees' salary fund and for the referees' expense fund".

1956—Subd. (a)(2). Act July 30, 1956, included commissions, and defined "traveling or city salesman".

1952—Subd. (a)(1). Act July 7, 1952, § 19(a), permitted filing fees advanced by banks to be reimbursed out of the estate, broadened the base of compensable services and added last proviso.

Subd. (b) repealed by act July 7, 1952, § 19(b).

1949—Subd. (a)(3). Act May 24, 1949, substituted "Chapter 9 of title 18" in lieu of "this Act".

1946—Subd. (a)(1). Act June 28, 1946, accorded priority to fees for salary and expense funds of referees, as

an administration expense, on a parity with other items set forth therein.

1938—Subd. (a), formerly (a) and (b), amended by act June 22, 1938. Clause (1) was formerly clauses (1), (2), and (3), of subd. (b). Clauses (2) and (3) were formerly clauses (5) and (4), respectively, of subd. (b). Clause (4) was formerly subd. (a) and clause (6) of subd. (b). Clause (5) was formerly clause (7) of subd. (b).

Subd. (b), formerly (c), amended by act June 22, 1938.

1926—Act May 27, 1926, amended section generally, which among other changes, amended subd. (a), introductory clause and clause (3) of subd. (b), inserted a new clause (4), changed original clause (4) to (5) and raised the amount mentioned therein from $300 to $600, inserted clause (6), changed former clause (5) to (7), and added a proviso.

EFFECTIVE DATE OF 1959 AMENDMENT

For effective date of amendment by Pub. L. 86-110, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act July 30, 1956, provided that: "The amendment made by the first section of this Act [to subd. (a)(2)] shall apply only with respect to proceedings commenced on or after the date of the enactment of this Act [July 30, 1956]."

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATES, REPEALS, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Administration expenses, see section 102 of this title.

Arrangement, confirmation, see section 761 et seq. of this title.

Attorney's fees, see section 102 of this title.

Crimes and offenses against bankruptcy laws, see section 151 et seq. of Title 18, Crimes and Criminal Procedure.

Debts which may be proved, see section 103 of this title.

Dividends, payment, see section 105 of this title.

Filing fee in bankruptcy, see section 80 of this title.

Lien for taxes due United States, see section 6321 et seq. of Title 26, Internal Revenue Code.

Opposition by trustee of discharge at expense of estate, see section 75 of this title.

Priority of claims, see section 93 of this title.

Priority of debts of United States due by insolvents or deceased debtors, see section 191 of Title 31, Money and Finance.

Referees' salary and expense funds, see section 68 of this title.

Rights of holders of valid liens, see section 107 of this title.

Wage earner, defined, see sections 1 and 1006 of this title.

Wage earners plans, confirmation, see section 1051 et seq. of this title.

Witnesses, fees and mileage, see section 1821 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35, 96, 107, 502, 1059 of this title; title 15 section 78fff.

**§ 105. Declaration and payments of dividends**

(a) Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

(b) The first dividends shall be declared within thirty days after the first date set for the first meeting of creditors, if the money of the estate in excess of the amount necessary to pay the debts which have priority equals 5 per centum or more of the allowed claims and such claims as have not been but probably will be allowed. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal 10 per centum or more, and upon closing the estate. Dividends may be declared oftener and in smaller proportions, if the court shall so order: Unless six months have expired since the first date set for the first meeting, the first dividend, including such sum as would be required to pay a like dividend upon such claims as probably will be allowed, shall not include more than 50 per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority, and the final dividend shall not be declared until three months after the first dividend shall be declared: *Provided*, That after the expiration of six months following the first date set for the first meeting only one dividend need be declared.

(c) The rights of creditors who have received dividends or in whose favor final dividends have been declared shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors, if the estate equals so much, before such other creditors are paid any further dividends.

(d) Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, all creditors with claims allowed by the court of bankruptcy who have not had a dividend paid or declared in their favor by the court without the United States shall first be paid a dividend equal to that paid or declared in such foreign court in favor of other creditors of the same class under this title, before creditors who have had a dividend paid or declared in their favor by such foreign court shall be paid any amount in the court of bankruptcy.

(e) A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this title.

(July 1, 1898, ch. 541, § 65, 30 Stat. 563; Feb. 5, 1903, ch. 487, § 15, 32 Stat. 800; June 22, 1938, ch. 575, § 1, 52 Stat. 875; July 7, 1952, ch. 579, § 20, 66 Stat. 426.)

AMENDMENTS

1952—Subd. (d). Act July 7, 1952, made more effective the policy of effectuating equal distribution between foreign and domestic creditors.

1938—Subds. (a) and (c) to (e) reenacted without change by act June 22, 1938.
Subd. (b) amended generally by act June 22, 1938.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Debts provable in bankruptcy, see section 103 of this title.
Declaration of dividends by referee, see section 67 of this title.
Payment of dividends by trustee, see section 75 of this title.
Priority of debts, see section 104 of this title.
Proof and allowance of claims, see section 93 of this title.
Unclaimed dividends, see section 106 of this title.

**§ 106. Unclaimed moneys**

(a) Dividends or other moneys which remain unclaimed for sixty days after the final dividend has been declared and distributed shall be paid by the trustee into the court of bankruptcy; and at the same time the trustee shall file with the clerk a list of the names and post-office addresses, as far as known, of the persons entitled thereto, showing the respective amounts payable to them. Such moneys and dividends shall be deposited and withdrawn as provided in section 2042 of title 28, and shall not be subject to escheat under the laws of any State.

(b) Repealed. Aug. 1, 1956, ch. 819, § 2, 70 Stat. 785.

(July 1, 1898, ch. 541, § 66, 30 Stat. 564; June 22, 1938, ch. 575, § 1, 52 Stat. 875; Aug. 1, 1956, ch. 819, §§ 1, 2, 70 Stat. 785.)

AMENDMENTS

1956—Subd. (a). Act Aug. 1, 1956, § 1, added sentence respecting deposit and withdrawal of unclaimed moneys as provided in section 2042 of title 28 without being subject to State escheat laws.
Subd. (b). Act Aug. 1, 1956, § 2, repealed subd. (b) which related to distribution to creditors of dividends remaining unclaimed for one year and permitted minors to claim dividends one year after arriving at majority.
1938—Subd. (a) amended by act June 22, 1938, to include other moneys as well as dividends, to reduce waiting period from six months to sixty days, and to require filing of list of persons.
Subd. (b) reenacted without change by act June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Amount of dividends generally, see section 105 of this title.
Declaration of dividends by referees, see section 67 of this title.
Payment of dividends by trustee, see section 75 of this title.
Proof and allowance of claims, see section 93 of this title.
Time of payment of dividends, see section 105 of this title.

**§ 107. Liens and fraudulent transfers**

(a)(1) Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition initiating a proceeding under this title by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this title: *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this title and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

(2) If any lien deemed null and void under the provisions of paragraph (1) of this subdivision, has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any of the nonexempt property of a person before the filing of a petition initiating a proceeding under this title by or against him, such indemnifying transfer or lien shall also be deemed null and void: *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this title, and if no arrangement or plan is proposed and confirmed, such transfer or lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

(3) The property affected by any lien deemed null and void under the provisions of paragraphs (1) and (2) of this subdivision shall be discharged from such lien, and such property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the trustee or debtor, as the case may be, except that the court may on due notice order any such lien to be preserved for the benefit of the estate, and the court may direct such conveyance as may be proper or adequate to evidence the title thereto of the trustee or debtor, as the case may be: *Provided, however,* That the title of a bona-fide purchaser of such property shall be valid, but if such title is acquired otherwise than at a judicial sale held to enforce such lien, it shall be valid only to the extent of the present consideration paid for such property.

(4) The court shall have summary jurisdiction of any proceeding by the trustee or debtor, as the case may be, to hear and determine the rights of any parties under this subdivision. Due notice of any hearing in such proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of such property or lien, and if such value

is less than the amount for which such property is indemnity or than the amount of such lien, the transferee or lienholder may elect to retain such property or lien upon payment of its value, as ascertained by the court, to the trustee or debtor, as the case may be, within such reasonable times as the court shall fix.

(5) The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and voided by the trustee or debtor, or, where the property is retained pursuant to the provisions of paragraph (4) of this subdivision, to the extent of the amount paid to the trustee or debtor.

(b) The provisions of section 96 of this title to the contrary notwithstanding and except as otherwise provided in subdivision (c) of this section, statutory liens in favor of employees, contractors, mechanics, or any other class of persons, and statutory liens for taxes and debts owing to the United States or to any State or any subdivision thereof, created or recognized by the laws of the United States or any State, may be valid against the trustee, even though arising or perfected while the debtor is insolvent and within four months prior to the filing of the petition initiating a proceeding under this title by or against him.

(c)(1) The following liens shall be invalid against the trustee:

(A) every statutory lien which first becomes effective upon the insolvency of the debtor, or upon distribution or liquidation of his property, or upon execution against his property levied at the instance of one other than the lienor;

(B) every statutory lien which is not perfected or enforceable at the date of bankruptcy against one acquiring the rights of a bona fide purchaser from the debtor on that date, whether or not such purchaser exists: *Provided,* That where a statutory lien is not invalid at the date of bankruptcy against the trustee under subdivision (c) of section 110 of this title and is required by applicable lien law to be perfected in order to be valid against a subsequent bona fide purchaser, such a lien may nevertheless be valid under this subdivision if perfected within the time permitted by and in accordance with the requirements of such law: *And provided further,* That if applicable lien law requires a lien valid against the trustee under section 110(c) of this title to be perfected by the seizure of property, it shall instead be perfected as permitted by this subdivision by filing notice thereof with the court;

(C) every statutory lien for rent and every lien of distress for rent, whether statutory or not. A right of distress for rent which creates a security interest in property shall be deemed a lien for the purposes of this subdivision.

(2) The Court may, on due notice, order any of the aforesaid liens invalidated against the trustee to be preserved for the benefit of the estate and in that event the lien shall pass to the trustee. A lien not preserved for the benefit of the estate but invalidated against the trustee shall be invalid as against all liens indefeasible in bankruptcy, so as to have the effect of promoting liens indefeasible in bankruptcy which would otherwise be subordinate to such invalidated lien. Claims for wages, taxes, and rent secured by liens hereby invalidated or preserved shall be respectively allowable with priority and restricted as are debts therefor entitled to priority under clauses (2), (4), and (5) of subdivision (a) of section 104 of this title, even though not otherwise granted priority.

(3) Every tax lien on personal property not accompanied by possession shall be postponed in payment to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title. Where such a tax lien is prior in right to liens indefeasible in bankruptcy, the court shall order payment from the proceeds derived from the sale of the personal property to which the tax lien attaches, less the actual cost of that sale, of an amount not in excess of the tax lien, to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title. If the amount realized from the sale exceeds the total of such debts, after allowing for prior indefeasible liens and the cost of the sale, the excess up to the amount of the difference between the total paid to the debts specified in clauses (1) and (2) of subdivision (a) of section 104 of this title and the amount of the tax lien, is to be paid to the holder of the tax lien.

(4) Where a penalty not allowable under subdivision (j) of section 93 of this title is secured by a lien, the portion of the lien securing such penalty shall not be eligible for preservation under this subdivision.

(5) This subdivision shall not apply to liens enforced by sale before the filing of the petition, nor to liens against property set aside to the bankrupt as exempt, nor to liens against property abandoned by the trustee or unadministered in bankruptcy for any reason and shall not apply in proceedings under section 205 of this title, nor in proceedings under chapter 10 of this title unless an order has been entered directing that bankruptcy be proceeded with.

(d)(1) For the purposes of, and exclusively applicable to, this subdivision: (a) "Property" of a debtor shall include only his nonexempt property; (b) "debt" is any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent; (c) "creditor" is a person in whose favor a debt exists; (d) a person is "insolvent" when the present fair salable value of his property is less than the amount required to pay his debts; and to determine whether a partnership is insolvent, there shall be added to the partnership property the present fair salable value of the separate property of each general partner in excess of the amount required to pay his separate debts, and also the amount realizable on any unpaid subscription to the partnership of each limited partner; and (e) consideration given for the property or obligation of a debtor is "fair" (1) when, in good faith, in exchange and as a fair equivalent therefor, property is transferred or an antecedent debt is satisfied, or (2) when such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property or obligation obtained.

(2) Every transfer made and every obligation incurred by a debtor within one year prior to the filing of a petition initiating a proceeding under this title by or against him is fraudulent (a) as to creditors existing at the time of such transfer or obligation, if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent, without regard to his actual intent; or (b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such business or transaction, for which the property remaining in his hands is an unreasonably small capital, without regard to his actual intent; or (c) as to then existing and future creditors, if made or incurred without fair consideration by a debtor who intends to incur or believes that he will incur debts beyond his ability to pay as they mature; or (d) as to then existing and future creditors, if made or incurred with actual intent as distinguished from intent presumed in law, to hinder, delay, or defraud either existing or future creditors.

(3) Every transfer made and every obligation incurred by a debtor who is or will thereby be rendered insolvent, within four months prior to the filing of a petition initiating a proceeding under this title by or against him is fraudulent, as to then existing and future creditors: (a) if made or incurred in contemplation of the filing of a petition initiating a proceeding under this title by or against the debtor or in contemplation of liquidation of all or the greater portion of the debtor's property, with intent to use the consideration obtained for such transfer or obligation to enable any creditor of such debtor to obtain a greater percentage of his debt than some other creditor of the same class, and (b) if the transferee or obligee of such transfer or obligation, at the time of such transfer or obligation, knew or believed that the debtor intended to make such use of such consideration. The remedies of the trustee for the avoidance of such transfer or obligation and of any ensuing preference shall be cumulative: *Provided, however,* That the trustee shall be entitled to only one satisfaction with respect thereto.

(4) Every transfer of partnership property and every partnership obligation incurred within one year prior to the filing of a petition initiating a proceeding under this title by or against the partnership, when the partnership is insolvent or will be thereby rendered insolvent, is fraudulent as to partnership creditors existing at the time of such transfer or obligation, without regard to actual intent if made or incurred (a) to a partner, whether with or without a promise by him to pay partnership debts, or (b) to a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

(5) For the purposes of this subdivision, a transfer shall be deemed to have been made at the time when it became so far perfected that no bona fide purchaser from the debtor could thereafter have acquired any rights in the property so transferred superior to the rights of the transferee therein, but, if such transfer is not so perfected prior to the filing of the petition initiating a proceeding under this title, it shall be deemed to have been made immediately before the filing of such petition.

(6) A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this title, which is fraudulent under this subdivision against creditors of such debtor having claims provable under this title, shall be null and void against the trustee, except as to a bona fide purchaser, lienor, or obligee for a present fair equivalent value: *Provided, however,* That the court may, on due notice, order such transfer or obligation to be preserved for the benefit of the estate and, in such event, the trustee shall succeed to and may enforce the rights of such transferee or obligee: *And provided further,* That such purchaser, lienor, or obligee, who without actual fraudulent intent has given a consideration less than fair, as defined in this subdivision, for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.

(7) Nothing contained in this subdivision shall be construed to validate a transfer which is voidable under section 96 of this title.

(e) For the purpose of any recovery or avoidance under this section, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(f)(1) For the purposes of, and exclusively applicable to, this subdivision (a) "debtor" shall mean a face-amount certificate company as defined in section 80a-4 of title 15; (b) "face-amount certificate" shall mean a face-amount certificate as defined in section 80a-2 of title 15; (c) "depositary" is a person or State agency with whom securities or other property of a debtor is deposited or to whom property of a debtor is transferred, in trust or otherwise, pursuant to the requirements of a State law or an agreement by the debtor providing for the distribution of such property or its proceeds to creditors or security holders of the debtor in the event of the insolvency of the debtor or under other specified circumstances; (d) "deposit creditor" is a creditor who, under the provisions of a State law or agreement providing for a deposit with or transfer to a depositary, has rights as to the securities or property so deposited or transferred which exceed the rights of a general creditor; and (e) "State agency" is an official or agency of a State designated to act as depositary or to distribute property or the proceeds of property held by a depositary.

(2) Every deposit or transfer of securities or other property made by or on behalf of a debtor with or to any depositary for the benefit or protection of or to secure the holder of any security sold by or on behalf of the debtor on or after January 1, 1941, shall be voidable as against the trustee of such debtor if the property of the estate is insufficient for the full payment and discharge of all claims on account of all face-amount certificates sold by or on behalf of the debtor, and such deposit or transfer and every lien created thereby shall thereupon be avoided by the trustee subject to the provisions of paragraph (3) of this subdivision.

(3) In the event any deposit or transfer described in paragraph (2) of this subdivision shall be avoided the trustee shall segregate the property received by the trustee from the depositary and charge the same with the costs and expenses of maintenance and liquidation and distribute the net proceeds thereof to the creditors who would have been entitled thereto under the provisions of the law or agreement providing for the deposit or transfer of the property and each such creditor shall thereafter be entitled to dividends from the estate only after all creditors of the same rank shall have received the same percentage.

(4) The court shall have summary jurisdiction of any proceedings to hear and determine the rights of any parties under this subdivision and to hear and determine the sufficiency of the property of the estate for the full payment and discharge of all claims on account of all face-amount certificates sold by or on behalf of the debtor. Due notice of any hearing in such proceedings shall be given to every depositary and State agency which is a party in interest.

(5) Where the provisions of subsection (c) of section 28[1] are not applicable, the provisions of this section will not apply.

(July 1, 1898, ch. 541, § 67, 30 Stat. 564; Feb. 5, 1903, ch. 487, § 16, 32 Stat. 800; June 25, 1910, ch. 412, § 12, 36 Stat. 842; June 7, 1934, ch. 424, § 5, 48 Stat. 924; June 22, 1938, ch. 575, § 1, 52 Stat. 875; Aug. 22, 1940, ch. 686, title I, § 29(a), 54 Stat. 835; July 7, 1952, ch. 579, § 21, 66 Stat. 427; July 5, 1966, Pub. L. 89-495, §§ 3, 4, 80 Stat. 268.)

AMENDMENTS

1966—Subd. (b). Pub. L. 89-495, § 3, inserted "and except as otherwise provided in subdivision (c) of this section", deleted "landlords," following "mechanics," and deleted last sentence providing that statutory liens may be valid, even though not perfected before bankruptcy, where Federal or State laws providing for such liens require such liens to be perfected, if perfected within the time permitted by and in accordance with the requirements of such Federal or State laws, except that if such laws require the liens to be perfected by the seizure of property, they shall instead be perfected by filing notice thereof with the court, now incorporated in subsec. (c)(1)(B) of this section.

Subd. (c). Pub. L. 89-495, § 4, completely revised the provisions, and among other changes, invalidated against the trustee in par. (1)(A) every statutory lien which first becomes effective upon the insolvency of the debtor, or upon distribution or liquidation of his property, or upon execution against his property levied at the instance of one other than the lienor, in par. (1)(B) every statutory lien which is not perfected or enforceable at the date of bankruptcy against one acquiring the rights of a bona fide purchaser from the debtor on that date, whether or not such purchaser exists (incorporating the last sentence of subd. (b) into the two provisos of such par. (1)(B)) and statutory liens for rent and liens of distress for rent, whether statutory or not (adding the definition of right of distress for rent) whereas former provisions had also invalidated statutory liens for rent unaccompanied by possession or distraint but common law or statutory liens of distress for rent were postponed and restricted where accompanied by an actual levy of distraint or possession in the lienor; incorporated existing last sentence in par. (2) (adding the remainder thereto); incorporated existing provisions of par. (1) in the first sentence of par. (3) (adding the remainder thereto); added the provisions of par. (4); and incorporated existing provisions in par. (5) (making the subd. additionally inapplicable to liens against property set aside to the bankrupt as exempt or to liens against property abandoned by the trustee or unadministered in bankruptcy for any reason.

1952—Subd. (a). Act July 7, 1952, § 21(a), (b), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" wherever appearing in paragraphs (1) and (2).

Subd. (b). Act July 7, 1952, § 21(c), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title".

Subd. (c). Act July 7, 1952, § 21(d), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" and provided that the restrictable excess of the lien may be effected for the benefit of the estate.

Subd. (d)(2). Act July 7, 1952, § 21(e), substituted "initiating a proceeding under this title", in lieu of "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title".

Subd. (d)(3). Act July 7, 1952, § 21(f), substituted "initiating a proceeding under this title" for "in bankruptcy or of an original petition under chapters 10, 11, 12 or 13 of this title" and to clarified fraudulent transfers made with intent to use the consideration to effect a voidable preference.

Subd. (d)(4). Act July 7, 1952, § 21(g), substituted "initiating a proceeding under this title" for "in bankruptcy or of an original petition under chapters 11 or 12 of this title".

Subd. (d)(5). Act July 7, 1952, § 21(h), substituted "initiating a proceeding under this title" in lieu of "in bankruptcy or of an original petition under chapters 11 or 12 of this title" and deleted "and no creditor" following "from the debtor".

Subd. (d)(6). Act July 7, 1952, § 21(i), inserted first proviso.

1940—Subd. (f). Act Aug. 22, 1940, added subd. (f). It was enacted as part of the Investment Company Act of 1940, section 80a-1 et seq. of Title 15, Commerce and Trade.

1938—Section was amended generally by act June 22, 1938.

1934—Subd. (f) amended generally by act June 7, 1934.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1940 AMENDMENT

Effective date of act Aug. 22, 1940, see section 80a-52 of Title 15, Commerce and Trade.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Avoidance of preferences by trustee, see section 96 of this title.

Definitions, "Creditor", "Debt", "Insolvent", "Transfer", see section 1 of this title.

Exercise of ancillary jurisdiction, see section 11 of this title.

[1] So in original. Reference would seem to be to subsec. (c) of sec. 28 of the Bankruptcy Act, constituting section 51 of this title. However, since that section contains no subsec. (c) and relates to different subject matter, reference to section 80a-28 of Title 15, Commerce and Trade, was probably intended, that being section 28 of the Investment Company Act of 1940, which enacted subdivision (f) of this section.

Fraud as affecting right to discharge, see section 32 of this title.
Lien through legal proceeding as act of bankruptcy, see section 21 of this title.
Plenary jurisdiction, see section 46 of this title.
Preferred creditors, see section 96 of this title.
Priority of debts, see section 104 of this title.
Recovery of property transferred in fraud generally, see section 110 of this title.
Summary jurisdiction generally, see section 46 of this title.
Transfer of property fraudulently as act of bankruptcy, see section 21 of this title.
Trustee having powers of creditor holding lien, see section 110 of this title.
Valid liens payable in ancillary jurisdiction, see section 11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 46, 104, 405 of this title; title 26 section 7430.

**§ 108. Set-offs and counterclaims**

(a) In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

(b) A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate and allowable under subdivision (g) of section 93 of this title; or (2) was purchased by or transferred to him after the filing of the petition or within four months before such filing with a view to such use and with knowledge or notice that such bankrupt was insolvent or had committed an act of bankruptcy.

(July 1, 1898, ch. 541, § 68, 30 Stat. 565; June 22, 1938, ch. 575, § 1, 52 Stat. 878.)

AMENDMENTS

1938—Subd. (b). Act June 22, 1938, inserted "and allowable under subdivision (g) of section 93 of this title" in clause (1).

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Debts provable in bankruptcy, see section 103 of this title.
Proof and allowance of claims, see section 93 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Counterclaims, see rule 13, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 78fff, 1845.

**§ 109. Taking possession of property; receivers**

(a) Whenever a petition is filed to have a person adjudged a bankrupt and an application is made to have a receiver or a marshal take charge of the property of the bankrupt, or any part thereof, prior to the adjudication, the applicant shall file in the same court a bond in such amount as the court shall fix, with such surety as the court shall approve, conditioned to indemnify the bankrupt for such costs, counsel fees, expenses, and damages as may be occasioned by such seizure, taking, and detention of such property: *Provided,* That such property shall be released, if the bankrupt shall file a counter-bond in the same court in such amount as the court shall fix, with such surety as the court shall approve, conditioned that he account for and turn over such property or pay the value thereof in money at the time of seizure to the trustee, in the event the adjudication is made.

(b) If the petition for adjudication be dismissed, or withdrawn by the petitioners, the court shall fix and allow to the bankrupt, to be paid by the obligors on such bond, the costs, counsel fees, expenses and damages occasioned by such seizure, taking or detention of his property, in the manner provided by subdivision (n) of section 78 of this title.

(c) The judge of any court of bankruptcy which has jurisdiction over a bankrupt's property within its territorial limits may, in aid of a receiver appointed in a bankruptcy proceeding pending in any other court of bankruptcy, appoint for cause shown one or more ancillary receivers. The primary receiver or, if there be more than one primary receiver, then at least one of them, shall be appointed the ancillary receiver, or, if more than one is appointed, one of the ancillary receivers. Ancillary receivers shall be subject to the jurisdiction of the ancillary court, which shall determine and may allow their costs, expenses, and compensation in like manner as provided in the case of receivers.

(d) Upon the filing of a petition under this title, a receiver or trustee, appointed in proceedings not under this title, of any of the property of a bankrupt, an assignee for the benefit of creditors of a bankrupt, or an agent authorized to take possession of or to liquidate any of the property of a bankrupt shall be accountable to the bankruptcy court, in which the proceeding under this title is pending, for any action taken by him subsequent to the filing of such bankruptcy petition, and shall file in such bankruptcy court a sworn schedule setting forth a summary of the property in his charge and of the liabilities of the estate, both as of the time of and since becoming receiver, trustee, assignee, or agent, and a sworn statement of his administration of the estate. Such receiver, trustee, assignee, or agent, with knowledge of the filing of such bankruptcy proceeding, shall not make any disbursements or take any action in the administration of such property without first obtaining authorization therefor from the bankruptcy court.

(July 1, 1898, ch. 541, § 69, 30 Stat. 565; June 22, 1938, ch. 575, § 1, 52 Stat. 879; July 7, 1952, ch. 579, § 22, 66 Stat. 429.)

AMENDMENTS

1952—Subd. (d). Act July 7, 1952, conformed the scope of this section to that of section 11(21) of this title.

1938—Subd. (a), formerly entire section, amended by act June 22, 1938.

Subds. (b) to (d). Act June 22, 1938 added subds. (b) to (d).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Accounts and papers of receivers, see section 77 of this title.
Bond of receiver, see section 78 of this title.
Compensation of receivers, see section 76 of this title.
Delivery of property by receivers, see section 11 of this title.
Jurisdiction to appoint receivers, see section 11 of this title.

### § 110. Title to property

(a) The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this title, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trademarks, and in applications therefor: *Provided,* That in case the trustee, within thirty days after appointment and qualification, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted unless for cause shown by the trustee the court grants further time to the trustee for making such election; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised solely for some other person; (4) property transferred by him in fraud of his creditors; (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered: *Provided,* That rights of action ex delicto for libel, slander, injuries to the person of the bankrupt or of a relative, whether or not resulting in death, seduction, and criminal conversation shall not vest in the trustee unless by the law of the State such rights of action are subject to attachment, execution, garnishment, sequestration, or other judicial process: *And provided further,* That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; (6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property; (7) contingent remainders, executory devises and limitations, rights of entry for condition broken, rights or possibilities of reverter, and like interests in real property, which were nonassignable prior to bankruptcy and which, within six months thereafter, become assignable interests or estates or give rise to powers in the bankrupt to acquire assignable interests or estates; and (8) property held by an assignee for the benefit of creditors appointed under an assignment which constituted an act of bankruptcy, which property shall, for the purposes of this title, be deemed to be held by the assignee as the agent of the bankrupt and shall be subject to the summary jurisdiction of the court.

All property, wherever located, except insofar as it is property which is held to be exempt, which vests in the bankrupt within six months after bankruptcy by bequest, devise or inheritance shall vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date when it vested in the bankrupt, and shall be free and discharged from any transfer made or suffered by the bankrupt after bankruptcy.

All property, wherever located, except insofar as it is property which is held to be exempt, in which the bankrupt has at the date of bankruptcy an estate or interest by the entirety and which within six months after bankruptcy becomes transferable in whole or in part solely by the bankrupt shall, to the extent it becomes so transferable, vest in the trustee and his successor or successors, if any, upon his or their appointment and qualification, as of the date of bankruptcy.

The title of the trustee shall not be affected by the prior possession of a receiver or other officer of any court.

(b) The trustee shall assume or reject an executory contract, including an unexpired lease or real property, within sixty days after the adjudication or within thirty days after the qualification of the trustee, whichever is later, but the court may for cause shown extend or reduce the time. Any such contract or lease not assumed or rejected within that time shall be deemed to be rejected. If a trustee is not appointed, any such contract or lease shall be deemed to be rejected within thirty days after the date of the order directing that a trustee be not appointed. A trustee shall file, within sixty days after adjudication or within thirty days after he has qualified, whichever is later, unless the court for cause shown extends or reduces the time, a statement under oath showing which, if any, of the contracts of the bankrupt are executory in whole or in part, including un-

expired leases of real property, and which, if any, have been rejected by the trustee. Unless a lease of real property expressly otherwise provides, a rejection of the lease or of any covenant therein by the trustee of the lessor does not deprive the lessee of his estate. A general covenant or condition in a lease that it shall not be assigned shall not be construed to prevent the trustee from assuming the same at his election and subsequently assigning the same; but an express covenant that an assignment by operation of law or the bankruptcy of a specified party thereto or of either party shall terminate the lease or give the other party an election to terminate the same is enforcible.[1] A trustee who elects to assume a contract or lease of the bankrupt and who subsequently, with the approval of the court and upon such terms and conditions as the court may fix after hearing upon notice to the other party to the contract or lease, assigns the contract or lease to a third person, is not liable for breaches occurring after the assignment.

(c) The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitations, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee shall have as of the date of bankruptcy the rights and powers of: (1) a creditor who obtained a judgment against the bankrupt upon the date of bankruptcy, whether or not such a creditor exists, (2) a creditor who upon the date of bankruptcy obtained an execution returned unsatisfied against the bankrupt, whether or not such a creditor exists, and (3) a creditor who upon the date of bankruptcy obtained a lien by legal or equitable proceedings upon all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt upon a simple contract could have obtained such a lien, whether or not such a creditor exists. If a transfer is valid in part against creditors whose rights and powers are conferred upon the trustee under this subdivision, it shall be valid to a like extent against the trustee. In cases where repugnancy or inconsistency exists with reference to the rights and powers in this subdivision conferred, the trustee may elect which rights and powers to exercise with reference to a particular party, a particular remedy, or a particular transaction, without prejudice to his right to maintain a different position with reference to a different party, a different remedy, or a different transaction.

(d) After bankruptcy and either before adjudication or before a receiver takes possession of the property of the bankrupt, whichever first occurs—

(1) A transfer of any of the property of the bankrupt, other than real estate, made to a person acting in good faith shall be valid against the trustee if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien upon the property so transferred;

(2) A person indebted to the bankrupt or holding property of the bankrupt may, if acting in good faith, pay such indebtedness or deliver such property, or any part thereof, to the bankrupt or upon his order, with the same effect as if the bankruptcy were not pending;

(3) A person having actual knowledge of such pending bankruptcy shall be deemed not to act in good faith unless he has reasonable cause to believe that the petition in bankruptcy is not well founded;

(4) The provisions of paragraphs (1) and (2) of this subdivision shall not apply where a receiver or trustee appointed by a United States or State court is in possession of all or the greater portion of the nonexempt property of the bankrupt;

(5) A person asserting the validity of a transfer under this subdivision shall have the burden of proof. Except as otherwise provided in this subdivision and in subdivision (g) of section 44 of this title, no transfer by or in behalf of the bankrupt after the date of bankruptcy shall be valid against the trustee: *Provided, however,* That nothing in this title shall impair the negotiability of currency or negotiable instruments.

(e)(1) A transfer made or suffered or obligation incurred by a debtor adjudged a bankrupt under this title which, under any Federal or State law applicable thereto, is fraudulent as against or voidable for any other reason by any creditor of the debtor, having a claim provable under this title, shall be null and void as against the trustee of such debtor.

(2) All property of the debtor affected by any such transfer shall be and remain a part of his assets and estate, discharged and released from such transfer and shall pass to, and every such transfer or obligation shall be avoided by, the trustee for the benefit of the estate: *Provided, however,* That the court may on due notice order such transfer or obligation to be preserved for the benefit of the estate and in such event the trustee shall succeed to and may enforce the rights of such transferee or obligee. The trustee shall reclaim and recover such property or collect its value from and avoid such transfer or obligation against whoever may hold or have received it, except a person as to whom the transfer or obligation specified in paragraph (1) of this subdivision is valid under applicable Federal or State laws.

(3) For the purpose of such recovery or of the avoidance of such transfer or obligation, where plenary proceedings are necessary, any State court which would have had jurisdiction if bankruptcy had not intervened and any court of bankruptcy shall have concurrent jurisdiction.

(f) The court shall appoint a competent and disinterested appraiser and upon cause shown may appoint additional appraisers, who shall appraise all the items of real and personal property belonging to the bankrupt estate and who shall prepare and file with the court their report thereof. Real and personal property shall, when practicable, be sold subject to the approval of the court. It shall not be sold otherwise than subject to the approval of the court for less than 75 per centum of its appraised

[1] So in original. Probably should read "enforceable".

value. Whenever a sale of real or personal property of a bankrupt is made by or through an auctioneer employed by the court, receiver, or trustee, the auctioneer must be a duly licensed or authorized auctioneer in the place where the sale is to be conducted.

(g) The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

(h) Repealed. July 7, 1952, ch. 579, § 23(g), 66 Stat. 430.

(i) Upon the confirmation of an arrangement or plan, or at such later time as may be provided by the arrangement or plan, or in the order confirming the arrangement or plan, the title to the property dealt with shall revest in the bankrupt or debtor, or vest in such other person as may be provided by the arrangement or plan or in the order confirming the arrangement or plan.

(July 1, 1898, ch. 541, § 70, 30 Stat. 565; Feb. 5, 1903, ch. 487, § 16, 32 Stat. 800; May 27, 1926, ch. 406, § 16, 44 Stat. 667; June 22, 1938, ch. 575, § 1, 52 Stat. 879; Mar. 18, 1950, ch. 70, § 2, 64 Stat. 23; July 7, 1952, ch. 579, § 23, 66 Stat. 429; Sept. 25, 1962, Pub. L. 87-681, §§ 9, 10, 76 Stat. 571, 572; July 5, 1966, Pub. L. 89-495, § 5, 80 Stat. 269.)

AMENDMENTS

1966—Subd. (c). Pub. L. 89-495 inserted clauses (1) and (2) granting the trustee as of the date of bankruptcy the rights and powers of a creditor who obtained a judgment against the bankrupt upon the date of bankruptcy, whether or not such a creditor exists, and of a creditor who upon the date of bankruptcy obtained an execution returned unsatisfied, against the bankrupt, whether or not such a creditor exists, designated existing provisions as clause (3), inserting therein language respecting status of a creditor of the bankrupt upon a simple contract, recognized certain transfers, valid against creditors, as valid against trustees, and authorized the trustee to take repugnant or inconsistent positions in exercising rights and powers with reference to particular parties, particular remedies, or particular transactions.

1962—Subd. (b). Pub. L. 87-681, § 9, authorized the trustee to assume or reject an executory contract within thirty days after the qualification of the trustee when it is later than sixty days after the adjudication, eliminated from the provision deeming an executory contract or lease not assumed or rejected as rejected the clause "whether or not a trustee has been appointed or has qualified", inserted provision deeming an executory contract or lease to be rejected within thirty days after date of order directing a trustee not to be appointed and authorized the trustee to file a statement under oath concerning executory and rejected contracts within thirty days after the qualification of the trustee when it is later than sixty days after the adjudication.

Subd. (f). Pub. L. 87-681, § 10, substituted the requirement that the auctioneer be a duly licensed or authorized auctioneer in the place where the sale is to be conducted for former provision that the auctioneer, if an individual or a partnership, be a bona fide resident and citizen of the judicial district in which the property to be sold is situated, or, if a corporation, be lawfully domesticated and authorized to transact such business in the State in which the judicial district is located.

1952—Subd. (a). Act July 7, 1952, § 23(a) to (d), made it clear that a trustee in bankruptcy is vested with the title of the bankrupt in property which is located without, as well as within, the United States.

Subd. (c). Act July 7, 1952, § 23(e), clarified the fact that a trustee has the rights of a lien creditor upon property in which the bankrupt has an interest or as to which the bankrupt may be the ostensible owner.

Subd. (e)(2). Act July 7, 1952, § 23(f), provided that a transfer or obligation which is void or voidable against the trustee may be preserved for the benefit of the estate.

Subd. (h) repealed by act July 7, 1952, § 23(g).

1950—Subd. (c). Act Mar. 18, 1950, placed the trustee in bankruptcy in the position of a lien creditor with respect to all of the bankrupt's property.

1938—Subd. (a) amended by act June 22, 1938. Clauses (7) and (8) added. Clauses (2), (3), (5), and (6) amended. Clauses (1) and (4) reenacted without change.

Subds. (b) to (d) added by act June 22, 1938.

Subds. (e), (f), (h), and (i), formerly (e), (b), (d), and (f), respectively, amended by act June 22, 1938.

Subd. (g), formerly (c), reenacted without change by act June 22, 1938.

1926—Subd. (a)(2). Act May 27, 1926, added "and in applications for patents, copyrights, and trademarks" and the proviso following such words.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

REPEALS; SEPARABILITY PROVISIONS OF 1950 AMENDMENT

For repeals and separability provisions of act Mar. 18, 1950, see note set out under section 96 of this title.

EFFECT OF 1950 AMENDMENT

For effect of act Mar. 18, 1950, see note set out under section 96 of this title.

CROSS REFERENCES

Ancillary jurisdiction, see section 11 of this title.

Appointment of trustee, see section 72 of this title.

Compensation of trustee, see sections 76 and 112 of this title.

Date of bankruptcy defined, see section 1 of this title.

Debts dischargeable in bankruptcy, see section 35 of this title.

Duties of trustee generally, see section 75 of this title.

Execution of transfers of property in foreign countries, see section 25 of this title.

Exempt property, see section 24 of this title.

Jurisdiction and powers of court generally, see section 11 of this title.

Liens and fraudulent transfers, see section 107 of this title.

Notice of proposed sales of property, see section 94 of this title.

Preferred creditors, see section 96 of this title.

Qualifications of trustees, see section 73 of this title.

Suits by and against bankrupts, see section 29 of this title.

Title of trustee—

- Corporate reorganization, see section 586 of this title.
- Real property arrangement, see section 841 of this title.

Voidable preferences, see section 96 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 46, 107, 405, 502, 1002 of this title.

**§ 111. Clerks' indexes; certificates of search; dockets**

The clerks of the several district courts of the United States shall prepare and keep in their respective offices until no longer needed in conducting current business complete and convenient indexes of all proceedings and discharges under this title heretofore or hereafter filed in the said courts and shall, when requested so to do, issue certificates of search certifying as to whether or not any such proceedings or discharges have been filed. The clerks shall be entitled to receive for such certificates the same fees as may be allowed by law for certificates as to judgments in such courts. Such indexes and dockets shall at all times be open to inspection and examination by all persons without any fee or charge therefor.

(July 1, 1898, ch. 541, § 71, as added Feb. 5, 1903, ch. 487, § 17, 32 Stat. 800, and amended June 22, 1938, ch. 575, § 1, 52 Stat. 882; Oct. 25, 1951, ch. 562, § 2(3), 65 Stat. 639.)

AMENDMENTS

1951—Act Oct. 25, 1951, inserted "until no longer needed in conducting current business".

1938—Act June 22, 1938, amended section generally and, among other changes, substituted "under this title heretofore or hereafter filed in said courts" for "in bankruptcy filed prior to July 1, 1898, or thereafter filed in said courts" in the last sentence thereof and "to receive for such certificates the same fees as may be allowed by law for certificates as to judgments in such courts" for "to charge and collect for such certificates the same fees as allowed by law on February 5, 1903, for certificates as to judgments in said courts" after "shall be entitled" in the second sentence thereof.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

District court fees generally, see section 1914 of Title 28, Judiciary and Judicial Procedure.

Duties of clerks generally, see section 79 of this title.

Management and disposition of records, see chapters 29 and 31 of Title 44, Public Printing and Documents.

**§ 112. Limitation of compensation of officers of court**

No receiver, marshal, or trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services as required by this title, than that expressly authorized and prescribed in this title.

No referee shall receive any compensation for his services under this title other than his salary; and allowances made to a referee for compensation or expense while acting as a conciliation commissioner under section 203 of this title, or as a referee or special master under any chapter or section of this title, shall be paid to the clerk, and by him transmitted to the Treasury of the United States for deposit in the referees' salary and expense fund.

(July 1, 1898, ch. 541, § 72, as added Feb. 5, 1903, ch. 487, § 18, 32 Stat. 800, and amended June 25, 1910, ch. 412, § 13, 36 Stat. 842; June 22, 1938, ch. 575, § 1, 52 Stat. 883; June 28, 1946, ch. 512, § 13, 60 Stat. 330; July 28, 1959, Pub. L. 86-110, § 4, 73 Stat. 260.)

AMENDMENTS

1959—Pub. L. 86-110 substituted "referees' salary and expense fund" for "referees' salary fund and referees' expense fund, respectively" in second par.

1946—Act June 28, 1946, added second paragraph which reiterates that salaries of referees shall be full compensation and that any other compensation or expenses allowances received while acting as a conciliation commissioner, referee, or special master shall be covered into the Treasury.

1938—Act June 22, 1938 substituted "No" for "Neither the" at the beginning of the sentence and added "as required by this title" following "his services" in the first paragraph thereof.

EFFECTIVE DATE OF 1959 AMENDMENT

For effective date of amendment by Pub. L. 86-110, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATES, REPEALS, ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION OF 1938 AMENDMENT

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Compensation of—
Referees generally, see section 68 of this title.
Trustees, receivers, and marshals, see section 76 of this title.

## CHAPTER 8—PROVISIONS FOR THE RELIEF OF DEBTORS

Sec.
201, 202. Transferred.
202a. Personal representatives.
203, 203a. Omitted.
204. Repealed.
205. Reorganization of railroads engaged in interstate commerce.
(a) Petition for reorganization by railroad, subsidiary or creditors; venue; proceedings thereon; jurisdiction of court over debtor and property.
(b) Plan of reorganization, contents; "securities", "stockholders", "creditors", "claims" defined; suspension of statutes of limitation.
(c) Proceedings after approval of petition; orders of State regulatory bodies.
(d) Time for filing plan of reorganization; hearings by Commission; certification of approval to court.
(e) Court hearing after approval by Commission; acceptance of plan by creditors and stockholders; confirmation of plan by court; valuation of property.
(f) Binding effect of confirmation; discharge of debtor from liabilities; issuance of securities.
(g) Dismissal of proceedings because of undue delay in reorganization.
(h) Revenue acts inapplicable to issuance, etc., of securities.
(i) Transfer of title between receivers and trustees or to debtor; "Federal court" defined.

Sec.
(j) Restraining or staying commencement or continuation of proceedings against debtor; removal of causes; owners' rights to equipment leased or conditionally sold unaffected.
(k) Certified copy of order confirming plan or directing conveyance of property as evidence.
(*l*) Jurisdiction of court, duties of debtor and rights of creditors same as in voluntary bankruptcy.
(m) "Railroad corporation" and "person" defined.
(n) Claims of employees for personal injuries and claims of sureties as preferred claims; change in wages or working conditions regulated; moving shops, etc., regulated.
(o) Abandonment or sale of lines or property.
(p) Solicitation of proxies or authorizations.
(q) Application of law granting powers to Commission.
(r) Separability clause.
(s) Pending proceedings as governed by amendment of section.
205a. Removal to district court on ground of reorganization.
206. Transferred.
207. Transferred.
208. Petition subsequent to certification of reorganization plan.
(a) Duty of Commission to report changes, developments, etc., to court; remand of plan to Commission; procedure of subsequent proceedings; referral of petition.
(b) Supplemental report and order of Commission; certification of modified plan; transcript of proceeding denying modification; review by court.

### §§ 201, 202. Transferred

CODIFICATION

Section 201, act July 1, 1898, ch. 541, § 73, as added by act Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1467, and sections 30, 31, 202, 206, 207 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, Chandler Act.

Section 202, act July 1, 1898, ch. 541, § 74, as added by act Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1467, and amended by acts June 7, 1934, ch. 424, § 2, 48 Stat. 922; May 15, 1935, ch. 114, § 2, 49 Stat. 246, and sections 30, 31, 201, 206, 207 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title, by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

DISTRIBUTION

Subject matter of the various subdivisions comprising section 202 were distributed by act June 22, 1938, as follows:

| Section 202, subdivisions: | Present sections |
|---|---|
| a | 707, 722 to 725, 753, 806, 822 to 826, 858, 1006, and 1023 to 1025 |
| b | 732, 733, 737, 743, 837(1), and 845 |
| c | 734, 735, 834, 835, and 1032 |
| d | 713, 736, 738, 813, 836, and 1033 |
| e | 737, 761, 762, 837, 866, 868, and 1052 |
| f | 737(3), 837(3), and 1033 |
| g | 766, 867, 872, 1051, 1056(a), and 1056(b) |
| h | 756, 757, 861, 1037, and 1046 |
| i | 767, 873, and 1057 |
| j | 755, 767, 768, 872, 873, 1058, and 1059 |
| k | 786, 911, and 1071 |
| *l* | 727, 776, 777, 778, 779, 827, 881, 882, and 884 |
| m | 711, 712, 716, 741, 752, 778, 811, 812, 816, 843, 857, 883, 906, 907, 1011, 1012, 1016, 1036, and 1041 |
| n | 714, 814, and 1014 |
| o | 731, 831, and 1031 |
| p | 779 and 884 |

SAVINGS CLAUSE

Continuance of sections 201 and 202 in force with respect to certain proceedings, see sections 799, 926, and 1086 of this title.

### § 202a. Personal representatives

Section 202 of this title shall include the personal representative of a deceased individual for the purpose of effecting settlement or composition with the creditors of the estate: *Provided, however,* That such personal representative shall first obtain the consent and authority of the court which has assumed jurisdiction of said estate to invoke the relief provided by this title.

(June 7, 1934, ch. 424, § 2, 48 Stat. 922.)

REFERENCES IN TEXT

Section 202 of this title, referred to in text, was amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, the Chandler Act. See distribution table under section 202.

CODIFICATION

This section was not enacted as a part of the Bankruptcy Act which comprises this title.

### §§ 203, 203a. Omitted

CODIFICATION

Section 203, act July 1, 1898, ch. 541, § 75, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1470, and amended June 7, 1934, ch. 424, §§ 8, 9, 48 Stat. 925; June 28, 1934, ch. 869, 48 Stat. 1289; May 15, 1935, ch. 114, § 3, 49 Stat. 246; Aug. 28, 1935, ch. 792, §§ 1 to 6, 49 Stat. 942 to 945; Mar. 4, 1938, ch. 41, §§ 1, 2, 52 Stat. 84, 85; June 22, 1938, ch. 575, § 2(b), 52 Stat. 939; Mar. 4, 1940, ch. 39, §§ 1, 2, 54 Stat. 40; Mar. 11, 1944, ch. 87, 58 Stat. 113; June 3, 1946, ch. 280, 60 Stat. 230; Apr. 21, 1948, ch. 225, 62 Stat. 198, related to agricultural compositions and extensions, and is omitted since the time for filing a petition under this section expired Mar. 1, 1949.

Section 203a, act June 7, 1934, ch. 424, § 6, 48 Stat. 924, granted franking privileges to conciliation commissioners appointed under section 203 of this title.

### § 204. Repealed. June 22, 1938, ch. 575, § 4, 52 Stat. 940

Section, act July 1, 1898, ch. 541, § 76, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1474, and amended June 7, 1934, ch. 424, § 10, 48 Stat. 925, extended the extension provisions of section 203 to persons secondarily liable for debt.

Effective date and construction of repealing act, see note under section 1 of this title.

### § 205. Reorganization of railroads engaged in interstate commerce

#### (a) Petition for reorganization by railroad, suhsidiary or creditors; venue; proceedings thereon; jurisdiction of court over debtor and property

Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition

shall be filed with the court in whose territorial jurisdiction the corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission (hereinafter called the "Commission"). When any railroad, although engaged in interstate commerce, lies wholly within one State, the proceedings shall be brought in the United States district court for the district in which its principal operating office has been located during the preceding six months or the greater portion thereof. The petition shall be accompanied by payment to the clerk of a filing fee of $150. Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which the order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a court of the United States would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. Process of the court shall extend to and be valid when served in any judicial district. The Supreme Court of the United States shall promulgate rules relating to the service of process outside of the district in which the proceeding is pending, and any other rules which it may deem advisable in order to aid district courts and courts of appeal in exercising the jurisdiction herein conferred upon them. The railroad corporation shall be referred to in the proceedings as a "debtor". Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which the other debtor has filed such a petition, and in the same proceeding, a petition, a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with, or as a part of the plan of reorganization of the other debtor; and upon the filing of the petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that it complies with this section and has been filed in good faith, or dismissing it if not so satisfied, and thereupon the court, if it approves the petition, shall have the same jurisdiction with respect to such debtor, its property and its creditors and stockholders, as the court has with respect to the other debtor. Creditors of any railroad corporation, having claims aggregating not less than 5 per centum of all the indebtedness of the corporation as shown in the latest annual report which it has filed with the Commission at the time when the petition is filed, may, if the corporation has not filed a petition under this section, file with the court in which the corporation might file a petition under this section, a petition stating that the corporation is insolvent or unable to meet its debts as they mature and that the creditors have claims aggregating not less than 5 per centum of all such indebtedness of the corporation and propose that it shall effect a reorganization; copies of the petition shall be filed at the same time with the Commission and served upon the corporation. The corporation shall, within ten days after such service, answer the petition. If the answer admits the jurisdiction of the court and the material allegations of the petition, the judge shall enter an order approving the petition as properly filed if satisfied that it complies with this section and has been filed in good faith, or dismissing it, if not so satisfied. If the answer denies either the jurisdiction of the court or any material allegation of the petition, the judge shall summarily determine the issues presented by the pleadings without the intervention of a jury, and if he finds that the material allegations are sustained by the proofs and that the petition complies with this section and has been filed in good faith, the judge shall enter an order approving the petition; otherwise, he shall dismiss the petition. If such a petition is so approved, the proceedings thereon shall continue with like effect as if the railroad corporation had itself filed a petition under this section. If a petition is dismissed, neither the petition nor the answer of a debtor constitute an act of bankruptcy or an admission of insolvency or of inability to meet maturing obligations or be admissible in evidence, without the debtor's consent, in any proceedings then or thereafter pending or commenced under this title or in any State or United States court. If, in any case in which the issues have not already been tried under the provisions of this subdivision, any of the creditors, prior to the hearing provided for in paragraph (1) of subdivision (c) of this section, appear and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, and, unless the material allegations of the petition are sustained by the proofs, shall dismiss the petition.

**(b) Plan of reorganization, contents; "securities," "stockholders," "creditors," "claims" defined; suspension of statutes of limitation**

A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide

for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probably prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section.

The adoption of an executory contract or unexpired lease by the trustee or trustees of a debtor shall not preclude a rejection of such contract or lease in a plan of reorganization approved hereunder, and any claim resulting from such rejection shall not have priority over any other claims against the debtor because such contract or lease had been previously adopted. The term "securities" shall include evidences of indebtedness either secured or unsecured, bonds, stock, certificates of beneficial interest therein, certificates of beneficial interest in property, options, and warrants to receive, or to subscribe for, securities. The term "stockholders" shall include the holders of voting-trust certificates. The term "creditors" shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this title, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.

The term "claims" includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interests of whatever character. For all purposes of this section unsecured claims, which would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the day of the approval of the petition, shall be entitled to such priority and the holders of such claims shall be treated as a separate class or classes of creditors. In case an executory contract or unexpired lease of property shall be rejected, or shall not have been adopted by a trustee appointed under this section, or shall have been rejected by a receiver in equity in a proceeding pending prior to the institution of a proceeding under this section, or shall be rejected by any plan, any person injured by such nonadoption or rejection shall for all purposes of this section be deemed to be a creditor of the debtor to the extent of the actual damage or injury determined in accordance with principles obtaining in equity proceedings. The provisions of section 96 of this title shall apply to a proceeding under this section. For all purposes of this section any creditor or stockholder may act in person or by an attorney at law or by a duly authorized agent or committee subject to the provisions of subdivision (p) of this section. The running of all statutes of limitation shall be suspended during the pendency of a proceeding under this section.

**(c) Proceedings after approval of petition; orders of State regulatory bodies**

After approving the petition:

(1) The judge shall forthwith (and in pending proceedings immediately upon August 27, 1935) require the debtor to give such notice as the order may direct to the mortgage trustees, creditors and stockholders, and to cause publication thereof for such period and in such newspapers as the judge may direct, of a hearing to be held not later than thirty days after the date of such order, at which hearing or any adjournment thereof the judge shall appoint one or more trustees of the debtor's property. Such appointments shall become effective upon ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. Where a trustee is appointed who within one year prior thereto has been an officer, director, or employee of the debtor corporation, any subsidiary corporation, or any holding company connected therewith, the judge, subject to ratification by the Commission as herein provided, shall appoint another trustee or trustees who shall not have had any such affiliations: *Provided,* That the appointment of such additional trustee or trustees shall not be required for a debtor the annual operating revenues of which were less than $1,000,000 for the previous calendar year.

(2) The judge shall fix the amount of the bond of every trustee. He may thereafter terminate any such appointments on cause shown, and may in that event and in the event of a vacancy from any other cause, in the manner and within the qualifications herein provided for the appointment of trustees, appoint a substitute trustee or trustees, and in the same manner and within the same qualifications may appoint an additional trustee, and shall fix the amount of the bond of every such substitute or additional trustee or trustees. The judge shall in his discretion confirm the appointment of such legal counsel for the trustees as they shall select, with power of removal. The trustee or trustees and their counsel shall receive only such compen-

sation from the estate of the debtor as the judge may from time to time allow within such maximum limits as may be approved by the Commission as reasonable. The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by the Interstate Commerce Act as now or hereafter amended, the power to operate the business of the debtor. In operating the business of the debtor with respect to safety, location of tracks, and terminal facilities, the trustee or trustees shall be subject to lawful orders of State regulatory bodies of statewide jurisdiction to the same extent as would the debtor if a petition respecting it had not been filed under subdivision (a) of this section except that (A) any such order which would require the expenditure, or the incurring of an obligation for the expenditure, of money from the debtor's estate shall not become effective (a) unless the trustee or trustees, with the approval of the court, shall consent thereto, or (b) unless the Commission, upon appropriate application or applications by an interested party or interested parties, shall find that compliance with the order will not impair the ability of the trustee or trustees to perform his or their duties to the public, will not constitute an undue burden upon interstate commerce, will be compatible with the public interest, and will not interfere with the formulation and approval of a satisfactory plan of reorganization for the debtor, and (B) compliance shall be made with any applicable provision of the Interstate Commerce Act. Prior to the appointment of a trustee, the debtor on behalf of the court shall continue in the possession of the property and shall operate the business thereof during such period, and shall have all the title to the property and shall exercise all power consistent with the provisions of this section, subject at all times to the control of the judge, and to such limitations, restrictions, terms, and conditions as he may from time to time impose and prescribe.

(3) The judge may, upon not less than fifteen days' notice published in such manner and in such newspapers as the judge may in his discretion determine, which notice so determined shall be sufficient, for cause shown, and with the approval of the Commission, in accordance with section 20a of title 49, as now or hereafter amended, authorize the trustee or trustees to issue certificates for cash, property, or other consideration approved by the judge, for such lawful purposes and upon such terms and conditions and with such security and such priority in payments over existing obligations, secured or unsecured, or receivership charges, as might in an equity receivership be lawful. Where such certificates are authorized to provide funds to pay for the acquisition, assembly or installation of safety equipment or materials related thereto, or for the purpose of reimbursing the trustee or trustees for funds so expended, the judge may direct (without limitation of his power to make such direction in the absence of this provision) that the certificates shall have such lien on the property of the debtor and shall be entitled to such priority in payments over existing obligations, secured or unsecured, and receivership charges and present or future duties, debts or taxes or other obligations in favor of or payable to any State or any subdivision, agency or instrumentality thereof and interest or penalties, and to such parity with all or any portion of the other costs or expenses of administration or operation as in the particular case the judge may find equitable at the time of authorizing the issuance of such certificates, regardless of whether such obligations, charges, costs or expenses, duties, debts, or taxes constitute or are secured by liens on real or personal property or shall have become payable before or after the issuance of such certificates.

(4) The judge shall require the officers of the debtor or the trustee or trustees, at such time or times as the judge may direct, and in lieu of the schedules required by section 25 of this title, to file with the court such schedules and submit such other information as may be necessary to disclose the conduct of the debtor's affairs and the fairness of any proposed plan; and shall direct the officers of the debtor, or the trustee or trustees, within such time as the judge shall set, to prepare and file with the court a list of all known bondholders and creditors of the debtor, and the amounts and character of their debts, claims, and securities, and the last known post-office address or place of business of each bondholder and creditor, and a list of all known stockholders of the debtor, with the last known post-office address or place of business of each, which lists the judge may require to be brought down to date at any time. The contents of such lists shall not constitute admissions by the debtor or the trustees in a proceeding under this section or otherwise.

(5) It shall be the duty of anyone having information as to the names and addresses of the holders of any securities of the debtor to divulge such information to the trustee or trustees, upon written request therefor and, upon petition by any party in interest, and after hearing, the judge may order the production of any such information by anyone having and refusing to divulge it to any trustee, upon written request therefor. The judge may direct that the cost of preparing such information shall be borne by the debtor's estate.

(6) If a lease of a line of railroad is rejected, and if the lessee, with the approval of the judge, shall elect no longer to operate the leased line, it shall be the duty of the lessor at the end of a period to be fixed by the judge to begin the operation of such line, unless the judge, upon the petition of the lessor, shall decree after hearing that it would be impracticable and contrary to the public interest for the lessor to operate the said line, in which

event it shall be the duty of the lessee to continue operation on or for the account of the lessor, until abandonment of such line is authorized in accordance with the provisions of section 1 of the Interstate Commerce Act [49 U.S.C. 1] or until such operation pursuant to this paragraph is otherwise lawfully terminated. During any such operation, the lessor shall be deemed to be a carrier subject to all applicable provisions of the Interstate Commerce Act, as amended, and shall be entitled to receive just, reasonable, and equitable divisions of rates, fares, or charges applicable to the transportation of persons or property over its line or lines of railroad and the lines of the lessee or other carriers, and the provisions of section 15 (6) of the Interstate Commerce Act [49 U.S.C. 15(6)], as now or hereafter amended, shall apply to said divisions whether or not joint rates covering such transportation have been established.

(7) The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown, the manner in which such claims may be filed or evidenced and allowed, and for the purposes of the plan and its acceptance, after notice and hearing, the division of creditors and stockholders into classes according to the nature of their respective claims and interests. Such division shall not provide for separate classification unless there be substantial differences in priorities, claims, or interests. The trustee or trustees under any mortgage, deed of trust, or indenture outstanding against the property may, within the time prescribed, file a verified claim in behalf of all bonds or securities outstanding under such mortgage, deed of trust, or indenture, in which event it shall be unnecessary for the holders of such bonds or securities to file claims in their own behalf, but nothing herein shall constitute such trustee or trustees the representative or representatives of such holders for the purpose of accepting or rejecting any plan of reorganization.

(8) The judge shall cause reasonable notice of the period in which claims may be filed, of hearings on application for the dismissal of the proceedings, or for the final allowance of fees or expenses to be given creditors and stockholders by publication or otherwise.

(9) The judge shall direct the trustee or trustees, and may request the Commission through such of its agencies as it may designate, to report to him any facts pertaining to irregnlarities, fraud, misconduct, or inismanagement, as a consequence of which the debtor may have a cause of action arising therefrom against any person or corporation.

(10) The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate.

(11) The Commission may direct such of its agencies as it may designate to file in the proceedings before the Commission a report, and additional or supplemental reports at such time or times as the Commission shall designate, of such data with reference to the property, business, earnings, and corporate organization of the debtor and such other facts as the Commission, after hearing if it deems necessary, shall determine to be necessary or helpful information for the purposes of the preparation of reorganization plans, and for the purpose of aiding in determining the method or formula of allocating earnings permitted by paragraph (10) of this subdivision. Such report or reports shall be prima facie evidence of the facts therein stated in any proceeding under this section. The actual cost of preparing said report or reports shall be certified by the Commission and shall be borne by the debtor's estate.

(12) Within such maximum limits as are fixed by the Commission, the judge may make an allowance, to be paid out of the debtor's estate, for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and within such limits may make an allowance to be paid out of the debtor's estate for the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries and such assistants as the Commission with the approval of the judge may especially employ. Appeals from orders of the court fixing such allowances may be taken to the court of appeals independently of other appeals in the proceeding and shall be heard summarily. The Commission shall, at such time or times as it may deem appropriate, after hearing, fix the maximum allowances which may be allowed by the court pursuant to the provisions of paragraph (12) of this subdivision and, after hearing if the Commission shall deem it necessary, the maximum compensation which may be allowed by the court pursuant to the provisions of paragraph (2) of this subdivision.

(13) The judge may on his own motion or at the request of the Commission refer any matters for consideration and report, either generally or upon specified issues, to one of several special masters who shall have been previously designated to act as special masters in any proceedings under this section by order of any court of appeals and may allow such master a reasonable compensation for his ser-

vices and actual and reasonable expenses. The court of appeals of each circuit shall designate three or more members of the bar as such special masters whom they deem qualified for such services, and shall from time to time revise such designations by changing the persons designated or their number, as the public interest may require: *Provided, however,* That there shall always be three of such special masters qualified for appointment in each circuit who shall hear any matter referred to them under this section by a judge of any district court. The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, upon petition therefor and cause shown, any such person or any other interested party may be permitted to intervene. The judge may, after hearing, make reasonable rules defining the matters upon which notice shall be given to other than interveners and the manner of giving such notice.

**(d) Time for filing plan of reorganization; hearings by Commission; certification of approval to court**

The debtor, after a petition is filed as provided in subdivision (a) of this section, shall file a plan of reorganization within six months of the entry of the order by the judge approving the petition as properly filed, or if heretofore approved, then within six months of August 27, 1935, and not thereafter unless such time is extended by the judge from time to time for cause shown, no single extension at any one time to be for more than six months. Such plan shall also be filed with the Commission at the same time. Such plans may likewise be filed at any time before, or with the consent of the Commission during, the hearings hereinafter provided for, by the trustee or trustees, or by or on behalf of the creditors being not less than 10 per centum in amount of any class of creditors, or by or on behalf of any class of stockholders being not less than 10 per centum in amount of any such class, or with the consent of the Commission by any party in interest. After the filing of such a plan, the Commission, unless such plan shall be considered by it to be prima facie impracticable, shall, after due notice to all stockholders and creditors given in such manner as it shall determine, hold public hearings, at which opportunity shall be given to any interested party to be heard, and following which the Commission shall render a report and order in which it shall approve a plan, which may be different from any which has been proposed, that will in its opinion meet with the requirements of subdivisions (b) and (e) of this section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve any plan. In such report the Commission shall state fully the reasons for its conclusions.

The Commission may thereafter, upon petition for good cause shown filed within sixty days of the date of its order, and upon further hearings if the Commission shall deem necessary, in a supplemental report and order modify any plan which it has approved, stating the reasons for such modification. The Commission, if it approves a plan, shall thereupon certify the plan to the court together with a transcript of the proceedings before it and a copy of the report and order approving the plan. No plan shall be approved or confirmed by the judge in any proceeding under this section unless the plan shall first have been approved by the Commission and certified to the court.

**(e) Court hearing after approval by Commission; acceptance of plan by creditors and stockholders; confirmation of plan by court; valuation of property**

Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which such parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment. The judge shall, after notice in such manner as he may determine to the debtor, its trustee or trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment. After such hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subdivision (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in paragraph (12) of subdivision (c) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is given power to approve the same.

If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action, in which event he shall transmit to the Commission a copy of any evidence received. If the proceedings are referred back to the Commission, it shall proceed to a reconsideration of the proceedings under the provisions of subdivision (d) of this section. If the judge shall approve the plan, he shall file an opinion, stating his conclusions and the rea-

sons therefor, and enter an order to that effect, and shall send a certified copy of such opinion and order to the Commission. The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subdivision (c) of this section, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such time as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: *Provided,* That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, (a) that at the time of the finding the corporation is insolvent, or that at the time of the finding the equity of such class of stockholders has no value, or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: *Provided further,* That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, or that at the time of the finding the interests of such class of creditors have no value, or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests. For the purpose of this section the acceptance or rejection by any creditor or stockholder shall be in writing, executed by him or by his duly authorized attorney, committee, or representative. If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder, the interests or claims thereof shall be deemed to be affected by the plan, and the President of the United States, or any officer or agency he may designate, is authorized to act in respect of the interests or claims of the United States or of such agency or other corporation. The expense of such submission shall be certified by the Commission and shall be borne by the debtor's estate. The Commission shall certify to the judge the results of such submission.

Upon receipt of such certification, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subdivision holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in said submission as voting on said plan, and by or on behalf of stockholders of each class to which submission is required under this subdivision holding more than two-thirds of the stock of such class which has been reported in said submission as voting on said plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided,* That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3) of the first paragraph of this subdivision: *Provided further,* That if, in any reorganization proceeding under this section, the United States is a creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against, the debtor, as creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance, certified to the court, of a lesser amount by the President of the United States or the officer or agency designated by him pursuant to the provisions of the preceding paragraph hereof: *Provided further,* That if the President of the United States or such officer or agency shall fail to accept or reject such lesser amount for more than ninety days after receipt of written notice so to do from the court, accompanied by a certified copy of the plan, the consent of the United States insofar as its claims for taxes or customs duties are concerned shall be conclusively presumed. If the judge shall confirm the plan, he shall enter an order and file an opinion with a statement of his conclusions and his reasons therefor. If the judge shall not confirm the plan, he shall file an opinion, with a statement of his conclusions and his reasons therefor, and enter an order in which he shall either dismiss the proceedings, or, in his discretion and on the motion of any party in interest, refer the case back to the Commission for further proceedings, including the consideration of modifications of the plan or the proposal of new plans. In the event of such a reference back to the Commission, the proceedings with respect to any modified or new plan shall be governed by the provisions of this section in like manner as in an original proceeding hereunder.

If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the court in its report on the plan. The value of any property used in railroad operation shall be determined on a basis which will give due consideration to the earning power of the property, past, present, and prospective, and all other relevant facts. In determining such value only such effect shall be given to the present cost of reproduction new and less depreciation and original cost of the property, and the actual investment therein, as may be required under the law of the land, in light of its earning power and all other relevant facts.

**(f) Binding effect of confirmation; discharge of debtor from liabilities; issuance of securities**

Upon confirmation by the judge, the provisions of the plan and of the order of confirma-

tion shall, subject to the right of judicial review, be binding upon the debtor, all stockholders thereof, including those who have not, as well as those who have, accepted it, and all creditors secured or unsecured, whether or not adversely affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it. Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. The property dealt with by the plan, when transferred and conveyed to the debtor or to the other corporation or corporations provided for by the plan, or when retained by the debtor pursuant to the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, and the debtor shall be discharged from its debts and liabilities, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the judge may require the trustee or trustees appointed hereunder, the debtor, any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may require the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, and making such provisions as may be equitable, by way of injunction or otherwise, and closing the case. Upon confirmation of a plan the Commission shall, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation or merger of the debtor's property, or pooling of traffic, to the extent contemplated by the plan and not inconsistent with the provisions and purposes of the Interstate Commerce Act as now or hereafter amended. The provisions of title I and of section 5 of the Securities Act of 1933, as amended [15 U.S.C. 77a et seq., and 77e], shall not apply to the issuance, sale, or exchange of any of the following securities, which securities and transactions therein shall, for the purposes of said Securities Act, be treated as if they were specifically mentioned in sections 3 and 4 of the said Securities Act [15 U.S.C. 77c and 77d], respectively: (1) All securities issued pursuant to any plan of reorganization confirmed by the judge in accordance with the provisions of this section; (2) all securities issued pursuant to such plan for the purpose of raising money for working capital and other purposes of such plan; (3) all securities issued by the debtor or by the trustee or trustees pursuant to clause (3) of subdivision (c) of this section; (4) all certificates of deposit representing securities of, or claims against, the debtor, with the exception of such certificates of deposit as are issued by committees not subject to subdivision (p) of this section. The provisions of subdivision (a) of section (14) of the Securities Exchange Act of 1934 [15 U.S.C. 78n] shall not be applicable with respect to any action or matter which is within the provisions of subdivision (p) of this section.

**(g) Dismissal of proceedings because of undue delay in reorganization**

If in the light of all the existing circumstances there is undue delay in a reasonably expeditious reorganization of the debtor, the judge, in his discretion, shall, on motion of any party in interest or on his own motion, after hearing and after consideration of the recommendation of the Commission, dismiss the proceedings. Upon the filing of such an order of dismissal, all right, title, or interest of the trustee or trustees shall vest by operation of law in the debtor unless otherwise provided by such order.

**(h) Revenue acts inapplicable to issuance, etc., of securities**

The provisions of subdivisions (1), (2) and (3) of schedule A of title VIII of the Revenue Act of 1926, as amended by sections 721, 722, and 723 of the Revenue Act of 1932, and the provisions of subdivisions (8) and (9) of the same schedule A, as added by sections 724 and 725 of the Revenue Act of 1932, and any amendments thereto unless specifically providing to the contrary, shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any plan of reorganization confirmed under the provisions of this section.

**(i) Transfer of title between receivers and trustees or to debtor; "Federal court" defined**

If a receiver or trustee of all or any part of the property of a debtor has been appointed by a Federal or State court, whether before or after August 27, 1935, a petition or answer may be filed under this section at any time thereafter by such debtor, or its creditors as provided in subdivision (a) of this section, and if such petition is approved, the trustee or trustees appointed under this section, or the debtor until such trustee or trustees are appointed, shall be entitled forthwith to possession of and be vested with title to such property, and the judge shall make such orders as he may deem equitable for the protection of obligations incurred by the receiver or receivers or prior trustee or trustees and for the payment of such reasonable administrative expenses and allowances in the prior proceedings as may be fixed by the court appointing such receiver or trustee. Whether or not a receiver or trustee has been appointed by a Federal or State court prior or subsequent to the institution of a proceeding under this section and upon the dismissal of such proceeding under this section, the judge may include in the order of dismissal appropriate provisions directing the trustee or trustees, or the debtor if no trustee has been appointed, at the time of such order of dismissal, to transfer possession of the debtor's property within the territorial jurisdiction of such Federal or State court to the prior receiver or trustee, if a prior receiver or trustee has been so appointed by such Federal or State court, or

to a receiver or trustee appointed by such Federal or State court, upon such terms as the court in the proceeding under this section may deem equitable for the protection of the obligations incurred by any trustee or trustees appointed under this section and for the payment of administrative expenses and allowances in the proceedings hereunder. Upon the filing of such order of dismissal all title to the property in the trust estate shall vest as therein provided. For the purposes of this section the words "Federal court" shall include the district courts of the United States and of the Territories and possessions to which this title is or may hereafter be applicable.

**(j) Restraining or staying commencement or continuation of proceedings against debtor; removal of causes; owners' rights to equipment leased or conditionally sold unaffected**

In addition to the provisions of section 29 of this title for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: *Provided,* That suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction and any order staying the prosecution of any such cause of action or appeal shall be vacated. Proceedings under this section prior to its amendment by Act of August 27, 1935, or under this section as amended by such Act, shall not be grounds for the removal of any cause of action to the United States District Court which was not removable before March 3, 1933 and any order removing any cause of action or enjoining the prosecution of any such cause of action in any court is null and void and any cause of action heretofore removed from a State court on account of this section prior to its amendment by Act of August 27, 1935, shall be remanded to the court from which it was removed. The title of any owner, whether as trustee or otherwise, to rolling-stock equipment leased or conditionally sold to the debtor, and any right of such owner to take possession of such property in compliance with the provisions of any such lease or conditional sale contract, shall not be affected by the provisions of this section.

**(k) Certified copy of order confirming plan or directing conveyance of property as evidence**

A certified copy of the final order confirming a plan of reorganization, or of any other order or decree entered in a proceeding under this section, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order or decree was made. A certified copy of an order directing the transfer and conveyance of the property dealt with by the plan as provided in subdivision (f) of this section, or as specified in an order dismissing the proceedings as provided in subdivision (i) of this section, shall be evidence of the transfer and conveyance of title accordingly, and if recorded shall impart the same notice that a deed, if recorded, would impart.

**(*l*) Jurisdiction of court, duties of debtor and rights of creditors same as in voluntary bankruptcy**

In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed.

**(m) "Railroad corporation" and "person" defined**

The term "railroad corporation" as used in this section means any common carrier by railroad engaged in the transportation of persons or property in interstate commerce, except a street, a suburban, or interurban electric railway which is not operated as a part of a general railroad system of transportation or which does not derive more than 50 per centum of its operating revenues from the transportation of freight in standard steam railroad freight equipment. Wherever used in this section the term "person" shall include an individual, corporation, partnership, association, joint-stock company, unincorporated organization, or a government or political subdivision thereof.

**(n) Claims of employees for personal injuries and claims of sureties as preferred claims; change in wages or working conditions regulated; moving shops, etc., regulated**

In proceedings under this section, and in equity receiverships of railroad corporations now or hereafter pending in any court of the United States, claims for personal injuries to employees of a railroad corporation, claims of personal representatives of deceased employees of a railroad corporation, arising under State or Federal laws, and claims now or hereafter payable by sureties upon supersedeas, appeal, attachment, or garnishment bonds, executed by sureties without security, for and in any action brought against such railroad corporation or trustees appointed pursuant to this section, shall be preferred and paid out of the assets of such railroad corporation as operating expenses of such railroad. No judge or trustee acting under this title shall change the wages or working conditions of railroad employees except in the manner prescribed in the Railway Labor Act, as amended June 21, 1934, or as it may be hereafter amended [45 U.S.C. § 151 et seq.]. No reorganization effected under this title and no order of the court or Commission in connection therewith shall relieve any carrier from the obligation of any final judgment of any Federal or State court rendered prior to January 1, 1929, against such carrier or against one of its predecessors in title, requiring the maintenance of offices, shops, and roundhouses at any place, where such judgment was rendered on account of the making of a valid contract or contracts by such carrier or one of its predecessors in title.

**(*o*) Abandonment or sale of lines or property**

The trustee or trustees, from time to time, shall determine what lines or portions of lines

of railroad and what other property of the debtor, if any, should be abandoned or sold during the pendency of the proceedings in the interest of the debtor's estate and of ultimate reorganization but without unduly or adversely affecting the public interest, and shall present to the judge petitions, in which other parties in interest may join, for authority to abandon or to sell any such property; and upon order of the judge made after a hearing pursuant to such reasonable notice by publication or otherwise as the judge may direct to parties in interest, authorizing any such abandonment or sale, but only with the approval and authorization of the Commission when required by the Interstate Commerce Act, as amended February 28, 1920, or as it may be hereafter amended, the trustee or trustees shall take all steps and carry out all proceedings necessary for the consummation of any such abandonment or sale in accordance with the order of the judge. Any such order of the judge shall be a final order for the purposes of appeal. The judge may order and decree any sale of property, whether or not incident to an abandonment, under this subdivision at public or private sale and subject to or free from liens. The proceeds derived from any such sales shall be received by the trustee or trustees subject, in case the property was sold free from lien, to any liens thereon at the time of sale, and shall be applied or disposed of in such manner as the judge by further order shall direct. The expense of such sale shall be borne in such manner as the judge may determine to be equitable. The judge may order the trustee or trustees of the debtor to deposit such proceeds with any mortgage trustee entitled thereto, to be applied in payment of all or part of such mortgage.

**(p) Solicitation of proxies or authorizations**

It shall be unlawful for any person, during the pendency of proceedings under this section or of receivership proceedings against a railroad corporation in any State or Federal court, (a) to solicit, or permit the use of his name to solicit, from any creditor or shareholder of any railroad corporation by or against whom such proceedings have been instituted, any proxy or authorization to represent any such creditor or shareholder in such proceedings or in any matters relating to such proceedings, or to vote on his behalf for or against, or to consent to or reject, any plan of reorganization proposed in connection with such proceedings; or (b) to use, employ, or act under or pursuant to any such proxy or authorization from any such creditor or shareholder which has been solicited or obtained prior to the institution of such proceedings; or (c) to solicit the deposit by any such creditor, or shareholder, of his claim against or interest in such railroad corporation, or any instrument evidencing the same, under any agreement authorizing anyone other than such depositor to represent such depositor in such proceedings or in any matters relating to such proceedings, including any matters relating to the deposited security or claim; or to vote such claim or interest or to consent to or reject any such plan of reorganization; or (d) to use, employ, or act under or pursuant to any such agreement with such depositor which has been solicited or obtained prior to the institution of such proceedings; unless and until, upon proper application by any person proposing to make such solicitation or to use, employ, or act under or pursuant to such proxies, authorizations, or deposit agreements, and after consideration of the terms and conditions (including provisions governing the compensation and expenses to be received by the applicant, its agents and attorneys, for their services) upon which it is proposed to make such solicitation or to use, employ, or act under or pursuant to such proxies, authorizations, or deposit agreements, the Commission after hearing by order authorizes such solicitation, use, employment, or action: *Provided, however,* That nothing contained in this section shall be applicable to or construed to prohibit any person, when not part of an organized effort, from acting in his own interest, and not for the interest of any other, through a representative or otherwise, or from authorizing a representative to act for him in any of the foregoing matters, or to prohibit groups of not more than twenty-five bona fide holders of securities or claims or groups of mutual institutions from acting together for their own interests and not for others through representatives or otherwise or from authorizing representatives of such groups to act for them in respect to any of the foregoing matters. The Commission shall make such order only if it finds that the terms and conditions upon which such solicitation, use, employment or action is proposed are reasonable, fair, and in the public interest, and conform to such rules and regulations as the Commission may provide. The Commission shall have the power to make such rules and regulations respecting such solicitation, use, employment, or action and with respect to the terms and the provisions of such proxies, authorizations, and deposit agreements, and with respect to such other matters in connection with the administration of this subdivision as it deems necessary or desirable to promote the public interest, and to insure proper practices in the representation of creditors and stockholders through the use of such proxies, authorizations, or deposit agreements and in the solicitation thereof. It shall be unlawful for any person to solicit any such proxy, authorization, or the deposit of any such claim or interest or to use, employ, or act under or pursuant to any such proxy, authorization, or deposit agreement which has been solicited or obtained prior to the institution of such proceedings in violation of the rules and regulations so prescribed.

Every application for authority shall be made in such form and contain such matters as the Commission may prescribe. Every such application shall be made under oath, signed by, or on behalf of, the applicant by a duly authorized agent having knowledge of the matters therein set forth. The Commission may modify any order authorizing such solicitation, use, employment, or action by a supplemental order, but no such modification shall invalidate action previously taken, or rights or obligations which have previously arisen, in conformity with the Commission's prior order or orders authorizing such solicitation, use, employment, or action.

The Commission may, in its discretion, make such investigations as it deems necessary to de-

termine whether any person has violated or is about to violate any provision of this subdivision or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath, or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to publish information concerning any such violations, and to investigate any such facts, conditions, practices, or matters as it may deem necessary or proper to aid in the enforcement of the provisions of this subdivision, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this subdivision relates.

Any person who willfully violates any provision of this subdivision, or any rule or regulation made thereunder the violation of which is made unlawful, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed hereunder or under any rule or regulation authorized hereby, which statement is false or misleading with respect to any material fact, shall be guilty of a misdemeanor, and on conviction in any United States court having jurisdiction, shall be punished by a fine of not less than $1,000 nor more than $10,000 or by imprisonment for not less than one year nor more than three years, or by both such fine and imprisonment, in the discretion of the court; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

The provisions of this subdivision shall not be applicable to any person or committee which has begun to solicit, obtain, or use proxies, authorizations, or deposit agreements prior to August 27, 1935, in connection with proceedings under this section as in force prior to such date or receivership proceedings against a railroad then pending in any State or Federal court, unless such person or committee makes application to the Commission and receives authority to act as in this subdivision provided, in which event the provisions of this subdivision shall be applicable to such person or committee, but such authorization shall not be upon terms which shall invalidate any action theretofore taken, or any rights or obligations which have theretofore arisen: *Provided,* That with respect to committees which are not subject to this subdivision the judge shall scrutinize and may disregard any limitations or provisions of any deposit agreements, committee, or other authorizations affecting any creditor or stockholder acting under this section and may enforce an accounting thereunder or restrain the exercise of any power which he finds to be unfair or not consistent with public policy, including the collection of unreasonable amounts for compensation and expenses.

**(q) Application of law granting powers to Commission**

The provisions of section 12 of the Interstate Commerce Act, as amended March 2, 1889, February 10, 1891, and February 28, 1920 [49 U.S.C. 12], shall be applicable to enable the Commission to perform its duties under this section and the provisions of such section shall apply to the debtor, any subsidiary or affiliated company, or any other person as herein defined.

**(r) Separability clause**

If any provision of this section, or the application thereof to any person or circumstances, is held invalid, the remainder of this section, or application of such provision to other persons or circumstances, shall not be affected thereby.

**(s) Pending proceedings as governed by amendment of section**

Proceedings pending under this section on August 27, 1935, shall continue under, and be governed by, the provisions of this section as amended by Act of August 27, 1935: *Provided,* That the amendment of this section by Act of August 27, 1935, shall not invalidate any action taken before August 27, 1935, pursuant to this section as it existed prior to such date.

(July 1, 1898, ch. 541, § 77, as added Mar. 3, 1933, ch. 204, § 1, 47 Stat. 1474, and amended Aug. 27, 1935, ch. 774, 49 Stat. 911; June 26, 1936, ch. 833, 49 Stat. 1969; Aug. 11, 1939, ch. 689, 53 Stat. 1406; June 25, 1948, ch. 646, § 32(a), (b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 24, 1951, ch. 543, § 1, 65 Stat. 606; July 11, 1958, Pub. L. 85-515, 72 Stat. 357; Aug. 28, 1958, Pub. L. 85-824, 72 Stat. 984; Sept. 25, 1962, Pub. L. 87-681, § 11, 76 Stat. 572.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in subds. (c)(2), (6), (f), and (o), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, classified to generally chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of Title 49, Transportation. For complete classification of this Act to the Code, see note captioned Interstate Commerce Act set out under section 27 of Title 49 and Tables volume.

Title I of the Securities Act of 1933, as amended, referred to in subdiv. (f), probably means title I of act May 27, 1933, ch. 38, 48 Stat. 74. Title I of the 1933 Act is cited as the Securities Act of 1933, and is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables volume.

Subdivisions (1) to (3), (8), and (9) of schedule A of title VIII of the Revenue Act of 1926, referred to in subdiv. (h), were repealed by act Feb. 10, 1939, ch. 2, § 4, 53 Stat. 1. Said subdivisions were classified to sections 1801, 1802, 1821(b)(1) and (2), 3481(a), and 3482 of the Internal Revenue Code of 1939. See sections 4361 and 4362 of the Internal Revenue Code of 1954.

Railway Labor Act, referred to in subd. (n), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables volume.

CODIFICATION

References to the United States District Court for the District of Columbia and to the United States Court of Alaska, formerly set out in the definition of "Federal court" in subsec. (i), have been omitted since both such courts now are included within "district courts of the United States" as set out in subsec. (i). See section 132 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1962—Subd. (a). Pub. L. 87-681 increased from $100 to $150 the filing fee to be paid the clerk, eliminated after $100 the clause "which shall be in addition to the fees required to be collected by the clerk under other provisions of this title" and substituted "United States district court", "a court of the United States", "United States court" and "courts of appeal" for "Federal district court", "Federal court", "Federal court" and "circuit courts of appeal", respectively.

1958—Subd. (c)(2). Pub. L. 85-824 inserted provision making trustee operating business of debtor, with respect to safety, location of tracks, and terminal facilities, subject to lawful orders of State regulatory bodies to same extent as would debtor if petition had not been filed.

Subd. (c)(6). Pub. L. 85-515 required lessee to continue operation on or for the account of the lessor until such operation is otherwise terminated, and to provide that during such operation the lessor shall be deemed a carrier and entitled to receive just, reasonable, and equitable divisions of rates, fares, or charges.

1951—Subd. (c)(3). Act Oct. 24, 1951, permitted the financing of safety equipment by a railroad by directing that certificates issued for such purpose may be given priority over existing obligations, receivership charges, and past or future state or local taxes, and also shall be entitled to such parity with costs of administration and operation as the judge finds equitable.

1939—Subd. (n) amended by act Aug. 11, 1939.

1936—Subd. (e) amended by act June 26, 1936.

1935—Act Aug. 27, 1935, revised section generally.

CHANGE OF NAME

Section 32(a) of act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

Section 32(b) of act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" in lieu of "Supreme Court of the District of Columbia".

EFFECTIVE DATE OF 1951 AMENDMENT

Section 2 of act Oct. 24, 1951, provided that: "This Act [amendment of subd. (c)(3) of this section] shall take effect immediately upon the date of its approval and shall apply to any authorization given by the judge, regardless of whether such authorization shall have been given before or shall be given after such date. Neither the enactment of this Act [amendment of subd. (c)(3) of this section] nor anything herein contained shall be construed as implying that, prior to the date of approval of this Act [Oct. 24, 1951], the judge was not vested with the power which is expressly granted to him by this Act [amendment of subd. (c)(3) of this section]."

REPEALS

Insofar as subd. (h) of this section related exclusively to Internal Revenue it was repealed and incorporated as section 1808(e) of Title 26, Internal Revenue Code. Section 1808(e) was repealed by section 7851 of Title 26, I.R.C. 1954, and is now covered by section 4382 of such Title 26.

CLAIMS OF UNITED STATES

By Executive Order No. 7263, promulgated January 4, 1936, the Secretary of the Treasury was designated and authorized to act in respect of the interest or claims, within the purview of subd. (e) of this section, as amended, of the United States, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of Title 15, Commerce and Trade, abolished the Reconstruction Finance Corporation.

CROSS REFERENCES

Delivery and accounting for property, see section 11 of this title.

Railroads, exception from becoming bankrupts, see section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 107, 205a, 208, 506 of this title; title 26 sections 108, 302, 354, 371, 374, 4382; title 45 sections 661, 662, 666, 702, 717, 719, 721, 743; title 49 section 20b.

### § 205a. Removal to district court on ground of reorganization

Proceedings under section 205 of this title shall not be grounds for the removal of any cause of action to the United States district court which was not removable before the passage and approval of said section, and any cause of action removed prior to June 7, 1934, from a State court on account of said section shall be remanded to the court from which it was removed, and such order of removal vacated.

(June 7, 1934, ch. 424, § 7, 48 Stat. 924.)

CODIFICATION

Section was not enacted as a part of the Bankruptcy Act which comprises this title.

CROSS REFERENCES

Later provisions concerning removal of causes, see section 205 of this title.

### §§ 206, 207. Transferred

CODIFICATION

Section 206, act July 1, 1898, ch. 541, § 77A, as added by act June 7, 1934, ch. 424, § 1, 48 Stat. 912, and sections 30, 31, 201, 202, and 207 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, otherwise known as the Chandler Act.

Section 207, act July 1, 1898, ch. 541, § 77B, as added by act June 7, 1934, ch. 424, § 1, 48 Stat. 912, and amended by acts Aug. 20, 1935, ch. 577, 49 Stat. 664; Aug. 29, 1935, ch. 809, 49 Stat. 965; Aug. 12, 1937, ch. 589, § 1, 50 Stat. 622, and sections 30, 31, 201, 202, and 206 of this title, were amended and incorporated as chapters 10, 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840, otherwise known as the Chandler Act.

Effective date and construction of act June 22, 1938, see note under section 1 of this title.

DISTRIBUTION

Subject matter of the various subdivisions of section 207 was distributed by act June 22, 1938, as follows:

| Section 207, subdivisions: | Present sections |
|---|---|
| a | 511, 515, 526 to 532, 536, 537, 542, 543, 544, and 662. |
| b | 506, 507, 602, 609, 612, 616, and 661. |
| c | 516, 517, 556, 559, 560, 561, 562, 563, 564, 571, 586 to 589, 591, 596, 597, 606, 607, 636, 637, 638, 641 to 643, 647, and 650. |
| d | 570. |
| e | 577 to 579, and 599. |
| f | 621 to 624, and 667. |
| g | 624. |
| h | 626, 627, 628, and 664. |
| i | 644, 645, 646, 657, 658, and 659. |
| k | 502, 636, and 638. |
| l | 672. |
| m | 672. |
| n | 663. |
| o | 512, 514, and 600. |

SAVINGS CLAUSE

Continuance of sections 206 and 207 in force with respect to certain proceedings, see section 676 of this title.

**§ 208. Petition subsequent to certification of reorganization plan**

**(a) Duty of Commission to report changes, developments, etc., to court; remand of plan to Commission; procedure of subsequent proceedings; referral of petition**

Notwithstanding any other provision of law—

(1) with respect to any plan of reorganization or modified plan of reorganization approved by the Interstate Commerce Commission under the provisions of section 205 of this title, subsequent to April 9, 1948, it shall be the duty of the Commission, upon petition of any party to the proceeding filed at any time more than eighteen months after certification by the Commission to the court of the plan or of an order disposing of a like petition, but before any order confirming the plan shall have been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, to report to the court in which consideration of such plan is then pending, any changes, facts, or developments which have occurred since the approval of such plan by the Commission, which were not provided for in the plan, and which in the opinion of the Commission make it necessary or expedient for the Commission to reexamine or reconsider and, if necessary, to revise such plan in order to insure that such plan, if consummated and put into effect, shall then, in the opinion of the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section and section 205 of this title. Upon the filing of any such report by the Commission with the court, the court shall remand the plan to the Commission for such reexamination, reconsideration, and possible revision;

(2) if, with respect to any plan of reorganization or modified plan of reorganization approved by the Commission subsequent to April 9, 1948, the court before which such plan is then pending, for approval or confirmation, no order of confirmation having been entered, or, such an order having been entered, if an appeal from said order is pending on said date in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such appeal or to file such petition has not expired, upon petition of any party to the proceeding and either with or without a hearing, shall find that changes, facts, or developments have occurred since the approval of such plan by the Commission which were not provided for in the plan and which make it necessary or expedient, in the opinion of the court, that the Commission reexamine and reconsider and revise such plan in order to insure that the plan consummated and put into effect shall then, in the opinion of the court and the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section, and section 205 of this title, the court shall return the plan to the Commission for such reexamination, reconsideration and possible revision;

(3) with respect to any plan of reorganization or modified plan of reorganization which, on April 9, 1948, is before any district court for approval or confirmation, no order of confirmation having been entered, or, such order having been entered, if an appeal from said order is pending in a court of appeals or the matter is pending in the Supreme Court on a petition to review any order of a court of appeals dealing with said order of confirmation or the time within which to make such an appeal or to file such petition has not expired, it shall be the duty of the Commission, upon petition of any party to the proceeding, to report to such court any changes, facts, or developments which have occurred since December 31, 1939, which were not provided for in the plan and which, in the opinion of the Commission, make it necessary or expedient for the Commission to reexamine or reconsider and, if necessary, to revise such plan in order to insure that if consummated and put into effect, such plan shall then, in the opinion of the Commission, be fair and equitable and in the public interest and compatible with the provisions of this section and section 205 of this title. Upon the filing of any such report by the Commission with the court, the court shall remand the plan to the Commission for such reexamination, reconsideration, and possible revision;

(4) in the event of the return of a plan to the Commission pursuant to the provisions of this subdivision, the proceedings with respect thereto shall be governed by the provisions of subdivision (d) of section 205 of this title;

(5) each petition filed under the provisions of paragraph (1) or (3) of this subdivision shall be filed with the court before which is pending the plan which is the subject of the petition and such petition shall be referred by the court to the Commission. Upon the filing of such petition with the court all further proceedings for confirmation of the plan shall be suspended pending disposition of the petition by the Commission and certification of its action thereon to the court.

**(b) Supplemental report and order of Commission; certification of modified plan; transcript of proceeding denying modification; review by court**

As to any plan so returned to the Commission by the court, the Commission, upon further hearing at which all parties may appear and submit evidence as to prospective earning power and other relevant facts, and upon consideration of all changes, facts, and developments which have occurred since the date of approval of the plan by the Commission (or which have occurred since December 31, 1939, in the case of plans which on April 9, 1948, were pending before, but had not been confirmed by, the court by order which shall have become final), including, without limitation, for such period total railway operating revenues, operat-

ing expenses and other charges, net earnings, the full effect of amortization deductions on earnings of past and future years, improvements to property, the effect of released collateral through past or future payments of loans, cash and net current assets, retirements and purchases of debt, including retirements and purchases at a discount that have been made or that can reasonably be made, adjustment and reduction of interest rates on outstanding debt that may be made, shall, in a supplemental report and order, modify, or refuse to modify, any plan which it has approved, stating the reasons for such modification or for its refusal to modify the plan. The Commission, if it modifies the plan, shall certify the modified plan to the court, together with a transcript of the proceeding before it and a copy of its report and order approving the modified plan. Thereafter proceedings upon the plan shall be governed by the provisions of subdivision (e) of section 205 of this title, and of this section. If the Commission refuses to modify the plan, it shall transmit to the court a copy of its report and order, together with a transcript of the proceedings before it. Thereafter, if the court shall find that the refusal of the Commission to modify the plan is based on sufficient findings and is supported by the record, the proceeding upon the plan shall continue as if the plan had not been returned to the Commission; otherwise the court shall return the plan to the Commission for further consideration. Upon such consideration, the Commission shall again certify the plan to the court with such modifications, if any, as it may find necessary, and thereafter further proceedings upon the plan shall be as provided in subdivision (e) of section 205 of this title and in this section.

(Apr. 9, 1948, ch. 180, § 3, 62 Stat. 167; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

This section was not enacted as a part of the Bankruptcy Act which comprises this title.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

SEPARABILITY OF PROVISIONS

For separability of provisions of act Apr. 9, 1948, see note set out under section 20b of Title 49, Transportation.

## CHAPTER 9—ADJUSTMENT OF DEBTS OF POLITICAL SUBDIVISIONS AND PUBLIC AGENCIES AND INSTRUMENTALITIES

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CODIFICATION

This chapter, formerly chapter 10, was renumbered chapter 9 by act June 22, 1938, ch. 575, § 3(a), 52 Stat. 939, which provided that the Bankruptcy Act of 1898 as amended by act Aug. 16, 1937, ch. 657, 50 Stat. 653, should be "further amended by striking out the heading 'Chapter X' before section 81 of said act [sec. 401 of this title] and inserting in lieu thereof 'Chapter IX'."

Former chapter 9 of this title, sections 301 to 303, as added by act May 24, 1934, ch. 345, 48 Stat. 798, and amended by acts Apr. 10, 1936, ch. 186, 49 Stat. 1198 and Apr. 11, 1936, ch. 210, 49 Stat. 1203, entitled "Provisions for the Emergency Temporary Aid of Public Debtors," extended the benefits of the Bankruptcy Act to political subdivisions of state. It was declared unconstitutional by the Supreme Court in *Ashton* v. *Cameron County Water Improvement Dist. No. 1*, Tex. 1936, 56 S. Ct. 892, 298 U.S. 513, 80 L. Ed. 1309, 31 am. Bankr. Rep., N.S., 96.

### § 401. Definitions

As used in this chapter the term—

(1) "claim" includes all claims of whatever character against the petitioner or the prop-

erty of the petitioner, whether or not such claims are provable under section 103 of this title and whether secured or unsecured, liquidated or unliquidated as to amount, fixed or contingent;

(2) "court" means court of bankruptcy in which the case is pending, or a judge of such court;

(3) "creditor" means holder (including the United States, a State, or political subdivision or public agency or instrumentality of a State) of a claim against the petitioner;

(4) "claim affected by the plan" means claim as to which the rights of its holder are proposed to be materially and adversely adjusted or modified by the plan;

(5) "debt" means claim allowable under section 408(a) of this title;

(6) "lien" means security interest in property, lien obtained on property by levy, sequestration, or other legal or equitable process, statutory or common law lien on property, or any other variety of charge against property to secure the performance of an obligation;

(7) "person" includes a corporation or a partnership, the United States, the several States, and political subdivisions and public agencies and instrumentalities of the several States;

(8) "petitioner" means agency, instrumentality, or subdivision which has filed a petition under this chapter;

(9) "plan" means plan filed under section 410 of this title;

(10) "special tax payer" means record owner or holder of title, legal or equitable, to real estate against which has been levied a special assessment or special tax the proceeds of which are the sole source of payment of obligations issued by the petitioner to defray the costs of local improvements; and

(11) "special tax payer affected by the plan" means special tax payer with respect to whose real estate the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (10) of this section assessed against that real estate.

(July 1, 1898, ch. 541, § 81, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 315.)

CODIFICATION

A prior section 401, act July 1, 1898, ch. 541, § 81, as added Aug. 16, 1937, ch. 657, 50 Stat. 654, and amended June 28, 1940, ch. 438, § 1, 54 Stat. 667; July 1, 1946, ch. 532, § 1, 60 Stat. 409, which provided for the courts of bankruptcy to exercise original jurisdiction for the composition of indebtedness of, or authorized by, any of specified agencies or instrumentalities, was omitted by Congress in the general revision of this chapter by Pub. L. 94-260. See section 402 of this title.

SEPARABILITY OF PROVISIONS

Section 2 of Pub. L. 94-260 provided that: "If any provision of this chapter or the application thereof to any agency, instrumentality, or subdivision is held invalid, the remainder of the chapter, or the application of such provision to any other agency or instrumentality or political subdivision shall not be affected by such holding."

SAVINGS PROVISION

Section 3 of Pub. L. 94-260 provided that: "If the amendment made by this Act [enacting this chapter] is judicially finally determined to be unconstitutional then chapter IX of the Bankruptcy Act, [this chapter], as such chapter IX existed on the day before the date of enactment of this Act [Apr. 8, 1976], is revived and shall have full force and effect with respect to cases filed after such determination."

**§ 402. Jurisdiction and powers of court**

**(a) Jurisdiction**

The court in which a petition is filed under this chapter shall exercise exclusive original jurisdiction for the adjustment of the petitioner's debts, and for the purposes of this chapter, shall have exclusive jurisdiction of the petitioner and its property, wherever located.

**(b) Powers**

After the filing of a petition under this chapter the court may—

(1) permit the petitioner to reject executory contracts and unexpired leases of the petitioner, after hearing on notice to the parties to such contracts leases[1] and to such other parties in interest as the court may designate;

(2) during the pendency of a case under this chapter, or after the confirmation of the plan if the court has retained jurisdiction under section 416(e) of this title, after hearing on such notice as the court may prescribe and for cause shown, permit the issuance of certificates of indebtedness for such consideration as is approved by the court, upon such terms and conditions, and with such security and priority, in payment over existing obligations, secured or unsecured, and over costs and expenses of administration, not including operating expenses of the petitioner, as in the particular case may be equitable; and

(3) exercise such other powers as are not inconsistent with the provisions of this chapter.

**(c) Limitation**

Unless the petitioner consents or the plan so provides, the court shall not, by any stay, order or decree, in the case or otherwise, interfere with—

(1) any of the political or governmental powers of the petitioner;

(2) any of the property or revenues of the petitioner; or

(3) the petitioner's use or enjoyment of any income-producing property.

**(d) Designation of judge**

After the filing of a petition, the chief judge of the court in the district in which the petition is filed shall immediately notify the chief judge of the circuit court of appeals of the circuit in which the district court is located, who shall designate the judge of the district court to conduct the proceedings under this chapter.

(July 1, 1898, ch. 541, § 82, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 316.)

CODIFICATION

A prior section 402, act July 1, 1898, ch. 541, § 82, as added Aug. 16, 1937, ch. 657, 50 Stat. 654, and amended July 1, 1946, ch. 532, § 1, 60 Stat. 409, which provided for the construction of specific terms as used

[1] So in original. Probably should read "contracts, leases."

within the chapter, was omitted by Congress in the general revision of this chapter by Pub. L. 94-260. See section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 408 of this title.

**§ 403. Reservation of State power to control governmental functions of political subdivisions**

Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor: *Provided, however,* That no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.

(July 1, 1898, ch. 541, § 83, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 316.)

CODIFICATION

A prior section 403, act July 1, 1898, ch. 541, § 83, as added Aug. 16, 1937, ch. 657, 50 Stat. 655, and amended June 22, 1938, ch. 575, § 3(b), 52 Stat. 940; Mar. 4, 1940, ch. 41, § 1, 54 Stat. 44; June 28, 1940, ch. 438, §§ 2, 3, 54 Stat. 668, 669; July 1, 1946, ch. 532, § 1, 60 Stat. 409; June 25, 1948, ch. 646, § 32, 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107, which provided for the composition of the petition, hearings on the petition, and the availability of preliminary injunctions and stays, was omitted by Congress in the general revision of this chapter by Pub. L. 94-260. See section 403 et seq. of this title.

**§ 404. Eligibility for relief**

Any State's political subdivision or public agency or instrumentality, which is generally authorized to file a petition under this chapter by the legislature, or by a governmental officer or organization empowered by State law to authorize the filing of a petition, is eligible for relief under this chapter if it is insolvent or unable to meet its debts as they mature, and desires to effect a plan to adjust its debts. An entity is not eligible for relief under this chapter unless—

(1) it has successfully negotiated a plan of adjustment of its debts with creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

(2) it has negotiated in good faith with its creditors and has failed to obtain, with respect to a plan of adjustment of its debts, the agreement of creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

(3) such negotiation is impracticable; or

(4) it has a reasonable fear that a creditor may attempt to obtain a preference.

(July 1, 1898, ch. 541, § 84, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 317.)

CODIFICATION

A prior section 404, act July 1, 1898, ch. 541, § 84, as added Aug. 16, 1937, ch. 657, 50 Stat. 659, and amended June 28, 1940, ch. 438, § 4, 54 Stat. 670; June 22, 1942, ch. 434, 56 Stat. 377, which provided for the termination of jurisdiction conferred by former section 401 of this title after June 30, 1946, was repealed by act July 1, 1946, ch. 532, § 2, 60 Stat. 416.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 405 of this title.

**§ 405. Petition and proceedings relating to petition**

(a) Petition

An entity eligible under section 404 of this title may file a petition for relief under this chapter. In the case of an unincorporated tax or special assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of the district. Any party in interest may file an answer to the petition with the court, not later than 15 days after the publication of notice required by subsection (d) of this section is completed, objecting to the filing of the petition. Upon the filing of such an answer, the court may dismiss the petition after hearing on notice if the petitioner did not file the petition in good faith, or if the petition does not meet the requirements of this chapter. The court shall not, on account of an appeal from a finding of jurisdiction, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction shall not affect the validity of any certificate of indebtedness authorized by the court and issued in such case.

(b) List

The petitioner shall file with the court a list of the petitioner's creditors, insofar as practicable. The list shall include for each known creditor, to the extent practicable, the name of the creditor, the address of the creditor so far as known to the petitioner, and a description of any claim of the creditor, showing the amount and character of the claim, the nature of any security for the claim, and whether the claim is disputed, contingent or unliquidated as to amount. If an identification of any of the petitioner's creditors is impracticable, the petitioner shall state the reason such identification is impracticable and the character of the claims of the creditors involved. The petitioner shall supplement the list as creditors who were unknown or unidentified at the time the list was filed become known or identified to the petitioner. If the list is not filed with the petition, the petitioner shall file the list at such later time as the court, upon its own motion or upon application of the petitioner, sets.

(c) Venue and fees

The petition and any accompanying papers, together with a filing fee of $100, shall be filed with a court in a district in which the petitioner is located.

(d) Notice

The petitioner or such other person as the court designates shall give notice of the filing or dismissal of the petition to the State in which the petitioner is located, to the Securities and Exchange Commission, and to creditors included in the list of creditors required by sub-

section (b) of this section or in any supplement to that list. The notice shall also state that a creditor who files with the court a request, setting forth that creditor's name and address and the nature and amount of that creditor's claim, shall be given notice of any other matter in which that creditor has a direct and substantial interest. The notice required by the first sentence of this subsection shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other papers having a general circulation among bond dealers and bondholders as may be designated by the court. The court may require that it be published in such other publication as the court deems proper. The court shall require that a copy of the notice required by the first sentence of this subsection be mailed, postage prepaid, to each creditor named in the list required by subsection (b) of this section at the address of such creditor given in the list, or, if no address is given in the list for a creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice may, if the court so determines, be mailed, postage prepaid, to such creditor addressed as the court may prescribe. All expense of giving notice required by this subsection shall be paid by the petitioner, unless the court for good cause determines that the cost of notice in a particular instance should be borne by another party. The notice shall be first published as soon as practicable after the filing of the petition, and the mailing of copies of the notice shall be completed as soon as practicable after the filing of the list required by subsection (b) of this section.

**(e) Stay of enforcement of claims against petitioner**

**(1) Effect of filing a petition**

A petition filed under this chapter shall operate as a stay of the commencement or the continuation of any judicial or other proceeding against the petitioner, its property, or an officer or inhabitant of the petitioner, which seeks to enforce any claim against the petitioner, or of an act or the commencement or continuation of a judicial or other proceeding which seeks to enforce a lien upon the property of the petitioner or a lien on or arising out of taxes or assessments due the petitioner, and shall operate as a stay of the enforcement of any set-off or counterclaim relating to a contract, debt, or obligation of the petitioner.

**(2) Duration of automatic stay**

Except as it may be terminated, annulled, modified, or conditioned by the court under the terms of this subsection, the stay provided for in this subsection shall continue until the case is closed or dismissed, or the property subject to the lien is, with the approval of the court, abandoned or transferred.

**(3) Relief from automatic stay**

Upon the filing of a complaint seeking relief from a stay provided for by this section, the court shall set a hearing for the earliest possible date. The court may, for cause shown, terminate, annul, modify, or condition such stay.

**(4) Other stays**

The commencement or continuation of any other act or proceeding may be stayed, restrained, or enjoined by the court, upon notice to each person against whom such order would apply, and for cause shown. The court may issue an order under this paragraph without requiring the petitioner to give security as a condition to that order.

**(f) Unenforceability of certain contractual provisions**

A provision in a contract or lease, or in any law applicable to such a contract or lease, which terminates or modifies, or permits a party other than the petitioner to terminate or modify, the contract or lease because of the insolvency of the petitioner or the commencement of a case under this chapter is not enforceable if any defaults in prior performance of the petitioner are cured and adequate assurance of future performance is provided.

**(g) Recovery of set-off**

Any set-off which relates to a contract, debt, or obligation of the petitioner and which set-off was effected within four months prior to the filing of the petition, is voidable and recoverable by the petitioner after hearing on notice. The court may require as a condition to recovery that the petitioner furnish adequate protection for the realization by the person against whom or which recovery is sought of the claim which arises by reason of the recovery.

**(h) Avoiding powers**

Sections 96(a), 96(c), 107(a), 107(d), 110(c), 110(e)(1), and 110(e)(2) of this title and the first three sentences of section 96(b) of this title shall apply in cases under this chapter as though the petitioner were the bankrupt, debtor, or trustee. If the petitioner refuses to pursue a cause of action under a section or sentence made applicable to this chapter by this subsection, the court may, upon the application of any creditor, appoint a trustee to pursue such cause of action.

(July 1, 1898, ch. 541, § 85, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 317.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 408, 412 of this title.

**§ 406. Representation of creditors**

**(a) Representation and disclosure**

Any creditor may act in that creditor's own behalf or by an attorney or a duly authorized agent or committee. Every person, not including governmental entities, representing more than one creditor shall file with the court a list of the creditors represented by such person, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the claim held by that creditor, and shall attach to the list a copy of the instrument signed by the holder of such claim showing such person's authority, and shall file with the list a copy of the contract or agreement entered into between such person and the creditors represented by that person. Such person shall disclose all compensation incident to the case, received or to be received, directly or indirectly, by that person. That com-

pensation shall be subject to modification and approval by the court.

**(b) Multiple compensation**

The court shall examine all of the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, specifically for the purpose of ascertaining if any person, not including governmental entities, promoting the plan, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and any of its creditors, and shall take evidence under oath to determine whether any such compensation has occurred or is to occur. After such examination the court shall make an adjudication of this issue, and if it be found that any such compensation has occurred or is to occur, the court shall dismiss the petition and tax all of the costs against the person promoting the plan or doing anything of such a nature and receiving such multiple compensation, or against the petitioner, unless such plan is modified, within the time to be allowed by the court, so as to eliminate the possibility of such compensation, in which event the court may proceed to further consideration of the confirmation of the plan.

(July 1, 1898, ch. 541, § 86, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 319.)

**§ 407. Reference, expenses, and joint administration**

**(a) Reference**

The court may refer any special issue of fact to a referee in bankruptcy for consideration, the taking of testimony, and a report upon such special issue of fact, if the court finds that the condition of its docket is such that it cannot take such testimony without unduly delaying the dispatch of other business pending in the court, and if it appears that such special issue is necessary to the determination of the case. A reference to a referee in bankruptcy shall be the exception and not the rule. The court shall not make a general reference of the case, but may only request findings of specific facts.

**(b) Expenses**

The court may allow reasonable compensation for the actual and necessary expenses incurred in connection with the case, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work has been done by the petitioner or by a representative of creditors, and may allow reasonable compensation for an attorney or agent of any of them. No fee, compensation, reimbursement, or other allowances for an attorney, agent, or representative of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the mauner and in such sums, if any, as may be provided for in the plan. An appeal may be taken from any order allowing compensation to the United States court of appeals for the circuit in which the case under this chapter is pending, independently of any other appeal which may be taken in the case. The court of appeals shall hear and determine such appeal summarily.

**(c) Joint administration**

If two or more petitions by related entities are pending in the same court, the court may order joint administration of the cases.

(July 1, 1898, ch. 541, § 87, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 320.)

**§ 408. Claims**

**(a) Allowance of claims**

In the absence of an objection by a party in interest, or of a filing of a proof of claim, the claim of a creditor that is not disputed, contingent, or unliquidated as to amount, and that appears in the list or in a supplement to the list filed by the petitioner under section 405(b) of this title shall be deemed allowed. The court may set a date by which proofs of other claims shall be filed. If the court does not set a date, such proofs of other claims shall be filed before the entry of an order confirming the plan. Within thirty days after the filing by the petitioner of the list or any supplement to the list under section 405(b) of this title, the court shall give written notice to each person whose claim is listed as disputed, contingent, or unliquidated as to amount, informing each such person that a proof of claim must be filed with the court within the time fixed under this subsection. If there is no objection to such claim, the claim shall be deemed allowed. If there is an objection, the court shall hear and determine the objection.

**(b) Classification of creditors**

The court shall designate classes of creditors whose claims are of substantially similar character and the members of which enjoy substantially similar rights, consistent with the provisions of section 409 of this title, except that the court may create a separate class of creditors having unsecured claims of less than $250 for reasons of administrative convenience. If there is a controversy over the classification of a creditor, the court shall, after hearing on notice, summarily determine such controversy.

**(c) Damages upon rejection of executory contracts**

If an executory contract or an unexpired lease is rejected under the plan or under section 402(b) of this title, any person injured by such rejection may assert a claim against the petitioner. The rejection of an executory contract or unexpired lease constitutes a breach of the contract or lease as of the date of the commencement of the case under this chapter. The claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be allowed, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of such surrender or reentry. The court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the

amount of damages allowed the assignee of that claim.

(July 1, 1898, ch. 541, § 88, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 320.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 412, 415, 416 of this title.

### § 409. Priorities

The following shall be paid in full in advance of any distribution to creditors under the plan, in the following order:

(1) The costs and expenses of administration which are incurred subsequent to the filing of a petition under this chapter.

(2) Debts owed for services or materials actually provided within three months before the date of the filing of the petition under this chapter.

(3) Debts owing to any person, which by the laws of the United States (other than this Act) are entitled to priority.

(July 1, 1898, ch. 541, § 89, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 321.)

REFERENCES IN TEXT.

This Act, referred to in par. (3), means the Bankruptcy Act which is classified to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 408 of this title.

### § 410. Filing and transmission of plan and modifications

#### (a) Filing

The petitioner shall file a plan for the adjustment of the petitioner's debts. If such plan is not filed with the petition, the petitioner shall file the plan at such later time as the court, upon its own motion or upon application of the petitioner, sets. At any time prior to the confirmation of a plan, the petitioner, or any creditor, if the petitioner has consented in writing to the modification to be filed by the creditor, may file a modification of the plan; but the modification shall comply with the provisions of this chapter.

#### (b) Transmission of plan and modifications

As soon as practicable after the plan or any modification of the plan has been filed, the court shall set a time, which shall be ninety days from the filing of the plan or any modification of the plan, unless the court, for good cause, sets some other time, within which creditors may accept or reject the plan and any modification of the plan. The petitioner or such other person as the court designates shall transmit by mail a copy of such plan or modification, or a summary and any analysis of such plan, or modification, a notice of the time within which the plan or modification may be accepted or rejected, and a notice of the right to receive a copy, if it has not been sent, of such plan or modification, to each creditor whose claim is affected by the plan, to each special tax payer affected by the plan, and to any party in interest that the court designates. Upon request by a recipient of such summary and notice, the petitioner or such other person as the court designates shall transmit by mail a copy of the plan or modification to that recipient. The court shall, after hearing on notice, determine any controversy as to whether a claim of a creditor or class of creditors is a claim affected by the plan and as to whether a special tax payer is a special tax payer affected by the plan.

(July 1, 1898, ch. 541, § 90, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 321.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 412 of this title.

### § 411. Provisions of plan

A petitioner's plan may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire, including provisions for the rejection of any executory contract or unexpired lease.

(July 1, 1898, ch. 541, § 91, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 322.)

### § 412. Acceptance

#### (a) Who may accept or reject

Unless a claim of a creditor who is included in the list or in a supplement to the list filed under section 405(b) of this title or who files a proof of claim and whose claim is not then disputed, contingent, or unliquidated as to amount, or of a security holder of record as of the date of the transmittal of information under section 410(b) of this title, has been disallowed or is not a claim affected by the plan, that creditor or security holder may accept or reject the plan and any modification of the plan within the time set by the court. Notwithstanding an objection to a claim, the court may temporarily allow such claim in such amount as the court deems proper for the purpose of acceptance or rejection under this section.

#### (b) General rule

Except as provided in subsection (d) of this section, the plan may be confirmed only if it has been accepted in writing by or on behalf of creditors holding at least two-thirds in amount of the claims of each class allowed under section 408 of this title and more than 50 percent in number of the claims of each class allowed under section 408 of this title.

#### (c) Computing acceptance

The two-thirds majority required by subsection (b) of this section is two-thirds in amount of the claims allowed under section 408 of this title of creditors who file an acceptance or rejection within the time fixed by the court, but not including claims held or controlled by the petitioner, or claims of creditors specified in subsection (d) of this section. The more than 50 percent required by subsection (b) of this section is more than 50 percent in number of the claims allowed under section 408 of this title of creditors who file an acceptance or rejection within the time fixed by the court, but not including claims held or controlled by the peti-

tioner, or claims of creditors specified in subsection (d) of this section.

**(d) Exception**

It is not requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors—

(1) whose claims are not affected by the plan;

(2) if the plan makes provision for the payment of their claims in cash in full; or

(3) if provision is made in the plan for the protection of the interests, claims, or lien of such creditor or class of creditors.

**(e) Acceptance of modification**

If the court finds that a proposed modification does not materially and adversely affect the interest of a creditor, the modification shall be deemed accepted by that creditor if that creditor has previously accepted the plan. If the court determines that a modification does materially and adversely affect the interest of a creditor, that creditor shall be given notice of the proposed modification and the time allowed for its acceptance or rejection. The number of acceptances of the plan as modified required by subsection (b) of this section shall be obtained. The plan as modified shall be deemed to have been accepted by any creditor who accepted the plan and who fails to file a written rejection of the modification with the court within such reasonable time as shall be allowed in the notice to that creditor of the proposed modification.

(July 1, 1898, ch. 541, § 92, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 322.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 414, 417 of this title.

**§ 413. Objection to plan**

A creditor who holds a claim affected by the plan or a special tax payer affected by the plan may file with the court an objection to the confirmation of the plan. The Securities and Exchange Commission may also file with the court an objection to the confirmation of the plan, but in the case of an objection filed under this section, the Securities and Exchange Commission may not appeal or file any petition for appeal. An objection to the confirmation of the plan may be filed with the court any time prior to ten days before the hearing on the confirmation of the plan, or within such other times set by the court.

(July 1, 1898, ch. 541, § 93, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 322.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 414 of this title.

**§ 414. Confirmation**

**(a) Hearing on confirmation**

Within a reasonable time after the expiration of the time set by the court within which the plan and any modifications of the plan may be accepted or rejected, the court shall hold a hearing on the confirmation of the plan and any modifications of the plan. The court shall give notice of the hearing and of the time allowed for filing objections to all parties entitled to object under section 413 of this title. The court may, for cause shown, permit a labor union or employees' association, that represents employees of the petitioner, to be heard on the economic soundness of the plan affecting the interests of the represented employees.

**(b) Conditions for confirmation**

The court shall confirm the plan if—

(1) the plan is fair and equitable and feasible and does not discriminate unfairly in favor of any creditor or class of creditors;

(2) the plan complies with the provisions of this chapter;

(3) the plan has been accepted as required by section 412 of this title;

(4) all amounts to be paid by the petitioner or by any person, not including other governmental entities, for services and expenses in the case or incident to the plan have been fully disclosed and are reasonable;

(5) the offer of the plan and its acceptance are in good faith; and

(6) the petitioner is not prohibited by law from taking any action necessary to be taken by it to carry out the plan.

(July 1, 1898, ch. 541, § 94, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 323.)

**§ 415. Effect of confirmation**

**(a) Provisions of plan binding**

The provisions of a confirmed plan shall be binding on the petitioner and on any creditor who had timely notice or actual knowledge of the petition or plan, whether or not such creditor's claim has been allowed under section 408 of this title, and whether or not such creditor has accepted the plan.

**(b) Discharge**

(1) The petitioner is discharged from all claims against it provided for in the plan except as provided in paragraph (2) of this subsection as of the time when—

(A) the plan has been confirmed;

(B) the petitioner has deposited the money, securities, or other consideration to be distributed under the plan with a disbursing agent appointed by the court; and

(C) the court has determined—

(i) that any security so deposited will constitute upon distribution a valid legal obligation of the petitioner; and

(ii) that any provision made to pay or secure payment of such obligation is valid.

(2) The petitioner is not discharged under paragraph (1) of this subsection from any claim—

(A) excepted from discharge by the plan or order confirming the plan; or

(B) whose holder, prior to confirmation, had neither timely notice nor actual knowledge of neither the petition nor the plan.

(July 1, 1898, ch. 541, § 95, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 323.)

**§ 416. Postconfirmation matters**

**(a) Time allowed for deposit under tbe plan**

Prior to or promptly after confirmation of the plan, the court shall fix a time within

which the petitioner shall deposit with the disbursing agent appointed by the court any consideration to be distributed under the plan.

**(b) Duties of petitioner**

The petitioner shall comply with the plan and the orders of the court relative to the plan, and shall take all actions necessary to carry out the plan. The court may direct the petitioner and other necessary parties to execute and deliver or to join in the execution and delivery of any instrument required to effect a transfer of property under the plan and to perform such other acts including the satisfaction of a lien, as the court determines to be necessary for the consummation of the plan.

**(c) Distribution**

Distribution shall be made in accordance with the provisions of the plan to creditors whose claims have been allowed under section 408 of this title. Distribution may be made at the date the order confirming the plan becomes final to holders of securities of record whose claims have not been disallowed.

**(d) Compliance date**

When a plan requires presentment or surrender of securities or the performance of any other action as a condition to participation under the plan, such action shall be taken not later than five years after the entry of the order of confirmation. A person who has not within such time presented or surrendered that person's securities or taken such other action required by the plan shall not participate in any distribution under the plan, and the consideration deposited with the disbursing agent for distribution to such person shall become the property of the petitioner.

**(e) Continuing jurisdiction**

The court may retain jurisdiction over the case for such period of time as the court determines is necessary for the successful execution of the plan.

**(f) Order or decree as evidence and notice**

A certified copy of any order or decree entered by the court in a case under this chapter shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly, and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

(July 1, 1898, ch. 541, § 96, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 324.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 402 of this title.

**§ 417. Effect of exchange of debt securities before date of the petition**

The exchange of new debt securities under the plan for claims covered by the plan, whether the exchange occurred before or after the date of the petition, does not limit or impair the effectiveness of the plan or of any provision of this chapter. The written consents of the holders of any securities outstanding as the result of any such exchange under the plan shall be included as acceptances of such plan in computing the acceptance required under section 412 of this title.

(July 1, 1898, ch. 541, § 97, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 324.)

**§ 418. Dismissal**

**(a) Permissive dismissal**

The court may dismiss the case after hearing on notice—

(1) for want of prosecution;

(2) if no plan is proposed within the time fixed or extended by the court;

(3) if no proposed plan is accepted within the time fixed or extended by the court; or

(4) where the court has retained jurisdiction after confirmation of a plan—

(A) if the petitioner defaults in any of the terms of the plan; or

(B) if a plan terminates by reason of the happening of a condition specified therein.

**(b) Mandatory dismissal**

The court shall dismiss the case if confirmation is refused.

(July 1, 1898, ch. 541, § 98, as added Apr. 8, 1976, Pub. L. 94-260, § 1, 90 Stat. 325.)

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CODIFICATION

Sections 30, 31, 201, 202, 206, and 207 of this title were amended and incorporated as this chapter and chapters 11, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840.

Former chapter 10 was renumbered 9 by act June 22, 1938, ch. 575, § 3(a), 52 Stat. 839. For effective date, construction, etc., of said act, see note under section 1 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11, 107, 728 of this title; title 15 sections 78eee, 78fff; title 26 sections 371, 374; title 29 section 1342.

## SUBCHAPTER I—CONSTRUCTION

### § 501. Exclusive application of chapter

The provisions of this chapter shall apply exclusively to proceedings under this chapter.

(July 1, 1898, ch. 541, § 101, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 502. Application of other provisions

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That section 46, subdivisions (h) and (n) of section 93, section 104, and subdivision (f) of section 110 of this title, shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 528 of this title, and the date of adjudication shall be taken to be the date of approval of a petition filed under section 527 or 528 of this title except where an adjudication had previously been entered.

(July 1, 1898, ch. 541, § 102, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

CODIFICATION

Somewhat similar provisions were contained in former section 207(k) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78fff.

## SUBCHAPTER II—DEFINITIONS

### § 506. In general

For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against a debtor or its property, except stock, whether or not such claims are provable under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

(2) "commission" shall mean any commission or public authority created by any law of the United States or of any State, having regulatory jurisdiction over a public-utility corporation;

(3) "corporation" shall mean a corporation, as defined in this title, which could be adjudged a bankrupt under this title, and any railroad corporation excepting a railroad corporation authorized to file a petition under section 205 of this title;

(4) "creditor" shall mean the holder of any claim;

(5) "debtor" shall mean a corporation by or against which a petition has been filed under this chapter;

(6) "debts" shall include all claims;

(7) "executory contracts" shall include unexpired leases of real property;

(8) "indenture trustee" shall mean a trustee under a mortgage, deed of trust, or indenture, pursuant to which there are securities outstanding, other than voting-trust certificates, constituting claims against a debtor or claims secured by a lien upon any of its property;

(9) "petition" shall mean a petition filed under this chapter by a debtor, creditors, or indenture trustee proposing that a plan of reorganization be effected;

(10) "plan" shall mean a plan of reorganization proposed in a proceeding under this chapter;

(11) "securities" shall include notes, bonds, and other evidences of indebtedness, either secured or unsecured, and stock;

(12) "stock" shall include membership, shares, and similar interests in a debtor, certificates and other evidences of such member-

ship, shares or interests, and voting-trust certificates;

(13) "subsidiary" shall mean a corporation substantially all of whose properties are operated under lease or operating agreement, or the majority of whose stock having power to vote for the election of directors, trustees, or other similar controlling bodies is owned, directly or indirectly, through an intervening corporation or other medium, by another parent corporation, a petition by or against which has been approved.

(July 1, 1898, ch. 541, § 106, as added June 22, 1938, ch. 575, § 1, 52 Stat. 883.)

CODIFICATION

Pars. (1), (4) were from part of former section 207 (b) of this title.

Par. (5) was from part of former section 207(a) of this title.

Par. (11) was from part of former section 207(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Corporations—
Capability of being adjudged a bankrupt, see section 22 of this title.
Definition of, see section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 4382.

**§ 507. Creditors affected by plan; determination**

Creditors or stockholders or any class thereof shall be deemed to be "affected" by a plan only if their or its interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor or stockholder or class is so affected.

(July 1, 1898, ch. 541, § 107, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CODIFICATION

This section was from the second sentence of former section 207(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER III—JURISDICTION AND POWERS OF COURT

**§ 511. Exclusive jurisdiction over debtor and property**

Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located.

(July 1, 1898, ch. 541, § 111, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Approval of petition as conclusive determination of jurisdiction, see section 549 of this title.

Delivery and accounting for property, see section 11 of this title.

**§ 512. Matters prior to approval of petition; jurisdiction, powers and duties**

Prior to the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding before adjudication.

(July 1, 1898, ch. 541, § 112, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CODIFICATION

This section was from former section 207(*o*) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Jurisdiction in ordinary bankruptcy proceedings, see sections 11 and 46 of this title.

**§ 513. Temporary stay of actions prior to approval of petition**

Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property, and may upon cause shown enjoin or stay until the petition is approved or dismissed the commencement or continuation of a suit against a debtor.

(July 1, 1898, ch. 541, § 113, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Stay of actions upon approval of petition, see sections 516 and 548 of this title.

**§ 514. Matters upon approval of petition; jurisdiction, powers, and duties**

Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication.

(July 1, 1898, ch. 541, § 114, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CODIFICATION

This section was from former section 207(o) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Approval of petition as conclusive determination of jurisdiction, see section 549 of this title.

**§ 515. Jurisdiction as in insolvency upon approval of petition**

Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature.

(July 1, 1898, ch. 541, § 115, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 516. Additional jurisdiction over administration of estate upon approval of petition**

Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties in this chapter conferred and imposed upon him and the court—

(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and to such other parties in interest as the judge may designate;

(2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable;

(3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve; and

(4) in addition to the relief provided by section 29 of this title, enjoin or stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor.

(5) notwithstanding any other provisions of this chapter, the title of any owner, whether as trustee or otherwise, to aircraft, aircraft engines, propellers, appliances, and spare parts (as any of such are defined in the Civil Aeronautics Act of 1938, as now in effect or hereafter amended) leased, subleased, or conditionally sold to any air carrier which is operating pursuant to a certificate of convenience and necessity issued by the Civil Aeronautics Board, and any right of such owner or of any other lessor to such air carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of this chapter if the terms of such lease or conditional sale so provide.

(6) notwithstanding any other provisions of this chapter, the title of any owner, whether as trustee or otherwise, to vessels (as the term is defined in the Ship Mortgage Act, 1920 [46 U.S.C. 911 et seq.], as now in effect or hereafter amended) leased, subleased, or conditionally sold to any water carrier which holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any right of such owner or of any other lessor to such water carrier to take possession of such property in compliance with the provisions of any such lease or conditional sale contract shall not be affected by the provisions of this chapter if the terms of such lease or conditional sale so provide.

(July 1, 1898, ch. 541, § 116, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885, and amended Sept. 4, 1957, Pub. L. 85-295, 71 Stat. 617; Oct. 17, 1968, Pub. L. 90-586, § 2, 82 Stat. 1149.)

REFERENCES IN TEXT

The Civil Aeronautics Act of 1938, referred to in par. (5), is act June 23, 1938, ch. 601, 52 Stat. 973, which was repealed by Pub. L. 85-726, § 1401(b), Aug. 23, 1958, 72 Stat. 806. It was classified to chapter 9 (§ 401 et seq.) of Title 49, Transportation, and is now covered by chapter 20 (§ 1301 et seq.) of Title 49.

The Ship Mortgage Act, 1920, referred to in par. (6), section 30 of act June 5, 1920, ch. 250, 41 Stat. 1000, which is classified generally to chapter 25 (§ 911 et seq.) of Title 46, Shipping. For complete classification of section 30 to the Code, see section 984 of Title 46 and Tables volume.

CODIFICATION

Par. (1) was from clause (5) of the first sentence of former section 207(c) of this title.

Par. (2) was from clause (3) of the first sentence of former section 207(c) of this title.

Par. (3) was from clause (3½) of the first sentence of former section 207(c) of this title.

Par. (4) was from clause (10) of the first sentence of former section 207(c) of this title.

AMENDMENTS

1968—Par. (6). Pub. L. 90-586 added par. (6).

1957—Par. (5). Pub. L. 85-295 added par. (5).

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Definition of executory contract, see section 506 of this title.
Rejection of executory contract as breach thereof, see section 103 of this title.
Stay of actions—
Approval of petition as stay, see section 548 of this title.
Prior to approval of petition, see section 513 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 664 of this title.

### § 517. Reference to referee or special master; appointment of receiver

The judge may, at any stage of a proceeding under this chapter, refer the proceeding to a referee in bankruptcy to hear and determine any and all matters not reserved to the judge by the provisions of this chapter, or to a referee as special master, to hear and report generally or upon specified matters. Only under special circumstances shall references be made to a special master who is not a referee. The appointment of a receiver in a proceeding under this chapter shall be by the judge.

(July 1, 1898, ch. 541, § 117, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885, and amended June 28, 1946, ch. 512, § 14, 60 Stat. 331.)

CODIFICATION

This section was from clause (11) of the first sentence of former section 207(c) of this title.

AMENDMENTS

1946—Act June 28, 1946, provided that only under unusual circumstances should special references be made to anyone other than a referee.

EFFECTIVE DATES, REPEAL, ETC., OF 1946 AMENDMENT

Effective dates, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 518. Repealed. July 7, 1952, ch. 579, § 24, 66 Stat. 440

Section, act July 1, 1898, ch. 541, § 118, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885, related to transfer of proceedings to another district.

EFFECTIVE DATE OF REPEAL

Repeal of section effective three months after July 7, 1952, see note under section 1 of this title.

### § 519. Extensions of time

Whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time.

(July 1, 1898, ch. 541, § 119, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 520. Notices

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices to be given under this chapter.

(July 1, 1898, ch. 541, § 120, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

General provisions concerning notices, see section 607 of this title.

### § 521. Appellate jurisdiction

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

(July 1, 1898, ch. 541, § 121, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Allowances, appeal from orders concerning, see section 650 of this title.
Appeals in bankruptcy proceedings, generally, see sections 47 and 48 of this title.

## SUBCHAPTER IV—PETITION

### § 526. Filing petition; persons entitled

A corporation, or three or more creditors who have claims against a corporation or its property amounting in the aggregate to $5,000 or over, liquidated as to amount and not contingent as to liability, or an indenture trustee where the securities outstanding under the indenture are liquidated as to amount and not contingent as to liability, may, if no other petition by or against such corporation is pending under this chapter, file a petition under this chapter.

(July 1, 1898, ch. 541, § 126, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 527. Petition filed in pending bankruptcy proceeding**

A petition may be filed in a pending bankruptcy proceeding either before or after the adjudication of a corporation.

(July 1, 1898, ch. 541, § 127, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Prior proceedings pending, filing petition, see section 656 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 636, 638, and 644 of this title.

**§ 528. Place of filing original petition**

If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction.

(July 1, 1898, ch. 541, § 128, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CODIFICATION

This section was from the second sentence of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Prior proceedings pending, filing petition, see sections 527 and 656 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 528, 529, 636, 637, and 638 of this title.

**§ 529. Subsidiary corporation: place of filing petition**

If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 528 of this title or in the court which has approved the petition by or against its parent corporation.

(July 1, 1898, ch. 541, § 129, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 530. Contents**

Every petition shall state—

(1) that the corporation is insolvent or unable to pay its debts as they mature;

(2) the applicable jurisdictional facts requisite under this chapter;

(3) the nature of the business of the corporation;

(4) the assets, liabilities, capital stock, and financial condition of the corporation;

(5) the nature of all pending proceedings affecting the property of the corporation known to the petitioner or petitioners and the courts in which they are pending;

(6) the status of any plan of reorganization, readjustment, or liquidation affecting the property of the corporation, pending either in connection with or without any judicial proceeding;

(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter 11 of this title; and

(8) the desire of the petitioner or petitioners that a plan be effected.

(July 1, 1898, ch. 541, § 130, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CODIFICATION

This section was from part of the first sentence of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 531 of this title.

**§ 531. Additional contents of creditors' or indenture trustee's petition**

A creditors' or indenture trustee's petition shall, in addition to the allegations required by section 530 of this title, state—

(1) that the corporation was adjudged a bankrupt in a pending proceeding in bankruptcy; or

(2) that a receiver or trustee has been appointed for or has taken charge of all or the greater portion of the property of the corporation in a pending equity proceeding; or

(3) that an indenture trustee or a mortgagee under a mortgage is, by reason of a default, in possession of all or the greater portion of the property of the corporation; or

(4) that a proceeding to foreclose a mortgage or to enforce a lien against all or the greater portion of the property of the corporation is pending; or

(5) that the corporation has committed an act of bankruptcy within four months prior to the filing of the petition.

(July 1, 1898, ch. 541, § 131, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 532. Fees for filing

The filing of a petition under this chapter shall be accompanied by payment to the clerk of a filing fee of $120 if no bankruptcy proceeding is pending, otherwise $70. Where $120 has been paid and an adjudication is entered under this chapter, $50 thereof shall be distributed by the clerk as in the case of a bankruptcy proceeding; but, if the proceeding under this chapter is dismissed and no order of adjudication is entered thereunder, such sum of $50 shall be refunded to the person paying it.

(July 1, 1898, ch. 541, § 132, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886, and amended June 11, 1960, Pub. L. 86-504, § 2, 74 Stat. 198.)

CODIFICATION

This section was from the fourth sentence of former section 207(a) of this title.

AMENDMENTS

1960—Pub. L. 86-504 substituted "$120" for "$100" in two instances, and "$50" for "$30" in two instances.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 728 of this title.

### § 533. Service of copy of petition and subpena on debtor

Upon the filing of a petition by creditors or an indenture trustee, a copy thereof, together with a subpena returnable within ten days or such longer time as the court for cause shown may have fixed, shall be served upon the debtor, as provided in subdivision (a) of section 41 of this title for service of a petition and subpena for involuntary bankruptcy.

(July 1, 1898, ch. 541, § 133, as added June 22, 1938, ch. 575, § 1, 52 Stat. 886.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER V—ANSWER

### § 536. Debtor's answer

Within ten days after the service of the subpena and of a copy of the petition, or within such further time as the court may for cause shown allow, an answer controverting the facts alleged in the petition may be filed by the debtor.

(July 1, 1898, ch. 541, § 136, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Approval or dismissal of petition after debtor's answer, see sections 542 and 543 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

### § 537. Creditor's, indenture trustee's, or stockholder's answer

Prior to the first date set for the hearing provided in section 561 of this title, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee or, if the debtor is not insolvent, by any stockholder of the debtor.

(July 1, 1898, ch. 541, § 137, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Approval or dismissal of petition after answer, see section 544 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

## SUBCHAPTER VI—APPROVAL OR DISMISSAL OF PETITION

### § 541. Petition of debtor

Upon the filing of a petition by a debtor, the judge shall enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith, or dismissing it if not so satisfied.

(July 1, 1898, ch. 541, § 141, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 542. Failure of debtor to answer; non-controversial answer

If an answer is not filed by a debtor to a petition against it, or if the answer filed does not controvert any material allegation of the petition, the judge shall enter an order approving

the petition if satisfied that it complies with the requirements of this chapter and has been filed in good faith, or dismissing it if not so satisfied.

(July 1, 1898, ch. 541, § 142, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Right of debtor to answer, see section 536 of this title.

**§ 543. Controversial answer by debtor; determination of issues**

If the answer of a debtor shall controvert any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied.

(July 1, 1898, ch. 541, § 143, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Right of debtor to answer, see section 536 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

**§ 544. Controversial answer by creditor, indenture trustee, or stockholder; determination of issues**

If an answer filed by any creditor, indenture trustee, or stockholder shall controvert, any of the material allegations of the petition, the judge shall, as soon as may be, determine, without the intervention of a jury, the issues presented by the pleadings and enter an order approving the petition, if satisfied that it complies with the requirements of this chapter and has been filed in good faith and that the material allegations are sustained by the proofs, or dismissing it if not so satisfied.

(July 1, 1898, ch. 541, § 144, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Right to answer, see section 537 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 545 of this title.

**§ 545. Finality of determinations**

If any issue raised in an answer filed under section 536 or 537 of this title has, after hearing upon notice to the debtor, creditors, indenture trustees, and stockholders entitled to controvert the allegations of the petition, already been tried and finally determined under the provisions of section 543 or 544 of this title, such final determination shall be conclusive for all purposes under this chapter.

(July 1, 1898, ch. 541, § 145, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 546. Good faitb of petition**

Without limiting the generality of the meaning of the term "good faith", a petition shall be deemed not to be filed in good faith if—

(1) the petitioning creditors have acquired their claims for the purpose of filing the petition; or

(2) adequate relief would be obtainable by a debtor's petition under the provisions of chapter 11 of this title; or

(3) it is unreasonable to expect that a plan of reorganization can be effected; or

(4) a prior proceeding is pending in any court and it appears that the interests of creditors and stockholders would be best subserved in such prior proceeding.

(July 1, 1898, ch. 541, § 146, as added June 22, 1938, ch. 575, § 1, 52 Stat. 887.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 547. Amendment of petition to comply witb provisions governing arrangements.**

A petition filed under this chapter improperly because adequate relief can be obtained by the debtor under chapter 11 of this title may, upon the application of the debtor, be amended to comply with the requirements of chapter 11 of this title for the filing of a debtor's petition, and shall thereafter for the purposes of chapter 11 of this title be deemed to have been originally filed thereunder.

(July 1, 1898, ch. 541, § 147, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 548. Order of approval as stay of other proceedings**

Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy, mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property.

(July 1, 1898, ch. 541, § 148, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Power of judge to stay actions—
Prior to approval of petition, see section 513 of this title.
Upon approval of petition, see section 516 of this title.

**§ 549. Final order of approval as determinative of court's jurisdiction**

An order, which has become final, approving a petition filed under this chapter shall be a conclusive determination of the jurisdiction of the court.

(July 1, 1898, ch. 541, § 149, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Jurisdiction of court generally, see section 511 et seq. of this title.

## SUBCHAPTER VII—PROCEEDINGS SUBSEQUENT TO APPROVAL OF PETITION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 621, 622 of this title.

**§ 556. Appointment of trustees; continuance of debtor in possession**

Upon the approval of a petition, the judge shall, if the indebtedness of a debtor, liquidated as to amount and not contingent as to liability, is $250,000 or over, appoint one or more trustees. Any trustee appointed under this chapter shall be disinterested and shall have the qualifications prescribed in section 73 of this title, except that the trustee need not reside or have his office within the district. If such indebtedness is less than $250,000, the judge may appoint one or more such trustees or he may continue the debtor in possession. In any case where a trustee is appointed the judge may, for the purposes specified in section 589 of this title, appoint as an additional trustee a person who is a director, officer, or employee of the debtor.

(July 1, 1898, ch. 541, § 156, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CODIFICATION

This section was from part of clause (1) of the first sentence of former section 207 (c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 558 of this title.

**§ 557. Attorney for trustee**

An attorney appointed to represent a trustee under this chapter shall also be a disinterested person: *Provided, however,* That for any specified purposes other than to represent a trustee in conducting the proceeding under this chapter the trustee may, with the approval of the judge, employ an attorney who is not disinterested.

(July 1, 1898, ch. 541, § 157, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Employment of persons to assist trustee, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 558 of this title.

**§ 558. Interest of persons**

A person shall not be deemed disinterested, for the purposes of sections 556 and 557 of this title, if—

(1) he is a creditor or stockholder of the debtor; or

(2) he is or was an underwriter of any of the outstanding securities of the debtor or within five years prior to the date of the filing of the petition was the underwriter of any securities of the debtor; or

(3) he is, or was within two years prior to the date of the filing of the petition, a director, officer, or employee of the debtor or any such underwriter, or an attorney for the debtor or such underwriter; or

(4) it appears that he has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such underwriter, or for any reason an interest materially adverse to the interests of any class of creditors or stockholders.

(July 1, 1898, ch. 541, § 158, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 562 of this title; title 15 section 78eee.

**§ 559. Termination of trustee's appointment or debtor's possession**

Where the indebtedness of a debtor is less than $250,000, the judge may at any time terminate the appointment of a trustee and restore the debtor to the possession of its property, or, if the debtor has been continued in possession, terminate its possession and appoint a trustee.

(July 1, 1898, ch. 541, § 159, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

CODIFICATION

This section was from part of clause (1) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CODIFICATION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 560. Appointment of additional trustees; removal and substitution of trustees; hearings, time and notice**

In any case, the judge at any time, without or upon cause shown, may appoint additional trustees and cotrustees, or remove trustees and appoint substitute trustees; and upon each such appointment the judge shall fix a hearing to be held within thirty days to consider objections to the retention in office of the trustee. At least ten days' notice of the hearing shall be given to the persons designated in section 561 of this title.

(July 1, 1898, ch. 541, § 160, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888, and amended Sept. 25, 1962, Pub. L. 87-681, § 12, 76 Stat. 574.)

CODIFICATION

This section was from part of clause (1) of the first sentence of former section 207(c) of this title.

AMENDMENTS

1962—Pub. L. 87-681 provided for the appointment of additional cotrustees and for hearings upon all appointments.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 561. Hearing; time and notice**

The judge shall fix a time of hearing, to be held not less than thirty days and not more than sixty days after the approval of the petition, of which hearing at least thirty days' notice shall be given by mail to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission and such other persons as the judge may designate, and, if directed by the judge, by publication in such newspaper or newspapers of general circulation as the judge may designate.

(July 1, 1898, ch. 541, § 161, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CODIFICATION

This section was from part of clause (1) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 537, 560, 562 of this title.

**§ 562. Objections at hearing to trustee or possession of debtor**

At the hearing required by section 561 of this title, or at any adjournment thereof, or, upon application, at any other time, the judge may hear objections to the continuance of the debtor in possession, or to the retention in office of a trustee upon the ground that he is not qualified or not disinterested as provided in section 558 of this title.

(July 1, 1898, ch. 541, § 162, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CODIFICATION

This section was from part of clause (1) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 563. Scbedules; debtor continued in possession**

Upon the approval of a petition, where the debtor is continued in possession, the debtor shall, at the expense of the estate, prepare, make oath to, and file in court, within such time as the court shall fix—

(1) a schedule of its property, showing the location, quantity, and money value thereof;

(2) a schedule of its creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and post-office address or place of business of each creditor; and

(3) a schedule of its stockholders of each class showing the number and kind of shares registered in the name of each stockholder, and the last-known post-office address or place of business of each stockholder.

(July 1, 1898, ch. 541, § 163, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CODIFICATION

This section was from part of clause (4) of the first sentence of of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938. known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 566 of this title.

**§ 564. Schedules of debtor not continued in possession**

Upon the approval of a petition, where a debtor is not continued in possession, the court shall fix a time within which the trustee shall prepare and file in court a list of the creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and the post-office address or place of business of each creditor; and a list of the debtor's stockholders of each class, showing the number and kind of shares registered in the name of each stockholder and the last-known post-office address or place of business of each stockholder.

(July 1, 1898, ch. 541 § 164, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

CODIFICATION

This section was from part of clause (4) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 565, 566 of this title.

**§ 565. Information of third persons as to security holders**

If in any case it appears that a person, other than the debtor or its trustee, has in his possession or under his control a list of security holders of the debtor or information in respect to their names, addresses, or the securities held by any of them, and such list or information is necessary in order to disclose the names and addresses of the beneficial owners of such securities, or to prepare or complete the schedules required to be filed under section 563 of this title or the lists required to be filed under section 564 of this title, the court shall direct such person, after a hearing upon notice to him, to produce such list or a true and correct copy thereof, or to furnish such information, or to permit the inspection or use thereof, as may be deemed by the court necessary for the foregoing purposes.

(July 1, 1898, ch. 541, § 165, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 566 of this title.

**§ 566. Impounding schedules, lists, copies, or information; inspection or use**

The court may, upon cause shown, direct the impounding of the schedules, lists, copies, or information filed under sections 563, 564, and 565 of this title, but shall permit their inspection or use by the trustee, any indenture trustee or any creditor or stockholder upon such terms as the court may prescribe: *Provided,* That the court may refuse to permit such inspection by any creditor or stockholder who acquired his claim or stock within three months preceding the filing of the petition under this chapter or during the pendency of the proceeding.

(July 1, 1898, ch. 541, § 166, as added June 22, 1938, ch. 575, § 1, 52 Stat. 889.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 567. Powers and duties; trustee**

The trustee upon his appointment and qualification—

(1) shall, if the judge shall so direct, forthwith investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceeding or to the formulation of a plan, and report thereon to the judge;

(2) may, if the judge shall so direct, examine the directors and officers of the debtor and any other witnesses concerning the foregoing matters or any of them;

(3) shall report to the judge any facts ascertained by him pertaining to fraud, misconduct, mismanagement and irregularities, and to any causes of action available to the estate;

(4) may, subject to the approval of the judge, employ such person or persons as the judge may deem necessary for the purpose of assisting the trustee in performing the duties imposed upon him under this chapter;

(5) shall, at the earliest date practicable, prepare and submit a brief statement of his investigation of the property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, in such form and manner as the judge may direct, to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate; and

(6) shall give notice to the creditors and stockholders that they may submit to him suggestions for the formulation of a plan, or proposals in the form of plans, within a time therein named.

(July 1, 1898, ch. 541, § 167, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

CROSS REFERENCES

Employment of officers of debtor, see section 591 of this title.

Operation of business and management of property, see section 589 of this title.

Plan, preparation and filing, see section 569 of this title.

Reports, see section 590 of this title.

Schedules and lists, preparation and filing, see section 564 of this title.

Title, rights, and powers of trustees, see section 586 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 568 of this title; title 15 section 78fff.

### § 568. Powers and duties of disinterested person where debtor is in possession

If a debtor is continued in possession, the judge may at any time appoint a disinterested person as examiner to prepare and file a plan and to perform the duties imposed upon a trustee under paragraphs (1) to (5), inclusive, of section 567 of this title, or to perform any of such duties.

(July 1, 1898, ch. 541, § 168, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 569. Preparation, filing, and hearing on plan; trustee appointed

Where a trustee has been appointed the judge shall fix a time within which the trustee shall prepare and file a plan, or a report of his reasons why a plan cannot be effected, and shall fix a subsequent time for a hearing on such plan or report and for the consideration of any objections which may be made or of such amendments or plans as may be proposed by the debtor or by any creditor or stockholder.

(July 1, 1898, ch. 541, § 169, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Creditors and stockholders, trustee to notify of right to propose plans, see section 567 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 572, 574 of this title.

### § 570. Plan where debtor continued in possession

Where a debtor is continued in possession, a plan or plans may be filed, within a time fixed by the judge—

(1) by the debtor;

(2) by any creditor or indenture trustee;

(3) by any stockholder, if the debtor is not found to be insolvent;

(4) by the examiner, if so directed by the judge.

The judge shall fix a subsequent time for a hearing on such plans and for the consideration of any objections or amendments thereto.

(July 1, 1898, ch. 541, § 170, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CODIFICATION

This section was from former section 207(d) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 572, 574 of this title.

### § 571. Notice and time of hearing on plan

Notice of the time of any hearing, as provided in section 569 or 570 of this title, shall be given to the debtor, the creditors and stockholders, the indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the court may designate. The judge may, upon the application of the trustee, any creditor, indenture trustee, or stockholder, advance the time of such hearing.

(July 1, 1898, ch. 541, § 171, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

CODIFICATION

This section was from part of clause (7) of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

### § 572. Submission of plans to Securitites and Exchange Commission for report

After the hearing, as provided in section 569 or 570 of this title, and before the approval of any plan, as provided in section 574 of this title, the judge may, if the scheduled indebtedness of the debtor does not exceed $3,000,000, and shall, if such indebtedness exceeds $3,000,000, submit to the Securities and Exchange Commission for examination and report the plan or plans which the judge regards as worthy of consideration. Such report shall be advisory only.

(July 1, 1898, ch. 541, § 172, as added June 22, 1938, ch. 575, § 1, 52 Stat. 890.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 574, 575 of this title.

### § 573. Approval of plan; order to await report of Commission

The judge shall not enter an order approving a plan submitted to the Securities and Exchange Commission until after the Securities and Exchange Commission has filed its report thereon or has notified the judge that it will not file a report, or until the expiration of such reasonable time for the filing of such report as the judge has fixed, whichever first occurs.

(July 1, 1898, ch. 541, § 173, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

### § 574. Entry of order approving plan and fixing time for acceptance

After the hearing, as provided in section 569 or 570 of this title, and, if a plan has been submitted to the Securities and Exchange Commission, as provided in section 572 of this title, then after the filing of the report or notice that it will not be filed, or after the expiration of the time for its filing, whichever first occurs, the judge shall enter an order approving the plan or plans which in his opinion comply with the provisions of section 616 of this title, and which are fair and equitable, and feasible, and shall fix a time within which the creditors and stockholders affected thereby may accept the same.

(July 1, 1898, ch. 541, § 174, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

CROSS REFERENCES

Acceptance of plan—
Confirmation, acceptance as prerequisite, see sections 579 and 621 of this title.
Form and manner, see section 579 of this title.
Approval of plan, public utility, see section 577 of this title.
Confirmation of plan by judge, see section 621 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 572, 577, 578, 580 of this title.

### § 575. Submission of information to creditors and stockholders after approval

Upon the approval of a plan by the judge, the trustee or the debtor in possession shall transmit, by mail or otherwise, to all creditors and stockholders who are affected by any such plan—

(1) the plan or plans so approved, together with a summary thereof approved by the judge;

(2) the opinion of the judge, if any, approving the plan, or plans, or a summary thereof approved by the judge;

(3) the report, if any, filed in the proceeding by the Securities and Exchange Commission, as provided in section 572 of this title, or a summary thereof prepared by the Securities and Exchange Commission; and

(4) such other matters as the judge may deem necessary or desirable for the information of creditors and stockholders.

(July 1, 1898, ch. 541, § 175, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 576 of this title.

### § 576. Soliciting acceptance of plan before order of approval

No person shall, without the consent of the court, solicit any acceptance, conditional or unconditional, of any plan, or any authority, conditional or unconditional, to accept any plan, whether by proxy, deposit, power of attorney or otherwise, until after the entry of an order approving such plan and the transmittal thereof to the creditors and stockholders, as provided in section 575 of this title; and any such authority or acceptance given, procured, or received by reason of a solicitation prior to such approval and transmittal shall be invalid, unless such consent of the court has been so obtained.

(July 1, 1898, ch. 541, § 176, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Form and manner of acceptance, see section 579 of this title.
Good faith of acceptance—
Disqualification of votes in absence of, see section 603 of this title.
Prerequisite to confirmation, see section 621 of this title.
Time for acceptance, see section 574 of this title.

**§ 577. Approval of plan for public utility**

In case a debtor is a public-utility corporation, subject to the jurisdiction of a commission having regulatory jurisdiction over the debtor, a plan shall not be approved, as provided in section 574 of this title, until—

(1) it shall have been submitted to each such commission;

(2) an opportunity shall have been afforded each such commission to suggest amendments or offer objections to the plan; and

(3) the judge shall have considered such amendments or objections at a hearing at which such commission may be heard.

(July 1, 1898, ch. 541, § 177, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CODIFICATION

This section was from the first sentence of paragraph (2) of former section 207(e) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 578 of this title.

**§ 578. Plan approval for intrastate public utility**

In case a debtor is a public utility corporation, wholly intrastate, subject to the jurisdiction of a State commission having regulatory jurisdiction over such debtor, a plan shall not be approved, as provided in section 574 of this title, unless such State commission shall have first certified its approval of such plan as to the public interest therein and the fairness thereof. Upon its failure to certify its approval or disapproval within thirty days, or such further time as the court may prescribe, after the submission of the plan to it, as provided in section 577 of this title, the public interest shall, for the purposes of such approval and of the confirmation of the plan, not be deemed to be affected by the plan.

(July 1, 1898, ch. 541, § 178, as added June 22, 1938, ch. 575, § 1, 52 Stat. 891.)

CODIFICATION

This section was from the second sentence of paragraph (2) of former section 207(e) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 579. Acceptance of plan; hearing for confirmation**

After a plan has been accepted in writing, filed in court, by or on behalf of creditors holding two-thirds in amount of the claims filed and allowed of each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding the majority of stock, of which proofs have been filed and allowed, of each class, exclusive of creditors or stockholders or of any class of them who are not affected by the plan or whose claims or stock are disqualified pursuant to section 603 of this title, or for whom payment or protection has been provided as prescribed in paragraphs (7) and (8) of section 616 of this title, the judge shall fix a hearing, upon notice to the debtor, creditors, stockholders, indenture trustees, the Secretary of the Treasury, the Securities and Exchange Commission, and such other persons as the judge may designate, for the consideration of the confirmation of the plan and of such objections as may be made to the confirmation.

(July 1, 1898, ch. 541, § 179, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CODIFICATION

This section was from part of paragraph (1) of former section 207(e) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

CROSS REFERENCES

Acceptance of plan—
Alteration or modification of plan, see sections 622 and 623 of this title.
Classification of creditors and stockholders, see section 597 of this title.
Good faith as prerequisite to confirmation, see section 621 of this title.
Good faith, disqualification of votes in absence, see section 603 of this title.
Indenture trustee, see section 598 of this title.
Rejected executory contract holder, see section 602 of this title.
Soliciting acceptance before approval, see section 576 of this title.
Time for acceptance, see section 574 of this title.
United States as creditor, see section 599 of this title.
Confirmation of plan by judge, see section 621 of this title.

**§ 580. Effect of order of approval of plan on right to object to confirmation**

The order of the judge approving a plan, as provided in section 574 of this title, shall not affect the right of the debtor, a creditor, indenture trustee, or stockholder to object to the confirmation of the plan.

(July 1, 1898, ch. 541, § 180, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER VIII—TITLE, RIGHTS, AND POWERS OF TRUSTEES AND DEBTORS IN POSSESSION

### § 586. Trustee; title

A trustee, upon his appointment and qualification, shall be vested with such title as a trustee appointed under section 72 of this title would have.

(July 1, 1898, ch. 541, § 186, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CODIFICATION

This section was from part of clause (2) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 587. Rights, powers, and duties of trustee

Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the same rights, be subject to the same duties, and exercise the same powers as a trustee appointed under section 72 of this title, and, if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor.

(July 1, 1898, ch. 541, § 187, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CODIFICATION

This section was from part of clause (2) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Generaliy, see section 567 of this title.

### § 588. Debtor in possession: title, rights, duties and powers

A debtor continued in possession of its property shall have all the title, be vested with all the rights, be subject to all the duties, and exercise all the powers of a trustee appointed under this chapter, subject, however, at all times to the control of the judge and to such limitations, restrictions, terms, and conditions as the judge may from time to time prescribe.

(July 1, 1898, ch. 541, § 188, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CODIFICATION

This section was from part of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 589. Operation of business and management of property; reports

A trustee or debtor in possession, upon authorization by the judge, shall operate the business and manage the property of the debtor during such period, limited or indefinite, as the judge may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate.

(July 1, 1898, ch. 541, § 189, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

CODIFICATION

This section was from part of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 556 of this title.

### § 590. Reports; form; contents; inspection; distribution

The reports of the trustee or debtor in possession shall be in such form and contain such information as the court may prescribe and shall at all times be open to the examination of any party in interest. The court shall direct copies or summaries of annual reports, and may direct copies or summaries of other reports, to be mailed to the creditors, stockholders, and indenture trustees, and may also direct the publication of summaries of any such reports in such newspaper or newspapers of general circulation as the court may designate. The Securities and Exchange Commission may recommend the form of such reports and summaries.

(July 1, 1898, ch. 541, § 190, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

### § 591. Employment of officers of debtor

A trustee or debtor in possession may employ officers of the debtor at rates of compensation to be approved by the court. No person shall become an officer or director of the debtor, to fill a vacancy or otherwise, without the prior approval of the court.

(July 1, 1898, ch. 541, § 191, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CODIFICATION

This section was from part of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER IX—CREDITORS AND STOCKHOLDERS

### § 596. Filing and allowing proofs of claims; objections to allowances

After the approval of the petition the judge shall prescribe the manner in which and fix a time within which the proofs of claim of creditors and of the interests of stockholders may be filed and allowed. Objections by any party in interest to the allowance of any such claims or interests shall be heard and summarily determined by the court.

(July 1, 1898, ch. 541, § 196, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CODIFICATION

This section was from part of clause (6) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 597. Classification of creditors and stockholders

For the purposes of the plan and its acceptance, the judge shall fix the division of creditors and stockholders into classes according to the nature of their respective claims and stock. For the purposes of such classification, the judge shall, if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the judge may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value.

(July 1, 1898, ch. 541, § 197, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CODIFICATION

This section was from part of clause (6) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Acceptance of plan—
- Form and manner, see section 579 of this title.
- Indenture trustee, acceptance by, see section 598 of this title.
- Rejected executory contract holder, see section 602 of this title.
- United States as creditor, see section 599 of this title.

### § 598. Claims by indenture trustee for all holders under trust

An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: *Provided, however,* That in computing the majority necessary for the acceptance of the plan only the claims filed by the holders thereof, and allowed, shall be included.

(July 1, 1898, ch. 541, § 198, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

### § 599. United States as creditor

If the United States is a secured or unsecured creditor or stockholder of a debtor, the claims or stock thereof shall be deemed to be affected by a plan under this chapter, and the Secretary of the Treasury is authorized to accept or reject a plan in respect of the claims or stock of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as secured or unsecured creditor or stockholder), no plan which does not provide for the payment thereof shall be confirmed by the judge except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided,* That if the Secretary of the Treasury shall fail to accept or reject a plan for more than nmety days after receipt of written notice so to do from the court to which the plan has been proposed, accompanied by a certified copy of the plan, his consent shall be conclusively presumed.

(July 1, 1898, ch. 541, § 199, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CODIFICATION

This section was from part of paragraph (1) of former section 207(e) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 621 of this title.

### § 600. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same,

before the approval of the petition, as in a bankruptcy proceeding before adjudication and, upon the approval of the petition, as in a bankruptcy proceeding upon adjudication.

(July 1, 1898, ch. 541, § 200, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CODIFICATION

This section was from former section 207(*o*) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 601. Provability of claims arising after petition**

All claims arising after the filing of a petition under this chapter and before the qualification of a receiver or trustee or before the petition is approved and the debtor continued in possession, whichever first occurs, shall be provable.

(July 1, 1898, ch. 541, § 201, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 602. Rejection of executory contract or unexpired lease; assignment of future rent claim**

In case an executory contract shall be rejected pursuant to the provisions of a plan or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the plan, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to such date of surrender or reentry: *Provided,* That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof.

(July 1, 1898, ch. 541, § 202, as added June 22, 1938, ch. 575, § 1, 52 Stat. 893.)

CODIFICATION

This section was from part of former section 207(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

Creditor, definition of, see section 506 of this title.

Rejection of executory contract as breach thereof, see section 103 of this title.

**§ 603. Disqualification of votes on acceptance in absence of good faith**

If the acceptance or failure to accept a plan by the holder of any claim or stock is not in good faith, in the light of or irrespective of the time of acquisition thereof, the judge may, after hearing upon notice, direct that such claim or stock be disqualified for the purpose of determining the requisite majority for the acceptance of a plan.

(July 1, 1898, ch. 541, § 203, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Confirmation, good faith of acceptance as prerequisite, see section 621 of this title.

Form and manner, generally, of acceptance, see section 579 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 579 of this title.

**§ 604. Surrender, etc., of claims upon distribution under plan**

Upon distribution, as provided in section 624 of this title, the judge may, upon notice to all persons affected, fix a time, to expire not sooner than five years after the final decree closing the estate, within which, as provided in the plan or final decree—

(1) the creditors, other than holders of securities, shall file, assign, transfer, or release their claims; and

(2) the holders of securities shall present or surrender their securities. After such time no such claim or stock shall participate in the distribution under the plan.

(July 1, 1898, ch. 541, § 204, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in scction 605 of this title.

**§ 605. Unclaimed cash and securities**

The securities or cash remaining unclaimed at the expiration of the time fixed as provided in section 604 of this title, or of any extension thereof, shall become the property of the debtor or of the new corporation acquiring the assets of the debtor under the plan, as the case

may be, free and clear of any and all claims and interests.

(July 1, 1898, ch. 541, § 205, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 606. Persons entitled to hearings**

The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter. The judge may for cause shown, permit a labor union or employees' association, representative of employees of the debtor, to be heard on the economic soundness of the plan affecting the interests of the employees.

(July 1, 1898, ch. 541, § 206, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CODIFICATION

This section was from part of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Labor unions, organization and membership, see section 672 of this title.

**§ 607. Intervention of parties; notices generally**

The judge may for cause shown permit a party in interest to intervene generally or with respect to any specified matter. Except where otherwise provided in this chapter, the judge may from time to time enter orders designating the matters in respect to which, the persons to whom, and the form and manner in which notice shall be given.

(July 1, 1898, ch. 541, § 207, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

CODIFICATION

This section was from part of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Notices, general provisions concerning, see section 520 of this title.

**§ 608. Intervention of Securities and Exchange Commission**

The Securities and Exchange Commission shall, if requested by the judge, and may, upon its own motion if approved by the judge, file a notice of its appearance in a proceeding under this chapter. Upon the filing of such a notice, the Commission shall be deemed to be a party in interest, with the right to be heard on all matters arising in such proceeding, and shall be deemed to have intervened in respect of all matters in such proceeding with the same force and effect as if a petition for that purpose had been allowed by the judge; but the Commission may not appeal or file any petition for appeal in any such proceeding.

(July 1, 1898, ch. 541, § 208, as added June 22, 1938, ch. 575, § 1, 52 Stat. 894.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

**§ 609. Representation in proceedings**

Any creditor or stockholder may in a proceeding under this chapter act in person, by an attorney at law, or by a duly authorized agent or committee.

(July 1, 1898, ch. 541, § 209, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CODIFICATION

This section was from part of former section 207(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 610. Statement by attorney**

An attorney for creditors or stockholders shall not be heard unless he has first filed with the court a statement setting forth the names and addresses of such creditors or stockholders, the nature and amounts of their claims or stock, and the time of acquisition thereof, except as to claims or stock alleged to have been acquired more than one year prior to the filing of the petition.

(July 1, 1898, ch. 541, § 210, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 611. Statement by committees, etc., and indenture trnstees**

Every person or committee, representing more than twelve creditors or stockholders, and every indenture trustee, who appears in the proceeding shall file with the court a statement, under oath, which shall include-

(1) a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors or stockholders;

(2) a recital of the pertinent facts and circumstances in connection with the employ-

ment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or formed or agreed to act;

(3) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the proceeding of any indenture trustee, a showing of the amounts of claims or stock owned by such person, the members of such committee or such indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof; and

(4) a showing of the claims or stock represented by such person or committee and the respective amounts thereof, with an averment that each holder of such claims or stock acquired them at least one year before the filing of the petition or with a showing of the times of acquisition thereof.

(July 1, 1898, ch. 541, § 211, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 612. Powers of court as to representation, accounting, unfair powers, claims, stock acquisition

The judge may examine and disregard any provision of a deposit agreement, proxy, power or warrant of attorney, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, by the terms of which an agent, attorney, indenture trustee, or committee purports to represent any creditor or stockholder, may enforce an accounting thereunder, may restrain the exercise of any power which he finds to be unfair or not consistent with public policy and may limit any claim or stock acquired by such person or committee in contemplation or in the course of the proceeding under this chapter to the actual consideration paid therefor.

(July 1, 1898, ch. 541, § 212, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CODIFICATION

This section was from part of former section 207(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 613 of this title.

### § 613. Representation of creditors or stockholders; intervention

Without limiting the powers of the judge under section 612 of this title, an agent, indenture trustee, or committee, purporting to represent creditors or stockholders, shall not be heard or allowed to intervene in a proceeding under this chapter until such person or persons shall have satisfied the court that they have complied with all applicable laws regulating the activities and personnel of such persons.

(July 1, 1898, ch. 541, § 213, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER X—PROVISIONS OF PLAN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 621 of this title.

### § 616. Provisions of plan

A plan of reorganization under this chapter—

(1) shall include in respect to creditors generally or some class of them, secured or unsecured, and may include in respect to stockholders generally or some class of them, provisions altering or modifying their rights, either through the issuance of new securities of any character or otherwise;

(2) may deal with all or any part of the property of the debtor;

(3) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

(4) may provide for the rejection of any executory contract except contracts in the public authority;

(5) shall specify what claims, if any, are to be paid in cash in full;

(6) shall specify the creditors or stockholders or any class of them not to be affected by the plan and the provisions, if any, with respect to them;

(7) shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims, either as provided in the plan or in the order confirming the plan, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such claims; or (b) by a sale of such property free of such claims, at not less than a fair upset price, and the transfer of such claims to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such claims; or (d) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection;

(8) shall provide for any class of stockholders which is affected by the plan and does not accept the plan by the majority of the stock required under this chapter, adequate protection for the realization by them of the value of their equity, if any, in the property of the debtor dealt with by the plan, either as provided in the plan or in the order confirming the plan, (a) by the sale of such property at not less than a fair upset price; or (b) by ap-

praisal and payment in cash of the value of their stock; or (c) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection: *Provided, however,* That such protection shall not be required if the judge shall determine that the debtor is insolvent;

(9) may include, where any indebtedness is created or extended under the plan for a period of more than five years, provisions for the retirement of such indebtedness by stated or determinable payments out of a sinking fund or otherwise, (a) if secured, within the expected useful life of the security therefor, or (b) if unsecured, or if the expected useful life of the security is not fairly ascertainable, then within a specified reasonable time, not to exceed forty years;

(10) shall provide adequate means for the execution of the plan, which may include: the retention by the debtor of all or any part of its property; the sale or transfer of all or any part of its property to one or more other corporations theretofore organized or thereafter to be organized; the merger or consolidation of the debtor with one or more other corporations; the sale of all or any part of its property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens; the cancelation or modification of indentures or of other similar instruments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the amendment of the charter of the debtor; the issuance of securities of the debtor or such other corporations for cash, for property, in exchange for existing securities, in satisfaction of claims or stock or for other appropriate purposes;

(11) shall include provisions which are equitable, compatible with the interests of creditors and stockholders, and consistent with public policy, with respect to the manner of selection of the persons who are to be directors, officers, or voting trustees, if any, upon the consummation of the plan, and their respective successors;

(12) shall provide for the inclusion in the charter of the debtor, or any corporation organized or to be organized for the purpose of carrying out the plan, of—

(a) provisions prohibiting the debtor or such corporation from issuing non-voting stock, and providing, as to the several classes of securities of the debtor or of such corporation possessing voting power, for the fair and equitable distribution of such power among such classes, including, in the case of any class of stock having a preference over other stock with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; and

(b)(1) provisions which are fair and equitable and in accordance with sound business and accounting practice, with respect to the terms, position, rights, and privileges of the several classes of securities of the debtor or of such corporation, including, without limiting the generality of the foregoing, provisions with respect to the issuance, acquisition, purchase, retirement or redemption of any such securities, and the declaration and payment of dividends thereon; and (2) in the case of a debtor whose indebtedness, liquidated as to amount and not contingent as to liability, is $250,000 or over, provisions with respect to the making, not less than once annually, of periodic reports to security holders which shall include profit and loss statements and balance sheets prepared in accordance with sound business and accounting practice;

(13) may include provisions for the settlement or adjustment of claims belonging to the debtor or to the estate; and shall provide, as to such claims not settled or adjusted in the plan, for their retention and enforcement by the trustee or, if the debtor has been continued in possession, by an examiner appointed for that purpose; and

(14) may include any other appropriate provisions not inconsistent with the provisions of this chapter.

(July 1, 1898, ch. 541, § 216, as added June 22, 1938, ch. 575, § 1, 52 Stat. 895.)

CODIFICATION

Par. (1) was from clauses (1) and (2) of the first sentence of former section 207(b) of this title.

Par. (2) was from part of clause (10) of the first sentence of former section 207(b) of this title.

Par. (3) was from clause (3) of the first sentence of former section 207(b) of this title.

Par. (4) was from clause (6) of the first sentence of former section 207(b) of this title.

Par. (5) was from clause (8) of the first sentence of former section 207(b) of this title.

Par. (6) was from clause (7) of the first sentence of former section 207(b) of this title.

Par. (7) was from clause (5) of the first sentence of former section 207(b) of this title.

Par. (8) was from clause (4) of the first sentence of former section 207(b) of this title.

Par. (10) was from clause (9) of the first sentence of former section 207(b) of this title.

Par. (14) was from part of clause (10) of the first sentence of former section 207(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Compensation and allowances, general provisions, see section 641 et seq. of this title.

Rejection of executory contracts as breach thereof, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 574, 579 of this title.

## SUBCHAPTER XI—CONFIRMATION AND CONSUMMATION OF PLAN

### § 621. Confirmation by court

The judge shall confirm a plan if satisfied that—

(1) the provisions of subchapters VII and X of this chapter and section 599 of this title have been complied with;

(2) the plan is fair and equitable, and feasible;

(3) the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by this title;

(4) all payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the proceeding or in connection with the plan and incident to the reorganization, have been fully disclosed to the judge and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the judge; and

(5) the identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, upon the consummation of the plan, have been fully disclosed, and that the appointment of such persons to such offices, or their continuance therein, is equitable, compatible with the interests of the creditors and stockholders and consistent with public policy.

(July 1, 1898, ch. 541, § 221, as added June 22, 1938, ch. 575, § 1, 52 Stat. 897.)

CODIFICATION

Par. (1) was from clauses (2), (3), and (4) of the first sentence of former section 207(f) of this title.

Par. (2) was from clause (1) of the first sentence of former section 207(f) of this title.

Par. (3) was from clause (6) of the first sentence of former section 207(f) of this title.

Par. (4) was from clause (5) of the first sentence of former section 207(f) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Acceptance of plan—
Altered or modified plan, see sections 622 and 623 of this title.
Form and manner, see section 579 of this title.
Good faith, disqualification of votes in absence, see section 603 of this title.
Time for acceptance, see section 574 of this title.
United States as creditor, see section 599 of this title.

Application of internal revenue laws to issuance, transfer or exchange of securities, or to conveyances to effectuate plan of reorganization, see section 4382 of Title 26, Internal Revenue Code.

Approval of plan by judge, see section 574 of this title.

Compensation and allowances, general provisions, see section 641 et seq. of this title.

Executory contracts—
Court, power to reject, see section 516 of this title.
Rejected holder of, as creditor, see section 602 of this title.

Hearing for confirmation of plan, see section 579 of this title.

### § 622. Alteration or modification of plan

A plan may be altered or modified, with the approval of the judge, after its submission for acceptance and before or after its confirmation if, in the opinion of the judge, the alteration or modification does not materially and adversely affect the interests of creditors or stockholders. If the judge finds that the proposed alteration or modification, filed with his approval, does materially and adversely affect the interests of creditors or stockholders, he shall fix a hearing for the consideration, and a subsequent time for the acceptance or rejection, of such alteration or modification. The requirements in regard to notice of hearing, to submission to the Securities and Exchange Commission, to acceptance, to filing and hearing of objections to confirmation and to the confirmation, as prescribed in subchapter VII of this chapter in regard to the plan proposed to be altered or modified, shall be complied with.

(July 1, 1898, ch. 541, § 222, as added June 22, 1938. ch. 575, § 1, 52 Stat. 898.)

CODIFICATION

This section was from part of the second sentence of former section 207(f) of this title.

EFFECTIVE DATE AND CONSTEUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

### § 623. Acceptance by creditors and stockholders of altered plan

Any creditor or stockholder who has previously accepted the plan proposed to be altered or modified and who does not file a written rejection of the proposed alteration or modification within the time fixed by the judge, shall be deemed to have accepted the alteration or modification and the plan so altered or modified unless the previous acceptance provides otherwise.

(July 1, 1898, ch. 541, § 223, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

CODIFICATION

This section was from part of the second sentence of former section 207(f) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Acceptance of plan generally, see section 579 of this title.

### § 624. Effect of confirmation

Upon confirmation of a plan—

(1) the plan and its provisions shall be binding upon the debtor, upon every other corporation issuing securities or acquiring property

under the plan, and upon all creditors and stockholders, whether or not such creditors and stockholders are affected by the plan or have accepted it or have filed proofs of their claims or interests and whether or not their claims or interests have been scheduled or allowed or are allowable;

(2) the debtor and every other corporation organized or to be organized for the purpose of carrying out the plan shall comply with the provisions of the plan and with all orders of the court relative thereto and shall take all action necessary to carry out the plan, including, in the case of a public-utility corporation, the procuring of authorization, approval, or consent of each commission having regulatory jurisdiction over the debtor or such other corporation;

(3) if the judge shall so direct, there shall be deposited and distributed, in such manner as the judge may direct, the moneys for all payments which by the provisions of the plan or under this chapter are required to be made in each; and

(4) distribution shall be made, in accordance with the provisions of the plan, to creditors and stockholders (a) proofs of whose claims or stock have been filed prior to the date fixed by the judge and are allowed, or (b) if not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession and are not contingent, unliquidated or disputed.

(July 1, 1898, ch. 541, § 224, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898, and amended July 7, 1952, ch. 579, § 25, 66 Stat. 430.)

CODIFICATION

Par. (1) was from former section 207(g) of this title.
Par. (2) was from part of former section 207(f) of this title.

AMENDMENTS

1952—Par. (4). Act July 7, 1952, substituted "and are not contingent, unliquidated or disputed" for "as fixed claims or stock, liquidated in amount and not disputed".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Creditors, surrender, etc., of claims, see section 604 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 604, 625, 629 of this title.

### § 625. Objections to distribution

Where the claims or stock specified in paragraph (4), clause (b), of section 624 of this title are objected to by any party in interest, the objection shall be heard and summarily determined by the court.

(July 1, 1898, ch. 541, § 225, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 626. Property to be free of claims; exceptions

The property dealt with by the plan, when transferred by the trustee to the debtor or other corporation or corporations provided for by the plan, or when transferred by the debtor in possession to such other corporation or corporations, or when retained by the debtor in possession, as the case may be, shall be free and clear of all claims and interests of the debtor, creditors, and stockholders, except such claims and interests as may otherwise be provided for in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of such property.

(July 1, 1898, ch. 541, § 226, as added June 22, 1938, ch. 575, § 1, 52 Stat. 898.)

CODIFICATION

This section was from part of the first sentence of former section 207(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 627. Execution of instruments, satisfaction of liens, etc.

The court may direct the debtor, its trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of property dealt with by a plan which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the plan.

(July 1, 1898, ch. 541, § 227, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CODIFICATION

This section was from part of the first sentence of former section 207(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 628. Final decree on consummation of plan

Upon the consummation of the plan, the judge shall enter a final decree—

(1) discharging the debtor from all its debts and liabilities and terminating all rights and interests of stockholders of the debtor, except as provided in the plan or in the order confirming the plan or in the order directing or authorizing the transfer or retention of property;

(2) discharging the trustee, if any;

(3) making such provisions by way of injunction or otherwise as may be equitable; and

(4) closing the estate.

(July 1, 1898, ch. 541, § 228, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CODIFICATION

This section was from the second and third sentences of former section 207(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 629. Acts deemed consummating plan; order declaring consummation; substantial alteration or modification**

(a) A plan shall be deemed to have been substantially consummated if, insofar as applicable, each of the following events has occurred:

(1) transfer, sale or other disposition of all or substantially all of the property dealt with by the plan pursuant to the provisions of the plan;

(2) assumption of operation of the business and management of all or substantially all of the property dealt with by the plan by the debtor or by the corporation used for the purpose of carrying out the plan; and

(3) commencement of the distribution to creditors and stockholders, affected by the plan, of the cash and securities specified in the plan as provided for in section 624 of this title.

(b) Upon notice to the trustee, the debtor, the Securities and Exchange Commission and such other persons as the judge may designate, the trustee, the debtor in possession, the corporation to which the assets of the debtor are to be transferred under the plan, or any other party in interest may apply to the judge for an order declaring the plan to have been substantially consummated under the provisions of subdivision (a) of this section.

(c) When a plan has been substantially consummated as defined in subdivision (a) of this section, or an order has been entered under subdivision (b) of this section, the plan may not thereafter be altered or modified if the proposed alteration or modification materially and adversely affects the participation provided for any class of creditors or stockholders by the plan.

(July 1, 1898, ch. 541, § 229, as added July 7, 1952, ch. 579, § 26, 66 Stat. 431.)

EFFECTIVE DATE

Act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

## SUBCHAPTER XII—DISMISSALS AND ADJUDICATIONS

**§ 636. Failure to effectuate plan or consummation**

If no plan is proposed within the time fixed or extended by the judge, or if no plan proposed is approved by the judge and no further time is granted for the proposal of a plan, or if no plan approved by the judge is accepted within the time fixed or extended by the judge, or if confirmation of the plan is refused, or if a confirmed plan is not consummated, the judge shall—

(1) where the petition was filed under section 527 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 528 of this title, after hearing upon notice to the debtor, stockholders, creditors, indenture trustees, and such other persons as the judge may designate, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title, or dismissing the proceeding under this chapter, as in the opinion of the judge may be in the interests of the creditors and stockholders.

(July 1, 1898, ch. 541, § 236, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CODIFICATION

Somewhat similar provisions were contained in former section 207(c)(8) and (k) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 637. Dismissal of original petition; discharge of trustee and closing of estate**

Upon the dismissal of a proceeding under this chapter, where the petition was filed under section 528 of this title, the judge shall enter a final decree discharging the trustee, if any, and closing the estate, except as otherwise provided by section 659 of this title.

(July 1, 1898, ch. 541, § 237, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899.)

CODIFICATION

This section was from former section 207(c)(8) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 638. Procedure upon order directing that bankruptcy be proceeded with**

**(a) Reinstatement of bankruptcy proceeding; trustee; filing of separate debt schedule; tax claims; provable claims; date for first meeting of creditors; disallowance of untimely claims**

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) where the petition was filed under section 527 of this title, the bankruptcy proceeding shall be deemed reinstated and shall thereafter be conducted, so far as possible, as if the petition under this chapter had not been filed; or where the petition was filed under section 528 of this title, the proceeding shall thereafter be conducted so far as possible, in the same manner and with like effect as if an involuntary petition for adjudication had been filed at the time when the petition under this chapter was filed, and a decree of adjudication had been entered at the time when the petition under this chapter was approved;

(2) a trustee shall be elected or appointed pursuant to section 72 of this title and shall supersede any trustee previously appointed;

(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by it while continued in possession and before the qualification of a receiver or trustee, if any, under this chapter, and if a receiver or trustee has qualified, the schedule and statement shall be filed by such receiver or trustee for any obligations incurred and contracts assumed or entered into by him; and

(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 527 of this title and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purpose of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors; but if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title, shall not be allowed in the reinstated bankruptcy proceeding.

**(b) Executory contracts; rejection**

Any contract which is entered into or assumed by a debtor in possession, receiver, or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

**(c) Filing of claims**

Upon the filing of the schedule and statement required by subdivision (a) of this section, the court shall make an order directing the claims against the debtor in possession, receiver, or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision (a) of this section and claims arising from rejection of executory contracts under subdivision (b) of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession, receiver, or trustee shall be proved and filed in the manner provided in section 93 of this title.

**(d) Disallowance of untimely claims; surplus**

Claims directed to be filed under subdivision (c) of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession, receiver, or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision (c) and claims not allowable under paragraph (4) of subdivision (a) of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case.

(July 1, 1898, ch. 541, § 238, as added June 22, 1938, ch. 575, § 1, 52 Stat. 899, and amended, July 7, 1952, ch. 579, § 27, 66 Stat. 431; Nov. 28, 1967, Pub. L. 90-157, § 2, 81 Stat. 512.)

CODIFICATION

Somewhat similar provisions were contained in former section 207(c)(8) and (k) of this title.

AMENDMENTS

1967—Subd. (a). Pub. L. 90-157 designated existing provisions as subd. (a), provided for election of trustees in par. (2), added par. (3), redesignated former par. (3) as (4), inserted therein the phrase "except as otherwise provided in this section," and deleted "and owing to" preceding "the United States".

Subds. (b) to (d). Pub. L. 90-157 added subds. (b) to (d).

1952—Par. (3). Act July 7, 1952, permitted claims to be filed within six months rather than three months when bankruptcy ensues upon the failure of the plan and to make claims for taxes receive parallel treatment.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 104 of this title.

## SUBCHAPTER XIII—COMPENSATION AND ALLOWANCES

CROSS REFERENCES

Confirmation of plan, reasonableness of allowances as prerequisite, see section 621 of this title.

Plan, provisions for payment of compensation and allowances, see section 616 of this title.

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 659 of this title.

### § 641. Petitioning creditors; court officers; attorneys therefor

The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by a special master;

(3) by the trustee and other officers, and the attorneys for any of them;

(4) by the attorney for the debtor; and

(5) by the attorney for the petitioning creditors.

Such compensation of referees and trustees shall not be governed by sections 68 and 76 of this title.

(July 1, 1898, ch. 541, § 241, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CODIFICATION

This section was from part of clause (9) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 642. Representatives and other parties in interest; attorneys therefor

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or not accepted by creditors and stockholders or finally confirmed by the judge—

(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders;

(2) by any other parties in interest except the Securities and Exchange Commission; and

(3) by the attorneys or agents for any of the foregoing except the Securities and Exchange Commission.

(July 1, 1898, ch. 541, § 242, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CODIFICATION

This section was from part of clause (9) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

### § 643. Creditors and stockholders; attorneys therefor

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto.

(July 1, 1898 ch. 541, § 243, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CODIFICATION

This section was from part of clause (9) of the first sentence of former section 207(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 644. Petition filed in pending bankruptcy proceeding

Where a petition is filed under section 527 of this title, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in the pending bankruptcy proceeding—

(1) by a marshal, receiver, or trustee, as provided in subdivision (g) of section 76 of this title, and the attorneys for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this title to compensation or reimbursement in such bankruptcy proceeding.

(July 1, 1898, ch. 541, § 244, as added June 22, 1938, ch. 575, § 1, 52 Stat. 900.)

CODIFICATION

Provisions on this subject were contained in former section 207(i) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

**§ 645. Compensation and costs of referee in bankruptcy**

Where a petition is filed in a pending bankruptcy proceeding, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 68 of this title.

(July 1, 1898, ch. 541, § 245, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CODIFICATION

Provisions on this subject were contained in former section 207(i) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Prior proceedings, allowance of costs and expenses in, see section 658 of this title.

**§ 646. Dismissal of proceeding or adjudication of bankruptcy**

Upon the dismissal of a proceeding under this chapter, or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof, and for the payment of all proper costs and expenses incurred by officers in such proceedings.

(July 1, 1898, ch. 541, § 246, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

CODIFICATION

Provisions on this subject were contained in former section 207(i) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Dismissal of proceeding and reinstatement of bankruptcy, see section 648 of this title.

**§ 647. Hearing of applications**

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate, except that notice need not be given to any class of creditors or stockholders which does not participate under the plan as confirmed by the court from which no appeal is pending and the time allowed for appeal has expired. In the case of allowances for services and reimbursement in a superseded bankruptcy proceeding, notice need be given only to the applicants, the debtor, the trustee, and the unsecured creditors, and may be given to such other classes of creditors or other persons as the judge may designate. In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that bankruptcy be proceeded with, notice of the hearing to consider allowances need not be given to stockholders.

(July 1, 1898, ch. 541, § 247, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901, and amended Sept. 25, 1962, Pub. L. 87-681, § 13, 76 Stat. 574.)

CODIFICATION

This section was from former section 207(c)(7) of this title.

AMENDMENTS

1962—Pub. L. 87-681 provided that notice need not be given to any class of creditors or stockholders which does not participate under the plan as confirmed by the court from which no appeal is pending and the time allowed for appeal has expired.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

**§ 648. Dismissal of proceeding and reinstatement of bankruptcy; charging of allowances in bankruptcy**

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, receiver, or trustee in the bankruptcy proceeding for services rendered by them in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this title fixing their compensation in a bankruptcy proceeding.

(July 1, 1898, ch. 541, § 248, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Dismissal of proceeding or adjudication of bankruptcy, see section 646 of this title.

**§ 649. Statement of claims or stock acquired or transferred after commencement of proceeding**

Any persons seeking compensation for services rendered or reimbursement for costs and expenses incurred in a proceeding under this chapter shall file with the court a statement under oath showing the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the commencement of such proceeding. No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred.

(July 1, 1898, ch. 541, § 249, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 650. Appeals**

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

(July 1, 1898, ch. 541, § 250, as added June 22, 1938, ch. 575, § 1, 52 Stat. 901, and amended June 25, 1948, ch. 646, § 32 (a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CODIFICATION

This section was from part of clause (9) of the first sentence of former section 207(c) of this title.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Appeals generally, see section 521 of this title.

## SUBCHAPTER XIV—PRIOR PROCEEDINGS

**§ 656. Right to petition for reorganization during pendency of prior proceedings**

A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made.

(July 1, 1898, ch. 541, § 256, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 8 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Bankruptcy pending, filing petition, see section 527 of this title.

**§ 657. Trustee or debtor in possession vested with rights of prior fiduciary**

The trustee appointed under this chapter, upon his qualification, or if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage.

(Juiy 1, 1898, ch. 541, § 257, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CODIFICATION

This section was from part of the first sentence of former section 207(i) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 658. Protection of obligations of prior fiduciary; payment of costs and expenses**

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable costs and expenses incurred therein as may be allowed by the judge.

(July 1, 1898, ch. 541, § 258, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CODIFICATION

This section was from part of former section 207(i) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Bankruptcy, compensation, and expenses incurred in pending bankruptcy proceedings, see sections 644 and 645 of this title.

**§ 659. Reinstatement of prior proceeding on dismissal of reorganization; reorganization allowances and obligations**

Upon a dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated, and the judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in subchapter XIII of this chapter, and shall make appropriate provision for the retransfer of such property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by the trustee or debtor in possession, and for the payment of the costs and expenses of the proceedings.

(July 1, 1898, ch. 541, § 259, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CODIFICATION

This section was from part of the second sentence of former section 207(i) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 637 of this title.

## SUBCHAPTER XV—GENERAL PROVISIONS

**§ 661. Suspension of statutes of limitation, etc.**

All statutes of limitation affecting claims and interests provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences, and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed.

(July 1, 1898, ch. 541, § 261, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CODIFICATION

This section was from the last sentence of former section 207(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 662. Petition as act of bankruptcy if dismissed**

If a proceeding under this chapter shall be dismissed, the filing of the petition shall not constitute an act of bankruptcy by the debtor.

(July 1, 1898 ch. 541, § 262, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CODIFICATION

This section was from part of former section 207(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 663. Inapplicability to National Housing Act insured mortgage**

Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any corporation under a mortgage insured pursuant to the National Housing Act [12 U.S.C. 1701 et seq.] and Acts amendatory thereof and supplementary thereto. Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any corporation under a mortgage insured pursuant to title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.].

(July 1, 1898, ch. 541, § 263, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902, and amended Nov. 3, 1966, Pub. L. 89-754, title V, § 504(c), 80 Stat. 1278.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see References in Text note set out under section 1701 of Title 12 and Tables volume.

Title XI of the National Housing Act, referred to in text is classified to subchapter IX-B (§ 1749aaa et seq.) of chapter 13 of Title 12, Banks and Banking.

CODIFICATION

This section was from part of former section 207(n) of this title.

AMENDMENTS

1966—Pub. L. 89-754 provided for inapplication of chapter to creditors of corporation under a mortgage insured pursuant to provisions relating to mortgage insurance for group practice facilities.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 664. Unregistered securities; use of mails and interstate commerce**

(a) The provisions of section 77e of title 15 shall not apply to—

(1) any security issued by the receiver, trustee, or debtor in possession pursuant to paragraph (2) of section 516 of this title; or

(2) any transaction in any security issued pursuant to a plan in exchange for securities of or claims against the debtor or partly in such exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (a) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the plan, and (b) transactions by a dealer as to securities constituting the whole or a part of an unsold al-

lotment to or subscription by such dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the plan.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of title 15.

(July 1, 1898, ch. 541, § 264, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

CODIFICATION

Definition of "Securities Act of 1933" has been omitted at the end of subd. (b) of this section as unnecessary in view of translations in text to Title 15, Commerce and Trade.

Provisions on this subject were contained in the last sentence of former section 207(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Definitions generally, see section 506 et seq. of this title.

### § 665. Securities and Exchange Commission; notices, information and assistants

(a) In addition to the notices elsewhere expressly provided the Securities and Exchange Commission shall be given notice of all other steps taken in connection with a proceeding under this chapter. Any notice which this chapter requires to be given to the Securities and Exchange Commission shall be deemed to have been sufficiently given if it is given by registered first-class mail, postage prepaid, addressed to the Securities and Exchange Commission at Washington, District of Columbia, or at such other place as the Securities and Exchange Commission shall designate by written notice filed in the proceeding and served upon the parties thereto. The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Securities and Exchange Commission copies of (1) every petition filed under this chapter; (2) the answers thereto, if any; (3) the orders approving or dismissing petitions; (4) the orders appointing trustees or continuing debtors in possession; (5) the orders determining the time within which the claims of creditors may be filed and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and stock; (6) copies of [1] plans, alterations or modifications in plans, and any notices of hearings on the plans, alterations, or modifications; (7) the orders approving any plan or plans or alterations or modifications in plans; (8) the orders confirming plans, together with copies of such plans; (9) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; (10) the orders adjudging debtors to be solvent or insolvent; (11) the orders directing that bankruptcy be proceeded with, or adjudging the debtors bankrupt and directing that bankruptcy be proceeded with, or dismissing proceedings; (12) and such other papers filed in the proceedings as the Securities and Exchange Commission may request or which the court may direct be transmitted to it. Copies of the opinions or reports, if any, of the judge, referee, or special master, with respect to the matters enumerated, shall also be transmitted to the Securities and Exchange Commission.

(b) The provisions of section 78d(b) of title 15 shall be applicable with respect to the power of the Securities and Exchange Commission to appoint and fix the compensation of such officers, attorneys, examiners, and other experts, and such other officers and employees, as may be necessary for carrying out its functions under this chapter.

(July 1, 1898, ch. 541, § 265, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903, and amended July 7, 1952, ch. 579, § 28, 66 Stat. 431; Sept. 25, 1962, Pub. L. 87-681, §§ 14, 15, 76 Stat. 574.)

AMENDMENTS

1962—Subd. (a)(6). Pub. L. 87-681, § 14, incorporated the provision of former cl. (7) respecting alteration or modification in plans and provided for notices of hearings on the plans, alterations, or modifications.

Subd. (a)(7). Pub. L. 87-681, § 15, incorporated the provision of former cl. (6) respecting orders approving any plan or plans and eliminated provision for copies of alterations or modifications, now incorporated in cl. (6).

1952—Subd. (a)(11). Act July 7, 1952, made it clear that the "order" either directs reinstatement of a suspended bankruptcy proceeding or an adjudication in bankruptcy or a dismissal of proceeding in the case of an original petition.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 666 of this title.

### § 666. Secretary of Treasury; notices and information to

In addition to the notices elsewhere expressly provided, the clerk and, in the case of a reference, the referee, after such reference, shall forthwith transmit to the Secretary of the Treasury copies of all petitions, answers, orders, and applications, as more specifically enumerated in section 665 of this title, and copies of such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct be transmitted to him. Copies of the opinions or reports, if any, of the judge, referee, or special master, with respect to the matters so enumerated, shall also be transmitted to the Secretary of the Treasury. Any order fixing the time for

[1] So in original.

confirming a plan which affects claims or stock of the United States shall include a notice to the Secretary of the Treasury of not less than thirty days.

(July 1, 1898, ch. 541, § 266, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 667. Taxes; exemption from stamp taxes**

The issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer under any plan confirmed under this chapter, shall be exempt from any stamp taxes now or hereafter imposed under the laws of the United States or of any State.

(July 1, 1898, ch. 541, § 267, as added June 22, 1938, ch. 575, § 1, 52 Stat. 903.)

CODIFICATION

This section was from the last sentence of former section 207(f) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Exemption from taxation of securities issued, transferred, or exchanged pursuant to reorganization plan, see section 4382 of Title 26, Internal Revenue Code.

**§ 668. Income or profit from modification of indebtedness**

Except as provided in section 670 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in a plan under this chapter, or by a corporation organized or made use of for effectuating a plan under this chapter by reason of a modification in or cancellation in whole or in part of any of the indebtedness of the debtor in a proceeding under this chapter.

(July 1, 1898, ch. 541, § 268, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676 of this title.

**§ 669. Plan to avoid taxes; objection to confirmation**

Where it appears that a plan has for one of its principal purposes the avoidance of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury, or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the plan, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the plan.

(July 1, 1898, ch. 541, § 269, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 676 of this title.

**§ 670. Income tax property basis adjustment**

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the plan. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section.

(July 1, 1898, ch. 541, § 270, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904, and amended July 1, 1940, ch. 500, § 1, 54 Stat. 709.)

AMENDMENTS

1940—Act July 1, 1940, added "but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the plan" to the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of the Securities and Exchange Commission, see note under section 561 of this title.

CROSS REFERENCES

Application of this section to plans confirmed under former section 207 of this title, see section 676 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 668, 676 of this title; title 26 sections 372, 374, 1018, 1024.

### § 671. Assessment and payment or acceptance of plan as to taxes

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter and have not been assessed prior to the date of the confirmation of a plan under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from and shall be paid by the debtor or the corporation organized or made use of for effectuating a plan under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any plan dealing with the assumption, settlement, or payment of any such tax.

(July 1, 1898, ch. 541, § 271, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 672. Lahor and company unions; right to organize or join

The right of employees or of persons seeking employment on the property of a debtor under the jurisdiction of the court to join a labor organization of their choice, or to refuse to join or remain members of a company union, shall be free from interference, restraint, or coercion by the court, a debtor, or trustee. It shall be the duty of a debtor or trustee to report to the judge any agreement restricting or interfering with such right, and the judge shall thereupon enter an appropriate order for the termination of such agreement and for notice to the employees that the same is no longer binding upon them. No funds of the estate shall be used by a debtor or a trustee for the purpose of maintaining company unions.

(July 1, 1898, ch. 541, § 272, as added June 22, 1938, ch. 575, § 1, 52 Stat. 904.)

CODIFICATION

This section was from subds. (*l*) and (m) of former section 207 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Hearing on soundness of plan, right of labor union, see section 606 of this title.

National Labor Relations Act to prevail over provisions of this section, see section 165 of Title 29, Labor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 165.

## SUBCHAPTER XVI—WHEN CHAPTER TAKES EFFECT

### § 676. Proceedings to which chapter applies

(a) This chapter shall apply to debtors by whom or against whom petitions are filed on and after the effective date of this amendatory Act and to the creditors and stockholders thereof, whether their rights, claims, or interests of any nature whatsoever have been acquired or created before or after such date;

(b) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on such date, and a petition may be filed under this chapter notwithstanding the pendency on such date of a proceeding in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment application has been made in a court of the United States or of any State;

(c) the provisions of sections 206 and 207 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act, except that—

(1) if the petition in such proceedings was approved within three months prior to the effective date of this amendatory Act, the provisions of this chapter shall apply in their entirety to such proceedings; and

(2) if the petition in such proceedings was approved more than three months before the effective date of this amendatory Act, the provisions of this chapter shall apply to such proceedings to the extent that the judge shall deem their application practicable; and

(3) sections 668 and 670 of this title shall apply to any plan confirmed under section 207 of this title before the effective date of this amendatory Act and to any plan which may be confirmed under section 207 of this title on and after such effective date, except that the exemption provided by section 668 of this title may be disallowed if it shall be made to appear that any such plan had for one of its principal purposes the avoidance of income taxes, and except further that where such plan has not been confirmed on and after such effective date, section 669 of this title shall apply where practicable and expedient.

(July 1, 1898, ch. 541, § 276, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

REFERENCES IN TEXT

Sections 206 and 207 of this title, referred to in subd. (c), have been omitted. See Codification notes under those sections.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

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CODIFICATION

Sections 30, 31, 201, 202, 206, and 207 of this title were amended and incorporated as this chapter and chapters 10, 12, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 68, 530, 546, 547 of this title.

## SUBCHAPTER 1—CONSTRUCTION

### § 701. Exclusive application of chapter

The provisions of this chapter shall apply exclusively to proceedings under this chapter.

(July 1, 1898, ch. 541, § 301, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 702. Application of other provisions**

The provisions of chapters 1 to 7 of this title shall, insofar as they are not inconsistent with or in conflict with the provisions of this chapter, apply in proceedings under this chapter. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 722 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 721 or 722 of this title except where an adjudication had previously been entered.

(July 1, 1898, ch. 541, § 302, as added June 22, 1938, ch. 575, § 1, 52 Stat. 905.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER II—DEFINITIONS

**§ 706. In general**

For the purposes of this chapter, unless inconsistent with the context—

(1) "arrangement" shall mean any plan of a debtor for the settlement, satisfaction, or extension of the time of payment of his unsecured debts, upon any terms;

(2) "consideration" shall include evidences of indebtedness, either secured or unsecured, stock and certificates of beneficial interest therein, and certificates of beneficial interest in property;

(3) "debtor" shall mean a person who could become a bankrupt under section 22 of this title and who files a petition under this chapter;

(4) "executory contracts" shall include unexpired leases of real property; and

(5) "petition" shall mean a petition filed under this chapter by a debtor proposing an arrangement.

(July 1, 1898, ch. 541, § 306, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CODIFICATION

Paragraph (3) was from fifth sentence of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 707. Creditors; debts; claims**

Unless inconsistent with the context and for the purposes of an arrangement providing for an extension of time for payment of debts in full and applicable exclusively to the debts to be extended—

(1) "creditors" shall include the holders of all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent; and

(2) "debts" or "claims" shall include all unsecured debts, demands, or claims of whatever character against a debtor, whether or not provable as debts under section 103 of this title and whether liquidated or unliquidated, fixed or contingent.

(July 1, 1898, ch. 541, § 307, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CODIFICATION

Par. (1) was from sixth sentence of former section 202(a) of this title.

Par. (2) was from second sentence of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 708. Creditors affected by arrangement; determination**

A creditor shall be deemed to be "affected" by an arrangement only if his interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor is so affected.

(July 1, 1898, ch. 541, § 308, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER III—JURISDICTION, POWERS, AND DUTIES OF THE COURT

**§ 711. Exclusive jurisdiction of debtor and property**

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located.

(July 1, 1898, ch. 541, § 311, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CODIFICATION

This section was from first sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 712. Jurisdiction, powers, and duties**

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed; or

(2) where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 312, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CODIFICATION

This section was from second sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 713. Additional jurisdiction, powers, and duties**

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties conferred and imposed upon it by this chapter—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) upon such notice as the court may prescribe and upon cause shown, authorize the receiver or trustee, or the debtor in possession, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the court may approve;

(3) whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time.

(July 1, 1898, ch. 541, § 313, as added June 22, 1938, ch. 575, § 1, 52 Stat. 906.)

CODIFICATION

Par. (3) was from last sentence of former section 202 (d) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 714. Stay of actions**

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor.

(July 1, 1898, ch. 541, § 314, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CODIFICATION

This section was from former section 202(n) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 715. Notices**

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter.

(July 1, 1898, ch. 541, § 315, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 716. Appellate jurisdiction**

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

(July 1, 1898, ch. 541, § 316, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CODIFICATION

This section was from second sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER IV—PETITION AND STAY

**§ 721. Filing petition; pending bankruptcy proceeding**

A debtor may file a petition under this chapter in a pending bankruptcy proceeding either before or after his adjudication.

(July 1, 1898, ch. 541, § 321, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CODIFICATION

This section was from first sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 712, 725, 741, 752, 776, 777, 778, 786, 794 of this title.

### § 722. Filing of original petition

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication.

(July 1, 1898, ch. 541, § 322, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CODIFICATION

This section was from first sentence of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Amendment of petition in corporate reorganization proceeding to comply with requirements of this chapter, see section 547 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 712, 726, 741, 752, 776, 777, 778, 780, 786, 794 of this title.

### § 723. Contents of petition

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature, and shall set forth the provisions of the arrangement proposed by him, or, that he intends to propose an arrangement pursuant to the provisions of this chapter.

(July 1, 1898, ch. 541, § 323, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907, and amended Aug. 23, 1958, Pub. L. 85-732, § 1, 72 Stat. 820.)

CODIFICATION

This section was from first sentence of former section 202(a) of this title.

AMENDMENTS

1958—Pub. L. 85-732 added "or, that he intends to propose an arrangement pursuant to the provisions of this chapter".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 724. Statements and fees accompanying petition

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statements of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) payment to the clerk of the fees, if not already paid, required by this title.

(July 1, 1898, ch. 541, § 324, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907, and amended July 7, 1952, ch. 579, § 29, 66 Stat. 432.)

CODIFICATION

Former par. (2) was from first sentence of former section 202(a) of this title.

AMENDMENTS

1952—Act July 7, 1952, incorporated former pars. (1) and (2) into par. (1), added a proviso, and renumbered former par. (3) to be par. (2).

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 776 of this title.

### § 725. Petition in pending bankruptcy proceedings as stay

A petition filed under section 721 of this title shall not act as a stay of adjudication or of the administration of the estate, but the court may, upon application of the debtor and upon notice to all parties in interest, including the creditors' committee and the receiver or trustee, if any such has been appointed, grant a stay of adjudication or of the administration of the estate upon such terms as may be proper for the protection of the estate and for indemnity against loss thereto or diminution thereof.

(July 1, 1898, ch. 541, § 325, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CODIFICATION

This section was from fourth sentence of former section 202(a) of this title and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 726. Bond of debtor in original petition

Where a petition is filed under section 722 of this title, the court may, upon hearing and after notice to the debtor and to such other persons as the court may direct, order the debtor to file a bond or undertaking, with such sureties as may be approved by the court and in such amount as the court may fix, to indemnify the estate against subsequent loss thereto or diminution thereof until, in the event of the entry of an order of adjudication under this chapter, the entry of such order.

(July 1, 1898, ch. 541, § 326, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CODIFICATION

This section was from fourth sentence of former section 202(a) of this title and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 727 of this title.

**§ 727. Failure to file bond**

Upon failure of the debtor to comply with such order for indemnity, as prescribed in section 726 of this title, the court may, after hearing upon notice to the debtor, the creditors' committee, if any has been appointed, and to such other persons as the court may direct, either adjudge the debtor a bankrupt and direct that bankruptcy by proceeded with pursuant to the provisions of this title or dismiss the proceedings under this chapter, as in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 327, as added June 22, 1938, ch. 575, § 1, 52 Stat. 907.)

CODIFICATION

This section was from first sentence of former section 202(*l*) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 728. Dismissal proceedings; amended petition**

The judge may, upon application of the Securities and Exchange Commission or any party in interest, and upon such notice to the debtor, to the Securities and Exchange Commission, and to such other persons as the judge may direct, if he finds that the proceedings should have been brought under chapter 10 of this title, enter an order dismissing the proceedings under this chapter, unless within such time as the judge shall fix, the petition be amended to comply with the requirement of chapter 10 of this title for the filing of a debtor's petition or a creditors' petition under such chapter, [1] be filed. Upon the filing of such amended petition, or of such creditors' petition, and the payment of such additional fees as may be required to comply with section 532 of this title, such amended petition or creditors' petition shall thereafter, for all purposes of chapter 10 be deemed to have been originally filed under such chapter.

(July 1, 1898, ch. 541, § 328, as added July 7, 1952, ch. 579, § 30, 66 Stat. 432.)

EFFECTIVE DATE

Act July 7, 1952, effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

[1] So in original. Comma probably should be deleted.

TRANSFER OF FUNCTIONS

All executive and administrative functions of the Securities and Exchange Commission were, with certain exceptions, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction by Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out in the Appendix to Title 5, Government Organization and Employees.

## SUBCHAPTER V—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

**§ 731. Reference to referee**

The clerk shall, unless the judge or judges direct otherwise, refer the proceeding to a referee.

(July 1, 1898, ch. 541, § 331, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85-732, § 2, 72 Stat. 820; June 23, 1959, Pub. L. 86-64, § 4, 73 Stat. 109.)

CODIFICATION

This section was from former section 202(*o*) of this title.

AMENDMENTS

1959—Pub. L. 86-64 substituted provisions requiring the clerk, unless the judge or judges direct otherwise, to refer the proceeding to a referee for provisions which permitted the judge at any stage of the proceeding to refer it to a referee either generally or specially, and which required the clerk to refer the case if the judge or judges were absent at the time of the filing of the petition from the district or the division in which the petition was filed.

1958—Pub. L. 85-732 authorized the judge to refer the proceeding generally or specially and required the clerk forthwith to refer the case in absence of judges.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 732. Appointment of receiver or continuance of trustee in possession**

The court may, upon the application of any party in interest, appoint, if necessary, a receiver of the property of the debtor, or, if a trustee in bankruptcy has previously been appointed shall continue such trustee in possession.

(July 1, 1898, ch. 541, § 332, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CODIFICATION

This section was from former section 202(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 733. Appointment of appraisers**

The court may, upon the application of the receiver, trustee, or any party in interest, appoint, if not previously appointed, one or more appraisers who shall prepare and file under oath an inventory and appraisal of the proper-

ty of the debtor, and may prescribe how such inventory and appraisal shall be made.

(July 1, 1898, ch. 541, § 333, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908.)

CODIFICATION

Provisions on this subject matter were contained in former section 202 (b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 734. Meeting of creditors; time**

Not less than twenty-five nor more than forty days after the petition is filed the court shall hold a first meeting of creditors.

(July 1, 1898, ch. 541, § 334, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85-732, § 3, 72 Stat. 820; Nov. 13, 1963, Pub. L. 88-175, § 1, 77 Stat. 330; Nov. 28, 1967, Pub. L. 90-156, § 1, 81 Stat. 510.)

CODIFICATION

This section was from first sentence of former section 202(c) of this title and second sentence of former section 30(a) of this title.

AMENDMENTS

1967—Pub. L. 90-156 substituted provisions requiring the court to hold a first meeting of creditors not less than twenty-five nor more than forty days after the petition is filed for provisions that required notice by mail to be given within ten days after the petition is filed to the debtors, the creditors, and other parties in interest of the first meeting of creditors to be held not less than 15 nor more than 30 days after the date of the mailing of such notice, and the requirement that the last date for filing claims be set forth in such notice.

1963—Pub. L. 88-175 inserted "first" preceding "meeting of creditors" and required the last date for filing claims to be set forth in the notice.

1958—Pub. L. 85-732 substituted requirement that notice be given within ten days after filing of petition for a meeting to be held not less than fifteen nor more than thirty days after date of mailing the notice for requirement that first meeting of creditors be called promptly upon ten days' notice by mail.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 735. Contents of notice of creditors meeting and accompanying information**

(1) The notice of such meeting of creditors shall be accompanied by a copy of the proposed arrangement, if filed, a summary of the liabilities and a summary of the appraisal, if one has been made, or, if not made, a summary of the assets.

(2) If the notice of such meeting is not accompanied by a copy of the proposed arrangement, the court, at such meeting, shall fix a time within which the proposed arrangement shall be filed and shall adjourn the meeting for at least fifteen days after the date so fixed, or, if the proposed arrangement is filed at or before such meeting, shall adjourn the meeting for at least fifteen days. At least ten days before such adjourned date, the court shall mail notice of the adjourned meeting, together with a copy of the proposed arrangement, to the creditors and other parties in interest.

(3) The notice of such meeting of creditors as hereinbefore provided may also name the time for the filing of the application to confirm the arrangement and the time for the hearing of the confirmation and of such objections as may be made to the confirmation.

(July 1, 1898, ch. 541, § 335, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85-732, § 4, 72 Stat. 820.)

CODIFICATION

This section was from first sentence of former section 202(c) of this title and from former section 30(a) of this title.

AMENDMENT

1958—Pub. L. 85-732 designated existing provisions as subdivisions (1) and (3) and added subd. (2).

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 736. Conduct and business at creditors meeting**

At such meeting, or at any adjournment thereof, the judge or referee—

(1) shall preside;

(2) may receive proofs of claim and allow or disallow them;

(3) shall examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding; and

(4) shall receive and determine the written acceptances of creditors on the proposed arrangement, if a copy thereof shall have accompanied the notice of such meeting or adjourned meeting. Such acceptances may be obtained by the debtor before or after the filing of a petition under this chapter.

(July 1, 1898, ch. 541, § 336, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended Aug. 23, 1958, Pub. L. 85-732, § 5, 72 Stat. 820).

CODIFICATION

Par. (1) was from second sentence of former section 30(a) of this title.

Par. (3) was from first sentence of former section 202(d) of this title and second sentence of former section 30(a) of this title.

AMENDMENTS

1958—Par. (4). Pub. L. 85-732 inserted the words "if a copy thereof shall have accompanied the notice of such meeting or adjourned meeting".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 761 of this title.

**§ 737. Conduct and business at creditors meeting after acceptance of arrangement**

At such meeting, or at any adjournment thereof, the judge or referee shall, after the acceptance of the arrangement—

(1) designate the receiver or trustee, if any, or the debtor or a person specially appointed as disbursing agent to distribute, subject to the control of the court, the consideration, if any, to be deposited by the debtor; and, if a disbursing agent is so appointed, require such person to give bond with a surety to be approved by the court in such amount as the court shall fix, and fix the amount or rate of his compensation, not in excess of the compensation allowable to a receiver serving as a mere custodian under this title;

(2) fix a time within which the debtor shall deposit, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to the creditors, the money necessary to pay all debts which have priority, unless such priority creditors shall have waived their claims on such deposit, or consented in writing to any provision of the arrangement for otherwise dealing with such claims, and the money necessary to pay the costs and expenses of the proceeding; and

(3) fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof or any objections to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it.

(July 1, 1898, ch. 541, § 337, as added June 22, 1938, ch. 575, § 1, 52 Stat. 908, and amended July 7, 1952, ch. 579, § 31, 66 Stat. 432; Aug. 23, 1958, Pub. L. 85-732, § 6, 72 Stat. 821; Nov. 28, 1967, Pub. L. 90-158, § 1, 81 Stat. 516.)

CODIFICATION

Par. (1) was from former section 202(b) of this title.

Par. (2) was from second clause of first sentence of former section 202(e) of this title.

Par. (3) was from former section 202(f) of this title and former section 30(c) of this title.

AMENDMENTS

1967—Pub. L. 90-158 provided for the designation of the debtor or a specially appointed disbursing agent to distribute the consideration deposited by the debtor, required the disbursing agent to give bond with a surety, fixed the compensation of the designated individual, and eliminated the requirement that the debtor deposit the actual and necessary expenses, including fees and expenses of attorneys, accountants and agents, in such amounts as the court may allow.

1958—Par. (2). Pub. L. 85-732 included in the expenses of the proceedings, fees and expenses of attorneys, accountants and agents of a creditors' committee.

1952—Par. (2). Act July 7, 1952 substituted "in such amount as the court may allow, incurred after its appointment by a committee appointed pursuant to section 738 of this title, or incurred before or after the filing of the petition under this chapter by a committee designated in writings filed with the court and signed and acknowledged by a majority in amount of unsecured creditors whose claims have been scheduled otherwise than as contingent, unliquidated or disputed and who would not be disqualified by section 72 of this title to participate in the appointment of a trustee: *Provided, however,* That in fixing any such allowances the court shall give consideration only to the services which contributed to the arrangement confirmed or to the refusal of confirmation of an arrangement, or which were beneficial in the administration of the estate, and the proper costs and expenses incidental thereto; and" for "incurred in connection with the proceedings and the arrangement by the committee of creditors and the attorneys or agents of such committee, in such amount as the court may allow; and".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 738. Election of creditors' committee; nomination of trustee**

At such meeting, the creditors may elect a committee, if none has previously been elected under this title, and, if a trustee has not previously been elected or appointed, may nominate a trustee who shall thereafter qualify in case it shall become necessary to administer the estate in bankruptcy as provided under this chapter.

(July 1, 1898, ch. 541, § 338, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909, and amended July 7, 1952, ch. 579, § 32, 66 Stat. 432; Nov. 28, 1967, Pub. L. 90-158, § 2, 81 Stat. 516.)

CODIFICATION

This section was from second clause of first sentence of former section 202(d) of this title.

AMENDMENTS

1967—Pub. L. 90-158 provided for the election of a committee in place of appointment, and the qualification of a trustee, rather than appointment, subsequent to the nomination of such trustee.

1952—Act July 7, 1952, inserted "designation or" preceding "appointed under this title".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 739 of this title.

**§ 739. Functions and expenses of creditors' committee**

(1) The functions of a committee elected as provided in section 738 of this title may include the following: (a) to examine into the conduct of the debtor's affairs and the causes of his insolvency or inability to pay his debts as they mature; (b) to consider whether the arrangement proposed by the debtor is for the best interests of the creditors and is feasible; (c) to negotiate with the debtor concerning the terms of the proposed arrangement and to advise the creditors of its recommendations with respect thereto; (d) to report to the creditors from time to time concerning the progress of the proceed-

ing; (e) to collect and file with the court acceptance of the arrangement proposed; and (f) to perform such other services as may contribute to the confirmation of the arrangement.

(2) A committee elected as provided in section 738 of this title may employ such agents, attorneys, and accountants as may be necessary to assist in the performance of its functions. Expenses of the committee for such assistance, whether incurred before or after the filing of the petition under this chapter, shall be allowed as an expense of administration to the extent deemed reasonable and necessary by the court, provided the arrangement is confirmed. Such expenses incurred by the committee before its election in accordance with section 738 of this title shall not be disallowed because of a change in the committee's composition, provided a majority of the committee when it incurred the expense continue as members of the elected committee.

(July 1, 1898, ch. 541, § 339, as added Nov. 28, 1967, Pub. L. 90-158, § 3, 81 Stat. 517.)

## SUBCHAPTER VI—TITLE, RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

### § 741. In general

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and, subject to the approval of the court, their fees, and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 722 of this title; as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 341, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CODIFICATION

This section was from last sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 742. Continuance of debtor in possession

Where no receiver or trustee is appointed, the debtor shall continue in possession of his propetry [1] and shall have all the title and exercise all the powers of a trustee appointed under this title, subject, however, at all times to the control of the court and to such limitations, restrictions, terms, and conditions as the court may from time to time prescribe.

(July 1, 1898, ch. 541, § 342, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

[1] So in original.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 743. Operation of business and management of property; reports

The receiver or trustee, or the debtor in possession, shall have the power, upon authorization by and subject to the control of the court, to operate the business and manage the property of the debtor during such period, limited or indefinite, as the court may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate.

(July 1, 1898, ch. 541, § 343, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CODIFICATION

This section was from former section 202(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 744. Issuance of certificates of indebtedness

During the pendency of a proceeding for an arrangement, or after the confirmation of the arrangement where the court has retained jurisdiction, the court may upon cause shown authorize the receiver or trustee, or the debtor in possession, to issue certificates of indebtedness for cash, property, or other consideration approved by the court, upon such terms and conditions and with such security and priority in payment over existing obligations as in the particular case may be equitable.

(July 1, 1898, ch. 541, § 344, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 793 of this title.

## SUBCHAPTER VII—CREDITORS AND CLAIMS

### § 751. Classification of creditors

For the purposes of the arrangement and its acceptance, the court may fix the division of creditors into classes and, in the event of controversy, the court shall after hearing upon notice summarily determine such controversy.

(July 1, 1898, ch. 541, § 351, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 752. Rights, duties, and liabilities of creditors, etc.**

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 721 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 722 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 352, as added June 22, 1938, ch. 575, § 1, 52 Stat. 909.)

CODIFICATION

This section was from last sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 753. Rejection of executory contract or unexpired lease; assignment of future rent claim**

In case an executory contract shall be rejected pursuant to the provisions of an arrangement or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or a receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the arrangement, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided,* That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof.

(July 1, 1898, ch. 541, § 353, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CODIFICATION

This section was from the last two sentences of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

**§ 754. Repealed. July 7, 1952, ch. 579, § 33, 66 Stat. 433**

Section, act July 1, 1898, ch. 541, § 354, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910, related to expiration of time for filing claims in pending bankruptcy.

EFFECTIVE DATE OF REPEAL

Repeal of section effective three months after July 7, 1952, see note under section 1 of this title.

**§ 755. Repealed. Pub. L. 90-157, § 5, Nov. 28, 1967, 81 Stat. 516**

Section, act July 1, 1898, ch. 541, § 354, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910, and amended July 7, 1952, ch. 579, § 34, 66 Stat. 433, provided for allowance of claims upon order to proceed with bankruptcy, and is now covered by section 778(a)(4) of this title.

**§ 755a. Proofs of claim; filing before confirmation; exceptions**

Creditors, including the United States, any State, and any subdivision thereof, shall file their proofs of claim before confirmation except as follows:

(1) if scheduled by the debtor, a claim may be filed within thirty days after the date of mailing notice of confirmation to creditors but shall not be allowed for an amount in excess of that set forth in the debtor's schedules; and

(2) a claim arising from the rejection of an executory contract of the debtor may be filed within such time as the court may direct.

(July 1, 1898, ch. 541, § 355; as added Nov. 13, 1963, Pub. L. 88-175, § 2, 77 Stat. 330, and amended Nov. 28, 1967, Pub. L. 90-156, § 2, 81 Stat. 510.)

AMENDMENTS

1967—Pub. L. 90-156 substituted provisions requiring creditors to file their proofs of claim before confirmation except in enumerated instances for provision making subd. (n) of section 93 of this title applicable when a petition is filed under section 722 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 767, 769 of this title.

## SUBCHAPTER VIII—PROVISIONS OF ARRANGEMENT

**§ 756. Modification of rights of unsecured creditors**

An arrangement within the meaning of this chapter shall include provisions modifying or altering the rights of unsecured creditors generally or of some class of them, upon any terms or for any consideration.

(July 1, 1898, ch. 541, § 356, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CODIFICATION

This section was from first and second sentences of former section 202(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

June 22, 1938, set out as notes under section 1 of this title.

### § 757. Permissive provisions

An arrangement within the meaning of this chapter may include—

(1) provisions for treatment of unsecured debts on a parity one with the other, or for the division of such debts into classes and the treatment thereof in different ways or upon different terms;

(2) provisions for the rejection of any executory contract;

(3) provisions for specific undertakings of the debtor during any period of extension provided for by the arrangement, including provisions for payments on account;

(4) provisions for the termination, under specified conditions, of any period of extension provided by the arrangement;

(5) provisions for continuation of the debtor's business with or without supervision or control by a receiver or by a committee of creditors or otherwise;

(6) provisions for payment of debts incurred after the filing of the petition and during the pendency of the arrangement, in priority over the debts affected by such arrangement;

(7) provisions for retention of jurisdiction by the court until provisions of the arrangement, after its confirmation, have been performed; and

(8) any other appropriate provisions not inconsistent with this chapter.

(July 1, 1898, ch. 541, § 357, as added June 22, 1938, ch. 575, § 1, 52 Stat. 910.)

CODIFICATION

Pars. (3) and (5) were from second sentence of former section 202(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

## SUBCHAPTER IX—CONFIRMATION OF ARRANGEMENT

### § 761. Unanimously accepted arrangement; confirmation upon deposit by debtor

An arrangement which at the meeting of creditors, as provided in section 736 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when the debtor shall have made the deposit required under this chapter and under the arrangement, and if the court is satisfied that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by this title.

(July 1, 1898, ch. 541, § 361, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CODIFICATION

This section in part was from former sections 30(d)(3) and 202(e)(g)(4) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 762. Majority accepted arrangement; application for confirmation

If an arrangement has not been so accepted, an application for the confirmation of the arrangement may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing by a majority in number of all creditors or, if the creditors are divided into classes, by a majority in number of all creditors of each class, affected by the arrangement, whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims generally or of each class of claims, as the case may be; and

(2) the debtor has made the deposit required under this chapter and under the arrangement.

(July 1, 1898, ch. 541, § 362, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

CODIFICATION

This section was from first sentence of former section 202(e) of this title and from former section 30(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 787 of this title.

### § 763. Alterations or modifications prior and subsequent to confirmation

Alterations or modifications of an arrangement may be proposed in writing by a debtor, with leave of court, at any time before the arrangement is confirmed; or where the court has retained jurisdiction pursuant to the provisions of section 768 of this title, an arrangement providing for an extension of time for the payment of debts in whole or in part may be altered or modified after it has been confirmed to the extent and subject to the limitations set forth in section 787 of this title.

(July 1, 1898, ch. 541, § 363, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911, and amended Aug. 23, 1958, Pub. L. 85-732, § 7, 72 Stat. 821.)

AMENDMENTS

1958—Pub. L. 85-732 inserted provision respecting alteration or modification of an arrangement which has been confirmed.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

June 22, 1938, set out as notes under section 1 of this title.

### § 764. Acceptance of altered arrangement

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the arrangement and who fails to file with the court, within such time as shall be fixed in the order, his rejection of the altered or modified arrangement, shall be deemed to have accepted the alteration or modification and the arrangement so altered or modified, unless the previous acceptance provides otherwise.

(July 1, 1898, ch. 541, § 364, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 765. Notice of adjourned or reopened meeting and of proposed alteration

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the debtor, the creditors, and other parties in interest.

(July 1, 1898, ch. 541, § 365, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 766. Requisites for confirmation

The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors and is feasible;

(3) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and

(4) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor, or if the debtor is a corporation, the interests of its stockholders or members will be preserved under the arrangement.

(July 1, 1898, ch. 541, § 366, as added June 22, 1938, ch. 575, § 1, 52 Stat. 911, and amended July 7, 1952, ch. 579, § 35, 66 Stat. 433.)

CODIFICATION

This section was from former sections 30(d) and 202(g) of this title.

AMENDMENTS

1952—Act July 7, 1952, struck out provisions relating to the proposed plan being "fair and equitable" and added the last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 787 of this title.

### § 767. Effect of confirmation

Upon confirmation of an arrangement—

(1) the arrangement and its provisions shall be binding upon the debtor, upon any person issuing securities or acquiring property under the arrangement and upon all creditors of the debtor, whether or not they are affected by the arrangement or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed and are allowable;

(2) the money deposited for priority debts and for the costs and expenses shall be disbursed to the persons entitled thereto;

(3) the consideration deposited, if any, shall be distributed and the rights provided by the arrangement shall inure to the creditors affected by the arrangement, including the United States, any State, and any subdivision thereof, whose claims are filed within the time prescribed by section 755a of this title and are allowed; and

(4) except as otherwise provided in sections 769 and 770 of this title, the case shall be dismissed.

(July 1, 1898, ch. 541, § 367, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 36, 66 Stat. 433; Nov. 13, 1963, Pub. L. 88-175, § 3, 77 Stat. 331; Nov. 28, 1967, Pub. L. 90-156, § 3, 81 Stat. 510.)

CODIFICATION

Par. (1) was from first sentence of former section 202(i) of this title.

Pars. (3) and (4) were from first sentence of former section 202(j) of this title and first sentence of former section 30(e) of this title.

AMENDMENTS

1967—Par. (3). Pub. L. 90-156 substituted ", including the United States, any State, and any subdivision thereof, whose claims are filed within the time prescribed by section 755a of this title and are allowed" for "whose claims (a) have been filed prior to the date of confirmation but within the time prescribed by section 755a of this title and are allowed or (b) have been filed after the date of confirmation but within the time prescribed by section 755a of this title and are allowed".

1963—Par. (3). Pub. L. 88-175 inserted "but within the time prescribed by section 755a of this title" in clause (a), and substituted "have been filed after the date of confirmation but within the time prescribed by section 755a of this title and are allowed" for "whether or not filed have been scheduled by the debtor and

are not contingent, unliquidated, or disputed" in clause (b).

1952—Par. (3). Act July 7, 1952, struck out "are not barred by the provisions of section 754 of this title" following "whose claims", substituted "filed" for "proved" in two places and "are not contingent, unliquidated, or disputed;" for "as fixed liabilities, liquidated in amount, and are not disputed;".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 768. Retention of jurisdiction; provision in arrangement**

The court shall retain jurisdiction, if so provided in the arrangement.

(July 1, 1898, ch. 541, § 368, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

CODIFICATION

This section was from last sentence of former section 202(j) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 763, 787 of this title.

**§ 769. Final allowance or disallowance of debts as termination of jurisdiction**

The court shall in any event retain jurisdiction until the final allowance or disallowance of all claims affected by the arrangement which have been filed within the limitations as to time and amount prescribed by section 755a of this title but have not been allowed or disallowed prior to confirmation.

(July 1, 1898, ch. 541, § 369, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 37, 66 Stat. 433; Nov. 13, 1963, Pub. L. 88-175, § 4, 77 Stat. 331; Nov. 28, 1967, Pub. L. 90-156, § 4, 81 Stat. 510.)

AMENDMENTS

1967—Pub. L. 90-156 substituted the provision that the court shall retain jurisdiction as to claims filed within the limitations as to time and amount prescribed by section 755a of this title but which have not been allowed or disallowed prior to confirmation for the provisions that the court shall retain jurisdiction as to debts affected by the agreement which (1) have been proved, but not allowed or disallowed, prior to the date of confirmation; or (2) are disputed or unliquidated, have been scheduled by the debtor, and are filed within the time prescribed by section 755a of this title; or (3) arise from the rejection of executory contracts by the debtor and are filed within the time prescribed by section 755a of this title.

1963—Par. 2, Pub. L. 88-175 substituted "filed within the time prescribed by section 755a of this title" for "proved within such time as the court may direct".

Par. (3). Pub. L. 88-175 substituted "filed within the the time prescribed by section 755a of this title" for "proved within such time as the court may direct".

1952—Act July 7, 1952, amended the first unnumbered paragraph of section by striking out "and not barred by the provisions of section 752 of this title".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 767, 770 of this title.

**§ 770. Allowance of debts; distribution of deposited consideration**

Upon the allowance of any debts specified in paragraphs (1) to (3) of section 769 of this title, the consideration, if any, deposited for them shall be distributed and the rights provided by the arrangement shall inure to the creditors to whom such debts are owing.

(July 1, 1898, ch. 541, § 370, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

REFERENCES IN TEXT

Section 769 of this title, referred to in text, was amended by Pub. L. 90-156, § 4, Nov. 28, 1967, 81 Stat. 510, to remove the paragraph designations.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 767 of this title.

**§ 771. Discharge of unsecured debts upon confirmation**

The confirmation of an arrangement shall discharge a debtor from all his unsecured debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, but excluding such debts as, under section 35 of this title, are not dischargeable.

(July 1, 1898, ch. 541, § 371, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 38, 66 Stat. 433.)

AMENDMENTS

1952—Act July 7, 1952, struck out "including the claims specified in section 754 of this title" following "the arrangement".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

**§ 772. Final decree upon consummation of arrangement**

Upon the consummation of a proceeding under this chapter after confirmation of an arrangement, the court shall enter a final decree discharging the receiver or trustee, if any; closing the estate; and making such provisions, by way of injunction or otherwise, as may be equitable.

(July 1, 1898, ch. 541, § 372, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER X—DISMISSAL AND ADJUDICATION

**§ 776. Abandonment or rejection of arrangement before confirmation**

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 724 of this title, are not duly filed, or if an arrangement is not proposed in the manner and within the time fixed by the court, or if an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—

(1) where the petition was filed under section 721 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 722 of this title, enter an order, upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors: *Provided, however,* That an order adjudging the debtor a bankrupt may be entered without such hearing upon the debtor's consent.

(July 1, 1898, ch. 541, § 376, as added June 22, 1938, ch. 575, § 1, 52 Stat. 912, and amended July 7, 1952, ch. 579, § 39, 66 Stat. 434; Aug. 23, 1958, Pub. L. 85-732, § 8, 72 Stat. 821.)

CODIFICATION

This section was from first and second sentences of former section 202(*l*) of this title and former section 30(e) of this title.

AMENDMENTS

1958—Pub. L. 85-732 inserted "or if an arrangement is not proposed in the manner and within the time fixed by the court" in the opening paragraph, and the proviso clause in par. (2).

1952—Act July 7, 1952, amended section by inserting "If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 724 of this title, are not duly filed or".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 777. Termination or default after confirmation**

Where the court has retained jurisdiction after the confirmation of an arrangement and the debtor defaults in any of the terms thereof or the arrangement terminates by reason of the happening of a condition specified in the arrangement, the court upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct shall—

(1) where the petition has been filed under section 721 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt, if not previously so adjudged, and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 722 of this title, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 377, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CODIFICATION

This section was from first and second sentences of former section 202(*l*) of this title and former section 30(e) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 778. Procedure upon order directing that bankruptcy be proceeded with**

**(a) Reinstatement of bankruptcy proceeding; trustee; filing of separate debt schedule; tax claims; provable claims; date for first meeting of creditors; disallowance of untimely claims**

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 721 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed;

(2) in the case of a petition filed under section 722 of this title, the proceeding shall be conducted, so far as possible, in the same manner and with like effect as if a voluntary

petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed; and the trustee nominated by creditors under this chapter shall be appointed by the court, or, if not so nominated or if the trustee so nominated fails to qualify within five days after notice to him of the entry of such order, a trustee shall be appointed by the court;

(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by him while continued in possession and before the qualification of a receiver, if any, under this title, and if a receiver has qualified or a trustee has been continued in possession, the schedule and statement shall be filed by such receiver or trustee for any obligations incurred and contracts assumed or entered into by him; and

(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition was filed under section 721 of this title and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors; but if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title shall not be allowed in the reinstated bankruptcy proceeding.

**(b) Executory contracts; rejection**

Any contract which is entered into or assumed by a debtor in possession, receiver, or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

**(c) Filing of claims**

Upon the filing of the schedule and statement required by subdivision (a) of this section, the court shall make an order directing the claims against the debtor in possession, receiver, or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision (a) of this section and claims arising from rejection of executory contracts under subdivision (b) of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession, receiver, or trustee shall be proved and filed in the manner provided in section 93 of this title.

**(d) Disallowance of untimely claims; surplus**

Claims directed to be filed under subdivision (c) of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession, receiver, or trustee shall be forever discharged from any liability with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision (c) and claims not allowable under paragraph (4) of subdivision (a) of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly provided, shall be allowed against any surplus remaining in such case.

(July 1, 1898, ch. 541, § 378, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913, and amended Nov. 28, 1967, Pub. L. 90-157, § 3, 81 Stat. 513.)

CODIFICATION

Par. (2) was from first sentence of former section 202(*l*) of this title and second sentence of former section 202(m) of this title.

AMENDMENTS

1967—Subd. (a). Pub. L. 90-157 designated existing provisions as subd. (a), substituted in par. (2) provision for appointment of a trustee by the court for appointment as provided for in section 72 of this title, and added pars. (3) and (4).

Subds. (b) to (d). Pub. L. 90-157 added subds. (b) to (d).

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 104 of this title.

### § 779. Adjudication against wage earner or farmer; consent

No adjudication shall be entered under this chapter against a wage earner or farmer unless such person shall in writing file with the court consent to the adjudication.

(July 1, 1898, ch. 541, § 379, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CODIFICATION

This section was from last sentence of former section 202(*l*) of this title and former section 202(p) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 780. Final decree upon dismissal of original petition**

Upon the dismissal of a proceeding originated by a petition filed under section 722 of this title, the court shall enter a final decree discharging the receiver, if any, and closing the estate.

(July 1, 1898, ch. 541, § 380, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 781. Proceedings after confirmation of arrangement**

Where, after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters 1 to 7 of this title, shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with.

(July 1, 1898, ch. 541, § 381, as added July 7, 1952, ch. 579, § 40, 66 Stat. 434.)

EFFECTIVE DATE

Act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

## SUBCHAPTER XI—ARRANGEMENTS, WHEN SET ASIDE OR MODIFIED

**§ 786. Fraud in procuring arrangement**

If, upon the application of parties in interest filed at any time within six months after an arrangement has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement—

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon, (a) where the petition was filed under section 721 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt, if he has not already been so adjudged, and direct that the bankruptcy proceeding be proceeded with, or (b) where the petition was filed under section 722 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the arrangement for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the arrangement for the purpose of correcting the fraud, but may not materially modify or alter the arrangement adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person, who, for value, subsequent to the confirmation, acquired rights in reliance upon it.

(July 1, 1898, ch. 541, § 386, as added June 22, 1938, ch. 575, § 1, 52 Stat. 913.)

CODIFICATION

This section was from former sections 31 and 202(k) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 787. Alteration or modification of confirmed arrangement; procedure**

Where an arrangement which has been confirmed provides for an extension of time for payment in whole or in part of the debts affected by the arrangement, and the court has retained jurisdiction pursuant to section 768 of this title—

(1) A proposal to alter or modify the arrangement by changing the time of payment of deferred instaliments of the consideration, or by reducing the amount of such payments, or to accomplish both of such alterations or modifications, may be filed by the debtor with leave of court after the arrangement has been confirmed, but before the deferred consideration has been fully paid, or if such deferred consideration is represented by negotiable promissory notes, then before such notes have been delivered to the creditors.

(2) The proposal to alter or modify the arrangement shall set forth the proposed alterations or modifications, shall state whether the deferred payments provided for by the arrangement are evidenced by negotiable promissory notes and, if so, whether such promissory notes have been delivered to the creditors, and the reasons why such alterations or modifications are proposed. The proposal shall be accompanied by a list of the names and addresses of all creditors who have extended credit to the debtor since the arrangement was confirmed.

(3) If the court permits the proposed alterations or modifications to be filed, it shall call a meeting of the creditors on at least ten days' written notice to the debtor, the creditors and other parties in interest, including creditors who extended credit during the proceeding or after the arrangement was confirmed, and shall transmit with such notice a copy of the alterations or modifications proposed.

(4) If at such meeting the arrangement as altered or modified is accepted as required for confirmation by section 762 of this title by the creditors affected by such alteration or modification, the court, subject to the provisions of section 766 of this title, shall confirm the arrangements as altered or modified.

(July 1, 1898, ch. 541, § 387, as added Aug. 23, 1958, Pub. L. 85-732, § 9, 72 Stat. 822.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 763 of this title.

## SUBCHAPTER XII—GENERAL PROVISIONS

### § 791. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed.

(July 1, 1898, ch. 541, § 391, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 792. Notices; manner of giving

Unless otherwise directed by the court, all notices required by this chapter may be given by mail to the parties entitled thereto to their addresses ascertained in the manner prescribed for other notices in section 94 of this title.

(July 1, 1898, ch. 541, § 392, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 793. Unregistered securities; use of mails and interstate commerce

(a) The provisions of section 77e of title 15 shall not apply to—

(1) any security issued by a receiver, trustee, or debtor in possession pursuant to section 744 of this title; or

(2) any transaction in any security issued pursuant to an arrangement in exchange for claims against the debtor or partly in exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (A) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the arrangement, and (B) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by the dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the arrangement.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of title 15.

(July 1, 1898, ch. 541, § 393, as added June 22, 1938, ch. 575, § 1, 52 Stat. 914, and amended Sept. 25, 1962, Pub. L. 87-681, § 16, 76 Stat. 574.)

AMENDMENTS

1962—Subd. (a)(2). Pub. L. 87-681 eliminated "securities of or" following "arrangement in exchange for" and redesignated pars. (a) and (b) as (A) and (B), respectively.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 794. Secretary of Treasury; notices and information to

The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Secretary of the Treasury copies of—

(1) all petitions filed under sections 721 and 722 of this title;

(2) all notices given in a proceeding under this chapter;

(3) all orders dismissing proceedings or directing that bankruptcy be proceeded with, discharging debtors, closing estates, and setting aside confirmations;

(4) all orders appointing receivers or continuing debtors in possession;

(5) all orders confirming arrangements, together with copies of such arrangements;

(6) all orders approving alterations or modifications in arrangements, together with copies of such alterations or modifications;

(7) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; and

(8) such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

Any order fixing the time for confirming an arrangement which affects claims of the United States shall include a notice to the Secretary of the Treasury of not less than fifteen days.

(July 1, 1898, ch. 541, § 394, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 795. Taxes; income or profit from modification of indebtedness

Except as provided in section 796 of this title, no income or profit, taxable under any law of the United States or any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor or a corporation organized or made use of for effectuating an arrangement under this chapter by reason of a modification in or cancellation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however,* That if it shall be made to appear that the arrangement had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed.

(July 1, 1898, ch. 541, § 395, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former sections 30 and 202 of this title, see section 799 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 799 of this title.

### § 796. Income tax; property basis adjustment

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income-tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section.

(July 1, 1898, ch. 541, § 396, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915, and amended July 1, 1940, ch. 500, § 2, 54 Stat. 709.)

AMENDMENTS

1940—Act July 1, 1940, added "but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement" in the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280 set out in the Appendix to Title 5, Government Organization and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former sections 30 and 202 of this title, see section 799 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 795, 799 of this title; title 26 section 1024.

### § 797. Assessment and payment of taxes or acceptance of arrangement by taxing agency

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of an arrangement under this chapter, and all taxes which may become owing to the United States or any State from a receiver or trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from, and shall be paid by the debtor or the corporation organized or made use of for

effectuating an arrangement under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax.

(July 1, 1898, ch. 541, § 397, as added June 22, 1938, ch. 575, § 1, 52 Stat. 915.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER XIII—WHEN CHAPTER TAKES EFFECT

### § 799. Proceedings to which chapter applies

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on the effective date of this amendatory Act;

(3) the provisions of sections 30, 201, and 202 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act; and

(4) sections 795 and 796 of this title shall apply to compositions and extensions confirmed under sections 30 and 202 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under sections 30 and 202 of this title on and after such effective date.

(July 1, 1898, ch. 541, § 399, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

REFERENCES IN TEXT

Sections 30, 201, and 202 of this title, referred to in subds. (3) and (4), were omitted. See codification notes under those sections for distribution of subject matter.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

# CHAPTER 12—REAL PROPERTY ARRANGEMENTS BY PERSONS OTHER THAN CORPORATIONS

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CODIFICATION

Sections 30, 31, 201, 202, 206, and 207 of this title were amended and incorporated as this chapter and chapters 10, 11, 13, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11 of this title.

## SUBCHAPTER I—CONSTRUCTION

### § 801. Exclusive application of chapter

The provisions of this chapter shall apply exclusively to proceedings under this chapter.

(July 1, 1898, ch. 541, § 401, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 802. Application of other provisions

The provisions of chapters 1 to 7 of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply to proceedings under this chapter: *Provided, however,* That subdivision (n) of section 93 of this title shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7 of this title. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors," and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 822 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 821 or 822 of this title.

(July 1, 1898, ch. 541, § 402, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER II—DEFINITIONS

### § 806. In general

For the purposes of this chapter, unless inconsistent with the context—

(1) "arrangement" shall mean any plan which has for its primary purpose the alteration or modification of the rights of creditors or of any class of them, holding debts secured by real property or a chattel real of which the debtor is the legal or equitable owner;

(2) "claims" shall include all claims of whatever character, against a debtor or his property, whether or not such claims are provable under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

(3) "consideration" shall include evidences of indebtedness, either secured or unsecured, stock and certificates of beneficial interest therein, and certificates of beneficial interest in property;

(4) "executory contracts" shall include unexpired leases of real property;

(5) "creditors" shall mean the holders of claims;

(6) "debtor" shall mean a person, other than a corporation as defined in this title, who could become a bankrupt under section 22 of this title, who files a petition under this chapter and who is the legal or equitable owner of real property or a chattel real which is security for any debt, but shall not include a person whose only interest in property proposed to be dealt with by the arrangement is a right to redeem such property from a sale had before the filing of such petition;

(7) "debts" shall include all claims;

(8) "indenture trustee" shall mean a trustee under a mortgage, deed of trust, or indenture, pursuant to which there are securities outstanding, other than voting trust certificates, constituting debts against a debtor or debts secured by a lien upon real property or a chattel real of which such debtor is the legal or equitable owner; and

(9) "petition" shall mean a petition filed under this chapter proposing an arrangement by a debtor.

(July 1, 1898, ch. 541, § 406, as added June 22, 1938, ch. 575, § 1, 52 Stat. 916.)

CODIFICATION

Par. (5) was from sixth sentence of former section 202(a) of this title.

Par. (6) was from fifth sentence of former section 202(a) of this title.

Par. (7) was from second sentence of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 807. Creditors affected by arrangement; determination

Creditors or any class thereof shall be deemed to be "affected" by an arrangement only if their or its interest shall be materially and adversely affected thereby. In the event of controversy, the court shall after hearing upon notice summarily determine whether any creditor or class is so affected.

(July 1, 1898, ch. 541, § 407, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER III—JURISDICTION, POWERS, AND DUTIES OF THE COURT

### § 811. Exclusive jurisdiction of debtor and property

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located.

(July 1, 1898, ch. 541, § 411, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CODIFICATION

This section was from first sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Delivery and accounting for property, see section 11 of this title.

### § 812. Jurisdiction, powers, and duties

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the bankruptcy proceeding at the time the petition under this chapter was filed; and

(2) where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 412, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CODIFICATION

This section was from first sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 813. Additional jurisdiction, powers, and duties

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties conferred and imposed upon it by this chapter—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) upon such notice as the court may prescribe and upon cause shown, authorize the trustee or debtor in possession to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the court may approve;

(3) whenever under this chapter the court is required or permitted to fix a time for any purpose, the court may upon cause shown extend such time.

(July 1, 1898, ch. 541, § 413, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CODIFICATION

This section was from last sentence of former section 202(d) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

### § 814. Stay of actions

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits against a debtor and may, upon notice for cause shown, enjoin or stay until final decree any act or the commencement or continuation

of any proceeding to enforce any lien upon any property of a debtor.

(July 1, 1898, ch. 541, § 414, as added June 22, 1938, ch. 575, § 1, 52 Stat. 917.)

CODIFICATION

This section was from former section 202(n) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Petition as stay, see section 828 of this title.

§ 815. Notices

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter.

(July 1, 1898, ch. 541, § 415, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 816. Appellate jurisdiction**

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

(July 1, 1898, ch. 541, § 416, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section was from second sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER IV—PETITION AND STAY

**§ 821. Filing petition; pending bankruptcy proceeding**

A debtor may file a petition under this chapter in a pending bankruptcy proceeding before his adjudication.

(July 1, 1898, ch. 541, § 421, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section was from first sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 812, 825, 843, 857, 881, 882, 883, 893, 894, 911, 919 of this title.

**§ 822. Filing of original petition.**

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication.

(July 1, 1898, ch. 541, § 422, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section was from first sentence of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 812, 826, 843, 857, 881, 882, 883, 885, 911, 919 of this title.

**§ 823. Contents of petition**

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature, and shall set forth the terms of the arrangement proposed by him.

(July 1, 1898, ch. 541, § 423, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section was from first sentence of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 824. Statements and fees to accompany petition**

The petition shall be accompanied by—

(1) a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statements of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) payment to the clerk of the fees, if not already paid, required by this title.

(July 1, 1898, ch. 541, § 424, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918, and amended July 7, 1952, ch. 579, § 41, 66 Stat. 434.)

CODIFICATION

This section was from first sentence of former section 202(a) of this title.

AMENDMENTS

1952—Act July 7, 1952, incorporated former pars. (1) and (2) into par. (1) and added proviso, renumbered former par. (3) as (2) and substituted "required by this title" for "required to be collected by the clerk under this title".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 881 of this title.

### § 825. Petition in pending bankruptcy proceeding as stay of adjudication or administration

A petition filed under section 821 of this title shall not act as a stay of adjudication or of the administration of the estate, but the court may, upon application of the debtor and upon notice to all parties in interest, including the creditors' committee and the receiver or trustee, if any such has been appointed, grant a stay of adjudication or of the administration of the estate upon such terms as may be proper for the protection of the estate.

(July 1, 1898, ch. 541, § 425, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section was from fourth sentence of former section 202(a) of this title and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 826. Bond of debtor in original petition

Where a petition is filed under section 822 of this title, the court may, upon hearing and after notice to the debtor and to such other persons as the court may direct, order the debtor to file a bond or undertaking, with such sureties as may be approved by the court and in such amount as the court may fix, to indemnify the estate against subsequent loss in the event of the entry of an order of adjudication under this chapter.

(July 1, 1898, ch. 541, § 426, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section was from fourth sentence of former section 202(a) of this title and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 827 of this title.

### § 827. Failure to give bond

Upon failure of the debtor to comply with such order for indemnity, as provided in section 826 of this title, the court may, after hearing upon notice to the debtor, the creditors' committee, if any has been appointed, and to such other persons as the court may direct, either adjudge the debtor a bankrupt and direct that bankruptcy be proceeded with pursuant to the provisions of this title or dismiss the proceedings under this chapter, as in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 427, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section in part was from first sentence of former section 202(*l*) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 828. Petition as stay of actions

Unless and until otherwise ordered by the court, upon hearing and after notice to the debtor and all other parties in interest, the filing of a petition under this chapter shall operate as a stay of any act or proceeding to enforce any lien upon the real property or chattel real of a debtor.

(July 1, 1898, ch. 541, § 428, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Stay of actions generally, see section 814 of this title.

## SUBCHAPTER V—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

### § 831. Reference of proceeding to referee

The judge may refer the proceeding to a referee.

(July 1, 1898, ch. 541, § 431, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

CODIFICATION

This section was from former section 202(o) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 832. Appointment of trustee

The court may, upon the application of any party in interest, appoint a trustee of the property of the debtor.

(July 1, 1898, ch. 541, § 432, as added June 22, 1938, ch. 575, § 1, 52 Stat. 918.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 833. Appointment of appraisers**

The court may, upon the application of the trustee or any party in interest, appoint one or more appraisers who shall prepare and file under oath an inventory and appraisal of the property of the debtor, and may prescribe how such inventory and appraisal shall be made.

(July 1, 1898, ch. 541, § 433, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 834. Meeting of creditors; time; notice**

The court shall promptly call a meeting of creditors, upon at least ten days' notice by mail to the debtor, the creditors, and other parties in interest.

(July 1, 1898, ch. 541, § 434, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CODIFICATION

This section in part was from first sentence of former section 202(c) of this title and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 815 of this title.

**§ 835. Contents of notice of creditors meeting and accompanying information**

The notice of such meeting of creditors shall be accompanied by a copy of the proposed arrangement, a summary of the liabilities as shown by the schedules and a summary of the appraisal, if one has been made, or, if not made, a summary of the assets as shown by the schedules. Such notice may also name the time for the filing of the application to confirm the arrangement and the time for the hearing of the confirmation and of such objections as may be made to the confirmation.

(July 1, 1898, ch. 541, § 435, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CODIFICATION

This section was from first sentence of former section 202(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 836. Conduct and business at creditors meeting**

At such meeting, or at any adjournment thereof, the judge or referee—

(1) shall preside;

(2) may receive proofs of claim and allow or disallow them;

(3) shall examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding; and

(4) shall receive and determine the written acceptances of creditors on a proposed arrangement, which acceptances may be obtained before or after the filing of a petition under this chapter.

(July 1, 1898, ch. 541, § 436, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CODIFICATION

Par. (1) was from second sentence of former section 30(a) of this title.

Par. (3) was from first sentence of former section 202(d) of this title. and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 867 of this title.

**§ 837. Conduct and business at creditors meeting after acceptance of arrangement**

At such meeting, or at any adjournment thereof, the judge or referee shall, after acceptance of the arrangement—

(1) appoint the trustee, if any, or otherwise appoint some other person, to receive and distribute, subject to the control of the court, the moneys and consideration, if any, to be deposited, require such person to give bond with surety to be approved by the court in such amount as the court shall fix and fix the amount or rate of such person's compensation;

(2) fix a time within which there shall be deposited, in such place as shall be designated by and subject to the order of the court, the consideration, if any, to be distributed to creditors, the money necessary to pay the costs, expenses, and compensation allowed by the court, unless and to the extent that such deposit shall be waived by the persons entitled to such costs, expenses, and compensation, and unless and to the extent that the court shall, in its discretion, allow security to be entered or deposited, upon such terms and conditions as the court may prescribe, in lieu of the deposit of such money;

(3) fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof and on any objections to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it.

(July 1, 1898, ch. 541, § 437, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

CODIFICATION

Par. (1) was from former section 202(b) of this title.
Par. (2) was from first sentence of former section 202(e) of this title.
Par. (3) was from former sections 30(c) and 202(f) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER VI—TITLE, RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

### § 841. Trustee; title

A trustee, upon his appointment and qualification, shall be vested with the title of a trustee appointed under section 72 of this title.

(July 1, 1898, ch. 541, § 441, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 842. Trustee's rights, duties, and powers

Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the rights, be subject to the duties, and exercise the powers of a trustee appointed under section 72 of this title, and, if authorized by the court, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of a debtor.

(July 1, 1898, ch. 541, § 442, as added June 22, 1938, ch. 575, § 1, 52 Stat. 919.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Receiver in equity, powers of, see section 959 of Title 28, Judiciary and Judicial Procedure.

### § 843. Powers, rights, and duties to be same as if bankruptcy adjudged

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the pending bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 443, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CODIFICATION

This section was from last sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 844. Continuance of debtor in possession

Where no trustee is appointed, the debtor shall continue in possession of his property and shall have all the title and exercise all the powers of a trustee appointed under this chapter, subject, however, at all times to the control of the court and to such limitations, restrictions, terms, and conditions as the court may from time to time prescribe.

(July 1, 1898, ch. 541, § 444, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 845. Operation of business and management of property; reports

The trustee or the debtor in possession shall have the power, upon authorization by and subject to the control of the court, to operate the business and manage the property of the debtor during such period, limited or indefinite, as the court may from time to time fix, and during such operation or management shall file reports thereof with the court at such intervals as the court may designate.

(July 1, 1898, ch. 541, § 445, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

CODIFICATION

This section was from former section 202(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 846. Issuance of certificates of indebtedness

During the pendency of a proceeding for an arrangement, or after the confirmation of the arrangement where the court has retained jurisdiction, the court may upon cause shown authorize the trustee or debtor in possession to issue certificates of indebtedness for cash, property, or other consideration approved by the court, upon such terms and conditions and with such security and priority in payment over existing obligations as in the particular case may be equitable.

(July 1, 1898, ch. 541, § 446, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 918 of this title.

## SUBCHAPTER VII—CREDITORS AND CLAIMS

### § 851. Filing proofs of claims; manner; time; objections to allowance

The court shall prescribe the manner in which and fix a time within which the proofs of claim of creditors may be filed and allowed. Objections by any party in interest to the allowance of any such claims shall be heard and summarily determined by the court.

(July 1, 1898, ch. 541, § 451, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 852. Classification of creditors

For the purposes of the arrangement and its acceptance, the court may fix the division of creditors into classes according to the nature of their respective claims, and, in the event of controversy, the court shall after hearing upon notice summarily determine the controversy.

(July 1, 1898, ch. 541, § 452, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 853 of this title.

### § 853. Hearing as to value of security

For the purposes of the classification, as provided in section 852 of this title, the court shall if necessary, upon the application of the trustee, the debtor, any creditor, or an indenture trustee, fix a hearing upon notice to the holders of secured claims, the debtor, the trustee, and such other persons as the court may designate, to determine summarily the value of the security and classify as unsecured the amount in excess of such value.

(July 1, 1898, ch. 541, § 453, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 854. Indenture trustee; filing claims

An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee, who have not filed claims: *Provided, however,* That in computing the majority necessary for the acceptance of the arrangement only the claims filed by the holders thereof, and allowed, shall be included.

(July 1, 1898, ch. 541, § 454, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 855. United States as creditor

If the United States is a secured or unsecured creditor of a debtor, the claim thereof shall be deemed to be affected by an arrangement under this chapter, and the Secretary of the Treasury is authorized to accept or reject an arrangement in respect of the claims of the United States. If, in any proceeding under this chapter, the United States is a secured or unsecured creditor on claims for taxes or customs duties (whether or not the United States has any other interest in, or claim against the debtor, as a secured or unsecured creditor), no arrangement which does not provide for the payment thereof shall be confirmed by the court, except upon the acceptance of a lesser amount by the Secretary of the Treasury certified to the court: *Provided,* That if the Secretary of the Treasury shall fail to accept or reject an arrangement for more than sixty days after receipt of written notice so to do from the court to which the arrangement has been proposed, accompanied by a certified copy of the arrangement, his consent shall be conclusively presumed.

(July 1, 1898, ch. 541, § 455, as added June 22, 1938, ch. 575, § 1, 52 Stat. 920.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 856. Creditor may act in person or by agent

A creditor may act in person, by an attorney-at-law, or by a duly authorized agent or committee and, if he shall act by an agent or committee, the court shall examine and may disregard any provision of a power or warrant of attorney, deposit agreement, trust indenture and committee, or other authorization affecting such creditor, and enforce an accounting thereunder and restrain the exercise of any power which it finds to be unfair or not consistent with public policy.

(July 1, 1898, ch. 541, § 456, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 857. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 821 of this title, as if a decree of adjudication had been entered in the pending bankruptcy pro-

ceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 822 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 457, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CODIFICATION

This section was from last sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 858. Rejection of executory contract or unexpired lease; assignment of future rent claim; rights of injured party**

In case an executory contract shall be rejected pursuant to the provisions of an arrangement or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a receiver in bankruptcy or receiver in equity in a prior pending proceeding, any person injured by such rejection shall, for the purposes of this chapter and of the arrangement, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the three years next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided*, That the court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof.

(July 1, 1898, ch. 541, § 458, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CODIFICATION

This section in part was from last two sentences of former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

**§ 859. Repealed. Pub. L. 90-157, § 5, Nov. 28, 1967, 81 Stat. 516**

Section, act July 1, 1898, ch. 541, § 459, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921, and amended July 7, 1952, ch. 579, § 42, 66 Stat. 434, provided for allowance of claims upon order to proceed with bankruptcy and is now covered by section 883(a)(4) of this title.

## SUBCHAPTER VIII—PROVISIONS OF ARRANGEMENT

**§ 861. Contents of arrangement**

An arrangement—

(1) shall include provisions modifying or altering the rights of creditors who hold debts secured by real property or a chattel real of a debtor, generally or of a class of them, either through the issuance of new securities of any character or otherwise;

(2) shall provide for the rights of all other creditors of a debtor who may be affected by the arrangement;

(3) may provide for treatment of unsecured debts on a parity one with the other, or for the division of such debts into classes and the treatment thereof in different ways or upon different terms;

(4) may provide for the rejection of any executory contract;

(5) may provide for the continuation of debtor's business and the management of his property with or without supervision or control by a trustee or by a committee of creditors or otherwise;

(6) may provide for payment of debts incurred after the filing of the petition and during the pendency of the arrangement, in priority over the debts affected by such arrangement;

(7) may deal with all or any part of his property;

(8) shall provide for the payment of all costs and expenses of administration and other allowances which may be approved or made by the judge;

(9) shall specify what debts, if any, are to be paid in cash in full;

(10) shall specify the creditors or any class of them not to be affected by the arrangement and the provisions, if any, with respect to them;

(11) shall provide for any class of creditors which is affected by and does not accept the arrangement by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their debts against the property dealt with by the arrangement and affected by such debts, either, as provided in the arrangement or in the order confirming the arrangement, (a) by the transfer or sale, or by the retention by the debtor, of such property subject to such debts; or (b) by a sale of such property free of such debts, at not less than a fair upset price, and the transfer of such debts to the proceeds of such sale; or (c) by appraisal and payment in cash of the value of such debts; or (d) by such method as will, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection;

(12) shall provide adequate means for the execution of the arrangement, which may include: the retention by the debtor of all or any part of his property; the sale or transfer of all or any part of his property in trust or to one or more corporations theretofore organized or thereafter to be organized; the sale

of all or any part of his property, either subject to or free from any lien, at not less than a fair upset price and the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein; the satisfaction or modification of liens; the cancelation or modification of indentures or of other similar instruments; the curing or waiver of defaults; the extension of maturity dates and changes in interest rates and other terms of outstanding securities; the issuance of trust securities or securities of the debtor or of such corporation or corporations for cash, for property, in exchange for existing securities, in satisfaction of debts, or for other appropriate purposes; and

(13) may include any other appropriate provisions not inconsistent with the provisions of this chapter.

(July 1, 1898, ch. 541, § 461, as added June 22, 1938, ch. 575, § 1, 52 Stat. 921.)

CODIFICATION

This section in part was from former section 202(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 868 of this title.

## SUBCHAPTER IX—PROPOSAL, CONFIRMATION, AND CONSUMMATION OF ARRANGEMENT

### § 866. Proposal of approved arrangement

An arrangement which has been approved by creditors affected thereby, who hold debts against the property dealt with therein, amounting to 25 per centum or more of the debts of some class of such creditors and 10 per centum or more of the debts of all such creditors, may be proposed by any such creditor.

(July 1, 1898, ch. 541, § 466, as added June 22, 1938, ch. 575, § 1, 52 Stat. 922.)

CODIFICATION

This section was from second sentence of former section 202(e) of this title and from former section 30(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 869 of this title.

### § 867. Unanimously accepted arrangement; confirmation upon deposit by debtor

An arrangement which at the meeting of creditors, as provided in section 836 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when there shall have been made the deposit required under this chapter and under the arrangement, and if the court is satisfied that the arrangement and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title.

(July 1, 1898, ch. 541, § 467, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CODIFICATION

This section was from fourth sentence of former section 202(g) of this title and third clause of former section 30(d) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 868. Majority accepted arrangement; application for confirmation

If an arrangement has not been so accepted, an application for the confirmation of an arrangement may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing by the creditors of each class, holding two-thirds in amount of the debts of such class affected by the arrangement proved and allowed before the conclusion of the meeting, or before such other time as may be fixed by the court, exclusive of creditors or of any class of them who are not affected by the arrangement or for whom payment or protection has been provided as prescribed in paragraph (11) of section 861 of this title; and

(2) the deposit required under this chapter and under the arrangement has been made.

(July 1, 1898, ch. 541, § 468, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

CODIFICATION

This section was from first and second sentences of former section 202(e) of this title and from former section 30(b) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 869. Alterations or modifications; proposal

Alterations or modifications of an arrangement may be proposed in writing, with leave of court, either before or after its confirmation, by a debtor, or by any creditor as provided in section 866 of this title.

(July 1, 1898, ch. 541, § 469, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

June 22, 1938, set out as notes under section 1 of this title.

### § 870. Acceptance of altered arrangement

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the arrangement and who fails to file with the court, within such time as shall be fixed in the order, his rejection of the altered or modified arrangement, shall be deemed to have accepted the alteration or modification and the arrangement so altered or modified, unless the previous acceptance provides otherwise.

(July 1, 1898, ch. 541, § 470, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 871. Notice of adjourned or reopened meeting and of proposed alteration

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the debtor, the creditors, and other parties in interest.

(July 1, 1898, ch. 541, § 471, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 815 of this title.

### § 872. Requisites for confirmation

The court shall confirm an arrangement if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of creditors and is feasible;

(3) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt;

(4) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title; and

(5) all payments made or promised by the debtor, by any person issuing securities or acquiring property under the arrangement or by any other person, for services and for costs and expenses in, or in connection with the proceeding or in connection with and incident to the arrangement, have been fully disclosed to the court and are reasonable, or, if to be fixed after confirmation of the arrangement, will be subject to the approval of the court.

Confirmation of an arrangement shall not be refused solely because the interest of a debtor will be preserved under the arrangement.

(July 1, 1898, ch. 541, § 472, as added June 22, 1938, ch. 575, § 1, 52 Stat. 923, and amended July 7, 1952, ch. 579, § 43, 66 Stat. 435.)

CODIFICATION

This section, except par. (5), formerly par. (6), was from former section 202(g) and (j) of this title.

AMENDMENTS

1952—Act July 7, 1952, eliminated the provision that a proposed plan must be "fair and equitable" and added the last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 873. Effect of confirmation

Upon confirmation of an arrangement—

(1) the arrangement and its provisions shall be binding upon the debtor, upon any person issuing securities or acquiring property under the arrangement, and upon all creditors of the debtor, whether or not they are affected by the arrangement or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed and are allowable;

(2) the debtor, and any corporation or trust organized or to be organized for the purpose of carrying out the arrangement, shall comply with the provisions of the arrangement and with all the orders of the court relative thereto and shall take all action necessary to carry out the arrangement;

(3) distribution shall be made, in accordance with the provisions of the arrangement, to the creditors, proofs of whose claims have been filed prior to the date fixed by the court and are allowed, or, if not so filed, whose claims have been scheduled by the debtor and are not contingent, unliquidated, or disputed: *Provided, however,* That where such debts are objected to by any party in interest, the objections shall be heard and summarily determined by the court.

(July 1, 1898, ch. 541, § 473, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924, and amended July 7, 1952, ch. 579, § 44, 66 Stat. 435.)

CODIFICATION

Par. (1) was from first sentence of former section 202(i) of this title.

Par. (3) was from former section 202(j) of this title.

AMENDMENTS

1952—Par. (3). Act July 7, 1952, substituted "and are not contingent, unliquidated, or disputed" for "fixed debts, liquidated in amount and not disputed".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 874. Property to be free of debts affected by arrangement**

Upon confirmation of an arrangement, the property dealt with by the arrangement, when transferred by the trustee appointed under this chapter to the debtor, or to a trustee or corporation provided for by the arrangement, or, if no trustee has been appointed under this chapter, when transferred by the debtor to a trustee or corporation provided for by the arrangement, or when retained by the debtor, as the case may be, shall be free and clear of all debts affected by the arrangement, except such debts as may otherwise be provided for in the arrangement or in the order confirming the arrangement or in the order directing or authorizing the transfer or retention of such property.

(July 1, 1898, ch. 541, § 474, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 875. Execution of instruments; satisfaction of liens, etc.**

The court may direct the debtor, his trustee, any mortgagees, indenture trustees, and other necessary parties to execute and deliver or to join in the execution and delivery of such instruments as may be requisite to effect a retention or transfer of the property dealt with by the arrangement which has been confirmed, and to perform such other acts, including the satisfaction of liens, as the court may deem necessary for the consummation of the arrangement.

(July 1, 1898, ch. 541, § 475, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effectlve date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 876. Discharge of debts upon confirmation**

The confirmation of an arrangement shall discharge a debtor from his debts and liabilities provided for by the arrangement, except as provided in the arrangement or the order confirming the arrangement, excluding such debts as are not dischargeable under section 35 of this title.

(July 1, 1898, ch. 541, § 476, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 877. Final decree upon consummation of arrangement**

Upon the consummation of a proceeding under this chapter, after confirmation of an arrangement, the court shall enter a final decree discharging the trustee, if any, closing the estate, and making such provisions, by way of injunction or otherwise, as may be equitable.

(July 1, 1898, ch. 541, § 477, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER X—DISMISSAL AND ADJUDICATION

**§ 881. Abandonment or rejection of arrangement before confirmation**

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 824 of this title, are not duly filed, or if an arrangement is withdrawn or abandoned prior to its acceptance and no other arrangement is pending, or if no arrangement is accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited is not deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall—

(1) where the petition was filed under section 821 of this title, enter an order dismissing the proceeding under this chapter and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition was filed under section 822 of this title, enter an order upon hearing after notice to the debtor, the creditors, and such other persons as the court may direct, either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 481, as added June 22, 1938, ch. 575, § 1, 52 Stat. 924, and amended July 7, 1952, ch. 579, § 45, 66 Stat. 435.)

CODIFICATION

This section was from first and second sentences of former sections 30(e) and 202(*l*) of this title.

AMENDMENTS

1952—Act July 7, 1952, added "If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 824 of this title, are not duly filed, or".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 882. Termination or default after confirmation**

Where the court has retained jurisdiction after the confirmation of an arrangement and the debtor defaults in any of the terms thereof or the arrangement terminates by reason of the happening of a condition specified in the arrangement, the court upon hearing after notice to the debtor, the creditors and such other persons as the court may direct shall—

(1) where the petition has been filed under section 821 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt and directing that the bankruptcy proceeding be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 822 of this title, enter an order either adjudging the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceeding under this chapter, whichever in the opinion of the court may be in the interest of the creditors.

(July 1, 1898, ch. 541, § 482, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

CODIFICATION

This section in part was from first and second sentences of former section 202(*l*) of this title and from former section 30(e) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 883. Procedure upon order directing that bankruptcy be proceeded with**

**(a) Reinstatement of bankruptcy proceeding; filing of separate debt schedule; tax claims; provable claims**

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 821 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed;

(2) in the case of a petition filed under section 822 of this title, the proceeding shall thereafter be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when such original petition under this chapter was filed;

(3) a separate schedule listing unpaid obligations incurred after the filing of the petition under this chapter, including the amounts owing, the creditors' names, and their addresses or places of business, and a statement of all contracts, executory in whole or in part, assumed or entered into after the filing of the petition, shall be filed with the court within thirty days after the entry of such order or within such further time as the court may allow; such schedule and statement shall be filed by the debtor for any obligations incurred and contracts assumed or entered into by him while continued in possession and before the qualification of a trustee, if any, under this chapter, and if a trustee has qualified, the schedule and statement shall be filed by such trustee for any obligations incurred and contracts assumed or entered into by him; and

(4) except as otherwise provided in this section, only claims for taxes due the United States or any State or any subdivision thereof at the time of the filing of the original petition under this chapter and such claims as are provable under section 103 of this title shall be allowed, and claims not already filed may be filed in accordance with the provisions of subdivision (n) of section 93 of this title.

**(b) Executory contracts; rejection**

Any contract which is entered into or assumed by a debtor in possession or trustee in a proceeding under this chapter and which is executory in whole or in part at the time of the entry of an order directing that bankruptcy be proceeded with shall be deemed to be rejected unless expressly assumed within sixty days after the entry of such order or the qualification of the trustee in bankruptcy, whichever is the later, but the court may for cause shown extend or reduce the time. When a contract entered into or assumed in a superseded proceeding is rejected, the resulting liability shall constitute a cost of administration of the superseded proceeding.

**(c) Filing of claims**

Upon the filing of the schedule and statement required by subdivision (a) of this section, the court shall make an order directing the claims against the debtor in possession or trustee, including all claims of the United States, any State, or any subdivision thereof, to be filed, and the holders of such claims to be notified to file their claims within sixty days from the date of the order. The court shall designate the form and manner in which the notice shall be given. Notwithstanding the foregoing, claims not duly scheduled as provided in subdivision (a) of this section and claims arising from rejection of executory contracts under subdivision (b) of this section may be filed within such further time as the court may direct. Except as otherwise provided in this section, claims against the debtor in possession or trustee shall be proved and filed in the manner provided in section 93 of this title.

**(d) Disallowance of untimely claims; surplus**

Claims directed to be filed under subdivision (c) of this section but not filed within the time therein provided shall not be allowed and shall be barred, and the debtor in possession or trustee shall be forever discharged from any liability

with respect to such claims. When all claims which have been duly allowed have been paid in full, claims directed to be filed but not filed within the time prescribed pursuant to subdivision (c) and claims not allowable under paragraph (4) of subdivision (a) of this section because not filed within the time prescribed therein may nevertheless be filed within such time as the court may fix or for cause shown extend and, if duly proved, shall be allowed against any surplus remaining in such case.

(July 1, 1898, ch. 541, § 483, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925, and amended Nov. 28, 1967, Pub. L. 90-157, § 4, 81 Stat. 515.)

CODIFICATION

Par. (2) was from second sentence of former section 202(m) of this title.

AMENDMENTS

1967—Subd. (a). Pub. L. 90-157 designated existing provisions as subd. (a) and added pars. (3) and (4).

Subds. (b) to (d). Pub. L. 90-157 added subds. (b) to (d).

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 104 of this title.

### § 884. Adjudication against wage earner or farmer; consent

No adjudication shall be entered under this chapter against a wage earner or farmer unless such person shall in writing filed with the court consent to the adjudication.

(July 1, 1898, ch. 541, § 484, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

CODIFICATION

This section was from last sentence of former section 202(*l*) of this title and, in part, from former section 202(p) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 885. Final decree upon dismissal of original petition

Upon the dismissal of a proceeding originated by a petition filed under section 822 of this title, the court shall enter a final decree discharging the trustee, if any, and closing the estate.

(July 1, 1898, ch. 541, § 485, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 886. Proceedings after confirmation of arrangement

Where, after the confirmation of an arrangement, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the arrangement and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the arrangement or in the order confirming the arrangement, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the arrangement or in the order confirming the arrangement, less any payment made thereunder; and

(3) the provisions of chapters 1 to 7 of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the arrangement and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of entry of the order directing that bankruptcy be proceeded with.

(July 1, 1898, ch. 541, § 486, as added July 7, 1952, ch. 579, § 46, 66 Stat. 435.)

EFFECTIVE DATE

Act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

## SUBCHAPTER XI—COMPENSATION AND ALLOWANCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

The subchapter is referred to in section 909 of this title.

### § 891. Court officers and attorneys

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by the trustee and other officers, and the attorneys for any of them; and

(3) by the attorney for the debtor.

Such compensation of referees and trustees shall not be governed by sections 68 and 76 of this title.

(July 1, 1898, ch. 541, § 491, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 892. Other parties in interest

The judge may allow reasonable compensation for services rendered and reimbursement

for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with an arrangement confirmed by the court—

(1) by indenture trustees, depositaries, reorganization managers and committees or representatives of creditors;

(2) by any other parties in interest; and

(3) by the attorneys or agents for any of the foregoing.

(July 1, 1898, ch. 541, § 492, as added June 22, 1938, ch. 575, § 1, 52 Stat. 925.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 893. Petition filed in pending bankruptcy proceeding

Where a petition is filed under section 821 of this title, the judge may allow, if not already allowed, reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such bankruptcy proceeding—

(1) by a marshal or receiver, as provided in subdivision (f) of section 76 of this title, and the attorney for any of them;

(2) by the attorney for the petitioning creditors;

(3) by the attorney for the bankrupt; and

(4) by any other persons and the attorneys for any of them entitled under this title to compensation or reimbursement in such bankruptcy proceeding.

(July 1, 1898, ch. 541, § 493, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 894. Compensation and costs of referee in bankruptcy

Where a petition is filed under section 821 of this title, the judge may allow reasonable compensation for services rendered and the proper costs and expenses incurred in such bankruptcy proceeding by a referee in bankruptcy. In fixing such compensation, the judge shall not be restricted by the provisions of section 68 of this title.

(July 1, 1898, ch. 541, § 494, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 895. Dismissal of proceeding or adjudication of bankruptcy; arrangement allowances

Upon the dismissal of a proceeding under this chapter or the entry of an order adjudging the debtor a bankrupt, the judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in such proceeding prior to such dismissal or order of adjudication by any persons entitled thereto, as provided in this chapter, and shall make provision for the payment thereof and for the payment of all proper costs and expenses incurred by officers in such proceedings.

(July 1, 1898, ch. 541, § 495, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 896. Hearing of applications

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, the indenture trustees, and such other persons as the judge may designate, except that, in the case of allowances for services and reimbursement in a superseded bankruptcy proceeding, notice need be given only to the applicants, the debtor, the trustee, and the unsecured creditors, and may be given to such other classes of creditors or other persons as the judge may designate.

(July 1, 1898, ch. 541, § 496, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 815 of this title.

### § 897. Dismissal of proceeding and reinstatement of bankruptcy; charging of allowances in bankruptcy

In the case of the dismissal of a proceeding under this chapter and the entry of an order therein directing that a superseded bankruptcy be proceeded with, the compensation allowed by the judge, in the course of the proceeding under this chapter, to the referee, marshal, or receiver in the bankruptcy proceeding for services rendered by him in such bankruptcy proceeding shall be deemed to have been allowed in such bankruptcy proceeding, and such compensation shall be considered in connection with the making of future allowances therein or shall be readjusted, so as to comply with the provisions of this title fixing their compensation in a bankruptcy proceeding.

(July 1, 1898, ch. 541, § 497, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 898. Appeals

Appeals may be taken in matters of law or fact from orders making or refusing to make

allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers.

(July 1, 1898, ch. 541, § 498, as added June 22, 1938, ch. 575, § 1, 52 Stat. 926, and amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER XII—PRIOR PROCEEDINGS

### § 906. Right to petition during pendency of prior proceedings

A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made.

(July 1, 1898, ch. 541, § 506, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CODIFICATION

This section was from first sentence of former section 202(m) of this title and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 907. Stay; rigbts of trustee or debtor in possession

Such prior proceeding shall be stayed by the filing of a petition under this chapter. The trustee appointed under this chapter, upon his qualification, or, if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all real property and chattels real of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage.

(July 1, 1898, ch. 541, § 507, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CODIFICATION

This section in part was from first sentence of former section 202(m) of this title and second sentence of former section 30(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 908. Protection of obligations of prior fiduciary; payment of costs and expenses

The judge shall make such provision as may be equitable for the protection of the obligations incurred by a receiver or trustee in such prior proceeding and for the payment of the reasonable compensation for services rendered and of the proper costs and expenses incurred therein as may be allowed by the judge.

(July 1, 1898, ch. 541, § 508, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 909. Reinstatement of prior proceeding on dismissal of arrangement proceeding; allowances

Upon a dismissal of a proceeding under this chapter, such prior proceeding shall become reinstated and the judge shall allow the reasonable costs and expenses under this chapter, including the allowances provided for in subchapter XI of this chapter, and shall make appropriate provision for the retransfer of such property to the person or persons entitled thereto upon such terms as may be equitable for the protection of the obligations incurred in the proceedings under this chapter by the trustee or debtor in possession, and for the payment of the costs and expenses of the proceedings.

(July 1, 1898, ch. 541, § 509, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER XIII—ARRANGEMENTS, WHEN SET ASIDE OR MODIFIED

### § 911. Fraud in procuring arrangement

If, upon the application of parties in interest filed at any time within six months after an arrangement has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such arrangement and that knowledge of such fraud has come to the petitioners since the confirmation of such arrangement:

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon (a) where the petition was filed under section 821 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt and direct that the bankruptcy proceeding be proceeded with; or (b) where the petition was filed under section 822 of this title, reinstate the proceeding, adjudge

the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the arrangement for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under this chapter and modify or alter the arrangement for the purpose of correcting the fraud, but may not materially modify or alter the arrangement adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person who, for value, subsequent to the confirmation, acquired rights in reliance upon it.

(July 1, 1898, ch. 541, § 511, as added June 22, 1938, ch. 575, § 1, 52 Stat. 927.)

CODIFICATION

This section was from former sections 202(k) and 31 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER XIV—GENERAL PROVISIONS

### § 916. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences, and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed.

(July 1, 1898, ch. 541, § 516, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 917. Inapplicability to obligations held by certain Federal agencies

Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any debtor under a mortgage insured pursuant to the National Housing Act [12 U.S.C. 1701 et seq.] and Acts amendatory thereof and supplementary thereto; nor shall its provisions be deemed to allow extension or impairment of any secured obligation held by Home Owners' Loan Corporation or by any Federal Home Loan Bank or member thereof.

(July 1, 1898, ch. 541, § 517, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

REFERENCES IN TEXT

The National Housing Act, referred to in text, is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is principally classified to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of the Act to the Code, see References in Text note set out under section 1701 of Title 12 and Tables volume.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

ABOLISHMENT OF HOME OWNERS' LOAN CORPORATION

For dissolution and abolishment of Home Owners' Loan Corporation, referred to in this section, by act June 30, 1953, ch. 170, § 21, 67 Stat. 126, see note under section 1463 of Title 12, Banks and Banking.

### § 918. Unregistered securities; use of mails and interstate commerce

(a) The provisions of section 77e of title 15 shall not apply to—

(1) any security issued by a trustee or debtor in possession pursuant to section 846 of this title; or

(2) any transaction in any security issued pursuant to an arrangement in exchange for securities of or claims against the debtor or partly in such exchange and partly for cash and/or property, or issued upon exercise of any right to subscribe or conversion privilege so issued, except (a) transactions by an issuer or an underwriter in connection with a distribution otherwise than pursuant to the arrangement, and (b) transactions by a dealer as to securities constituting the whole or a part of an unsold allotment to or subscription by such dealer as a participant in a distribution of such securities by the issuer or by or through an underwriter otherwise than pursuant to the arrangement.

(b) As used in this section, the terms "security", "issuer", "underwriter", and "dealer" shall have the meanings provided in section 77b of title 15.

(July 1, 1898, ch. 541, § 518, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 919. Secretary of Treasury; notices and information to

The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Secretary of the Treasury copies of—

(1) all petitions filed under sections 821 and 822 of this title;

(2) all notices given in a proceeding under this chapter;

(3) all orders dismissing proceedings or directing that bankruptcy be proceeded with, discharging debtors, closing estates and setting aside confirmations;

(4) all orders appointing trustees or continuing debtors in possession;

(5) all orders determining the time within which claims of creditors may be filed and allowed and the division of creditors into classes;

(6) all orders confirming arrangements, together with copies of such arrangements;

(7) all orders approving alterations or modifications in arrangements, together with copies of such alterations or modifications;

(8) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; and

(9) such other papers filed in the proceedings as the Secretary of the Treasury may request or which the court may direct to be transmitted to him.

Any order fixing the time for confirming an arrangement which affects claims of the United States shall include a notice to the Secretary of the Treasury of not less than thirty days.

(July 1, 1898, ch. 541, § 519, as added June 22, 1938, ch. 575, § 1, 52 Stat. 928.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 920. Taxes; income or profit from modification of indebtedness

Except as provided in section 922 of this title, no income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor, by a trustee provided for in an arrangement under this chapter, or by a corporation organized or made use of for effectuating an arrangement under this chapter by reason of a modification in or cancelation in whole or in part of any of the indebtedness of the debtor in an arrangement consummated under this chapter.

(July 1, 1898, ch. 541, § 520, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 926 of this title.

### § 921. Arrangement to evade taxes

Where it appears that an arrangement has for one of its principal purposes the evasion of taxes, objection to its confirmation may be made on that ground by the Secretary of the Treasury or, in the case of a State, by the corresponding official or other person so authorized. Such objections shall be heard and determined by the judge, independently of other objections which may be made to the confirmation of the arrangement, and, if the judge shall be satisfied that such purpose exists, he shall refuse to confirm the arrangement.

(July 1, 1898, ch. 541, § 521, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 926 of this title.

### § 922. Income tax; property basis adjustment

In determining the basis of property for any purposes of any law of the United States or of a State imposing a tax upon income, the basis of the debtor's property (other than money) or of such property (other than money) as is transferred to any person required to use the debtor's basis in whole or in part shall be decreased by an amount equal to the amount by which the indebtedness of the debtor, not including accrued interest unpaid and not resulting in a tax benefit on any income-tax return, has been canceled or reduced in a proceeding under this chapter, but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement. Any determination of value in a proceeding under this chapter shall not be deemed a determination of fair market value for the purposes of this section. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such regulations as he may deem necessary in order to reflect such decrease in basis for Federal income-tax purposes and otherwise carry into effect the purposes of this section.

(July 1, 1898, ch. 541, § 522, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929, and amended July 1, 1940, ch. 500, § 3, 54 Stat. 710.)

AMENDMENTS

1940—Act July 1, 1940, added "but the basis of any particular property shall not be decreased to an amount less than the fair market value of such property as of the date of entry of the order confirming the arrangement" in the first sentence and inserted second sentence.

EFFECTIVE DATE OF 1940 AMENDMENT

Act July 1, 1940, was, by enacting clause thereof, made retroactively effective as of June 22, 1938.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employ-

ees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions; by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees. The Commissioner of Internal Revenue, referred to in this section, is an officer of the Treasury Department.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 920, 926 of this title; title 26 section 1024.

**§ 923. Assessment and payment of taxes or acceptance of arrangement by taxing agency**

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter and have not been assessed prior to the date of the confirmation of an arrangement under this chapter, and all taxes which may become owing to the United States or any State from a trustee of a debtor or from a debtor in possession, shall be assessed against, may be collected from and shall be paid by the debtor, or the corporation organized or the trustee or corporation made use of for effectuating an arrangement under this chapter: *Provided, however,* That the United States or any State may in writing accept the provisions of any arrangement dealing with the assumption, settlement, or payment of any such tax.

(July 1, 1898, ch. 541, § 523, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER XV—WHEN CHAPTER TAKES EFFECT

**§ 926. Proceedings to which chapter applies**

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on such date, and a petition may be filed under this chapter notwithstanding the pendency on such date of a proceeding in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment application has been made in a court of the United States or of any State;

(3) the provisions of sections 201 and 202 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act; and

(4) sections 920 and 922 of this title shall apply to compositions and extensions confirmed under section 202 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 of this title on and after such effective date, except that the exemption provided by section 920 of this title may be disallowed if it shall be made to appear that such composition or extension, or composition and extension, had for one of its principal purposes the avoidance of income taxes, and except further that where such composition or extension, or composition and extension, has not been confirmed on or after such effective date, section 921 of this title shall apply where practicable and expedient.

(July 1, 1898, ch. 541, § 526, as added June 22, 1938, ch. 575, § 1, 52 Stat. 929.)

REFERENCES IN TEXT

Sections 201 and 202 of this title, referred to in subds. (3) and (4), were omitted. See Codification notes under those sections for distribution of subject matter.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

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CODIFICATION

Sections 30, 31, 201, 202, 206, and 207 of this title were amended and incorporated as this chapter and chapters 10, 11, 12, and 14 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 45, 68 of this title; title 15 section 1673.

## SUBCHAPTER I—CONSTRUCTION

### § 1001. Exclusive application of chapter

The provisions of this chapter shall apply exclusively to proceedings under this chapter.

(July 1, 1898, ch. 541, § 601, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1002. Application of other provisions

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: *Provided, however,* That subdivision (f) of section 110 shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive. For the purposes of such application, provisions relating to "bankrupts" shall be deemed to relate also to "debtors", and "bankruptcy proceedings" or "proceedings in bankruptcy" shall be deemed to include proceedings under this chapter. For the purposes of such application the date of the filing of the petition in bankruptcy shall be taken to be the date of the filing of an original petition under section 1022 of this title, and the date of adjudication shall be taken to be the date of the filing of the petition under section 1021 or 1022 of this title except where an adjudication had previously been entered.

(July 1, 1898, ch. 541, § 602, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER II—DEFINITIONS

### § 1006. In general

For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against the debtor or his property, whether or not provable as debts under section 103 of this title and whether secured or unsecured, liquidated or unliquidated, fixed or contingent, but shall not include claims secured by estates in real property or chattels real;

(2) "creditor" shall mean the holder of any claim;

(3) "debtor" shall mean a wage earner who filed a petition under this chapter;

(4) "debts" shall include all claims;

(5) "executory contracts" shall include unexpired leases of real property;

(6) "petition" shall mean a petition filed under this chapter by a wage earner desiring to effect a plan for a composition or extension of time for the payment of his debts, or both;

(7) "plan" shall mean a plan for a composition or extension, or both, proposed in a proceeding under this chapter; and

(8) "wage earner" shall mean an individual whose principal income is derived from wages, salary or commissions.

(July 1, 1898, ch. 541, § 606, as added June 22, 1938, ch. 575, § 1, 52 Stat. 930, and amended Dec. 29, 1950, ch. 1193, 64 Stat. 1134; May 13, 1959, Pub. L. 86-24, § 1, 73 Stat. 24.)

CODIFICATION

Provisions on this subject matter were contained in former section 202(a) of this title.

AMENDMENTS

1959—Par. (8). Pub. L. 86-24 substituted "whose principal income is derived from wages, salary or commissions" for "who works for wages, salary, or hire at

a rate of compensation which, when added to his other income, does not exceed $5,000 per year".

1950—Par. (8). Act Dec. 29, 1950, substituted "$5,000" for "$3,600".

EFFECTIVE DATE OF 1959 AMENDMENT

Section 3 of Pub. L. 86-24 provided that: "The provisions of this Act [amending par. (8) of this section and par. (3) of section 1059 of this title] shall apply to all cases in which the petition initiating the proceedings under the Bankruptcy Act [this title] is filed subsequent to the date of the enactment of this Act [May 13, 1959]."

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1007. Creditors affected by plan; determination**

A creditor shall be deemed to be "affected" by a plan only if his interest shall be materially and adversely affected thereby. In the event of controversy, the court shall, after hearing upon notice, summarily determine whether any creditor is so affected.

(July 1, 1898, ch. 541, § 607, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER III—JURISDICTION, POWERS, AND DUTIES OF THE COURT

**§ 1011. Exclusive jurisdiction of debtor, property, and earnings**

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and his property, wherever located, and of his earnings and wages during the period of consummation of the plan.

(July 1, 1898, ch. 541, § 611, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CODIFICATION

Provisions on this subject were contained in the first sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1012. Jurisdiction, powers, and duties**

Where not inconsistent with the provisions of this chapter, the jurisdiction, powers, and duties of the court shall be the same—

(1) where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or

(2) where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 612, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CODIFICATION

Provisions on this subject were contained in the second sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1013. Additional jurisdiction, powers, and duties**

Upon the filing of a petition, the court may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it—

(1) permit the rejection of executory contracts of the debtor, upon notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) extend upon cause shown any time which under this chapter the court is required or permitted to fix for any purpose.

(July 1, 1898, ch. 541, § 613, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contracts as breach thereof, see section 103 of this title.

**§ 1014. Stay of actions**

The court may, in addition to the relief provided by section 29 of this title and elsewhere under this chapter, enjoin or stay until final decree the commencement or continuation of suits other than suits to enforce liens upon the property of a debtor, and may, upon notice and for cause shown, enjoin or stay until final decree any act or the commencement or continuation of any proceeding to enforce any lien upon the property of a debtor.

(July 1, 1898, ch. 541, § 614, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CODIFICATION

Provisions on this subject were contained in former section 202(n) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1015. Notices**

Whenever notice is to be given under this chapter, the court shall designate, if not otherwise specified hereunder, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Any

notice to be given under this chapter may be combined, whenever feasible, with any other notice or notices under this chapter.

(July 1, 1898, ch. 541, § 615, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Mail, notices by, see section 1077 of this title.

**§ 1016. Appellate jurisdiction**

Where not inconsistent with the provisions of this chapter, the jurisdiction of appellate courts shall be the same as in a bankruptcy proceeding.

(July 1, 1898, ch. 541, § 616, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

CODIFICATION

Provisions on this subject were contained in the second sentence of former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER IV—PETITION AND STAY

**§ 1021. Filing petition; pending bankruptcy proceeding**

A debtor may file a petition under this chapter in a pending bankruptcy proceeding either before or after his adjudication.

(July 1, 1898, ch. 541 § 621, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1012, 1025, 1036, 1041, 1044, 1066, 1067, 1071 of this title.

**§ 1022. Filing of original petition**

If no bankruptcy proceeding is pending, a debtor may file an original petition under this chapter with the court which would have jurisdiction of a petition for his adjudication.

(July 1, 1898, ch. 541, § 622, as added June 22, 1938, ch. 575, § 1, 52 Stat. 931.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1012, 1024, 1036, 1041, 1066, 1067, 1071 of this title.

**§ 1023. Contents of petition**

A petition filed under this chapter shall state that the debtor is insolvent or unable to pay his debts as they mature and that he desires to effect a composition or an extension, or both, out of his future earnings or wages.

(July 1, 1898, ch. 541, § 623, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CODIFICATION

Provisions on this subject were contained in former section 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1024. Statements and fees accompanying petition**

The petition shall be accompanied—

(1) by a statement of the executory contracts of the debtor, and the schedules and statement of affairs, if not previously filed: *Provided, however,* That if the debtor files with the petition a list of his creditors and their addresses and a summary of his assets and liabilities, the court may, on application by the debtor, grant for cause shown further time, not exceeding ten days, for filing the statement of the executory contracts and the schedules and statement of affairs, and such time shall not further be extended except for cause shown and on such notice and to such persons as the court may direct; and

(2) where a petition is filed under section 1022 of this title, by payment to the clerk of $15 to be distributed, $10 to the Treasury of the United States for deposit in the referees' salary and expense fund and $5 to the clerk, in lieu of the fees of $32 and $8 as prescribed in sections 68 and 80 of this title: *Provided, however,* That such fees may be paid in installments, if so authorized by General Order of the Supreme Court of the United States.

(July 1, 1898, ch. 541, § 624, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932, and amended June 28, 1946, ch. 512, § 15, 60 Stat. 331; July 7, 1952, ch. 579, § 47, 66 Stat. 436; July 28, 1959, Pub. L. 86-110, § 5, 73 Stat. 261.)

CODIFICATION

Provisions on this subject were contained in former sections 30(a) and 202(a) of this title.

AMENDMENTS

1959—Par. (2). Pub. 86-110 substituted "referees' salary and expense fund" for "referees' salary fund" and fee of "$32" for "$17".

1952—Act July 7, 1952, incorporated former pars. (1) and (2) into par. (1), added a proviso, and renumbered former par. (3) as (2).

1946—Par. (3). Act June 28, 1946, made fees uniform with other bankruptcy fees, and provided for their disposition.

EFFECTIVE DATE OF 1959 AMENDMENT

For effective date of amendment by Pub. L. 86-110, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE, REPEAL, ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1066 of this title.

### § 1025. Petition in pending bankruptcy proceedings as stay

A petition filed under section 1021 of this title shall act as a stay of adjudication or of administration of the estate.

(July 1, 1898, ch. 541, § 625, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CODIFICATION

Provisions on this subject were contained in former sections 30(a) and 202(a) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1026. Bond of debtor; failure to file

The court may, upon hearing after notice to the debtor and such other persons as the court may designate, require the debtor to file, within such time as the court may fix, a bond or undertaking with such sureties, as may be approved by the court, or without sureties, as the court may order, and in such amount as the court may fix, to indemnify the estate against loss thereto or diminution thereof during the period of such stay. Upon the failure of the debtor to comply with such requirement the proceeding under this chapter shall be dismissed.

(July 1, 1898, ch. 541, § 626, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER V—PROCEEDINGS SUBSEQUENT TO FILING OF PETITION

### § 1031. Reference to referee

The clerk shall, unless the judge or judges direct otherwise, refer the proceedings to a referee.

(July 1, 1898, ch. 541, § 631, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932, and amended June 23, 1959, Pub. L. 86-64, § 5, 73 Stat. 109.)

CODIFICATION

Provisions on this subject were contained in former section 202(o) of this title.

AMENDMENTS

1959—Pub. L. 86-64 substituted "The clerk shall, unless the judge or judges direct otherwise, refer the proceedings to a referee" for "The judge may refer the proceeding to a referee".

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1032. Meeting of creditors; time; notice

The judge or referee shall promptly call a meeting of creditors, upon at least ten days' notice by mail to the debtor and his creditors.

(July 1, 1898, ch. 541, § 632, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CODIFICATION

Provisions on this subject were contained in former section 202(c) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1033. Conduct and business at creditors meetings

At such meeting, or at any adjournment thereof—

(1) the judge or referee shall preside, receive proofs of claim, and allow or disallow them, and examine the debtor or cause him to be examined and hear witnesses on any matter relevant to the proceeding;

(2) the debtor shall submit his plan, and deposit with the clerk, for payment into the referees' salary and expense fund a fee not to exceed $15, to be graduated and charged in the manner outlined in paragraph (2) of subdivision (c) of section 68 of this title: *Provided, however,* That such fee may be paid in instaliments, if so authorized by General Order of the Supreme Court of the United States;

(3) the court shall receive and determine the written acceptances of creditors on the proposed plan, which acceptances may be obtained by the debtor before or after the filing of a petition under this chapter;

(4) the court shall, if the plan is accepted, appoint a trustee to receive and distribute, subject to the control of the court, all moneys to be paid under the plan and shall require such trustee to give bond with surety to be approved by the court in such amount as the court shall fix; and

(5) the court shall fix a time for the filing of the application to confirm the arrangement and for a hearing on the confirmation thereof or any objection to the confirmation, unless such times have already been named in the notice of the meeting or unless all creditors affected by the arrangement have accepted it.

(July 1, 1898, ch. 541, § 633, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932, and amended June 28, 1946, ch. 512, § 16, 60 Stat. 331; July 28, 1959, Pub. L. 86-110, § 6, 73 Stat. 261.)

CODIFICATION

Provisions on this subject were contained in former sections 30(a) and (c) and 202(d) and (f) of this title.

AMENDMENTS

1959—Par. (2). Pub. L. 86-110 substituted "referees' salary and expense fund" for "referees' expense fund".

1946—Par. (2). Act June 28, 1946, made fees uniform with other bankruptcy fees.

EFFECTIVE DATE OF 1959 AMENDMENT

For effective date of amendment by Pub. L. 86-110 see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

EFFECTIVE DATE, REPEAL, ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 65, 1051, 1059 of this title.

## SUBCHAPTER VI—RIGHTS, DUTIES, AND POWERS OF DEBTOR AND OFFICERS

### § 1036. In general

Where not inconsistent with the provisions of this chapter, the powers and duties of the officers of the court and the rights, privileges, and duties of the debtor shall be the same, where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 636, as added June 22, 1938, ch. 575, § 1, 52 Stat. 932.)

CODIFICATION

Provisions on this subject were contained in former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1037. Exemptions

The allowance of exemptions to a debtor shall be the same as provided for a bankrupt under this title, and such exemptions shall be set aside to the debtor in like manner as provided for a bankrupt.

(July 1, 1898, ch. 541, § 637, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

CODIFICATION

Provisions on this subject were contained in the proviso to former section 202(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Exemptions of bankrupts, see section 24 of this title.

## SUBCHAPTER VII—CREDITORS AND CLAIMS

### § 1041. Rights, duties, and liabilities of creditors, etc.

Where not inconsistent with the provisions of this chapter, the rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, where a petition is filed under section 1021 of this title and a decree of adjudication has not been entered in the pending bankruptcy proceeding, as if a decree of adjudication had been entered in such bankruptcy proceeding at the time the petition under this chapter was filed, or, where a petition is filed under section 1022 of this title, as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered at the time the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 641, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

CODIFICATION

Provisions on this subject were contained in former section 202(m) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1042. Rejection of executory contract or unexpired lease; assignment of future rent claims

In case an executory contract shall be rejected pursuant to the provisions of a plan or to the permission of the court given in a proceeding under this chapter, or shall have been rejected by a trustee or receiver in bankruptcy in a prior pending proceeding, any person injured by such rejection shall, for the purpose of this chapter and of the plan, its acceptance and confirmation, be deemed a creditor. The claim of the landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be provable, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of surrender or reentry: *Provided*, That the court shall scrutinize the circumstances of an assignment of a

future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee thereof.

(July 1, 1898, ch. 541, § 642, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

**§ 1043. Repealed. July 7, 1952, ch. 579, § 48, 66 Stat. 436**

Section, act July 1, 1898, ch. 541, § 643, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933, related to expiration of time for filing claims in pending bankruptcy.

EFFECTIVE DATE OF REPEAL

Repeal of section effective three months after July 7, 1952, see note under section 1 of this title.

**§ 1044. Allowance of claims upon order to proceed with bankruptcy**

Upon the entry of an order under the provisions of this chapter directing that bankruptcy be proceeded with, only claims for taxes legally due and owing to the United States or any State or any subdivision thereof at the time of the filing of the original petition under this title and such claims as are provable under section 103 of this title shall be allowed; and, as to any such claims not already duly filed, where the petition under this chapter was filed under section 1021 of this title, and an order setting the first date for the first meeting of creditors was made before the filing of such petition, the date of mailing of notice to creditors of the entry of the order directing that bankruptcy be proceeded with shall, for the purposes of subdivision (n) of section 93 of this title, be deemed to be the first date set for the first meeting of creditors: *Provided, however,* That if the time for filing claims in a pending bankruptcy proceeding had expired prior to the filing of a petition under this chapter, claims not filed within the time prescribed or as permitted by subdivision (n) of section 93 of this title shall not be allowed in the reinstated bankruptcy proceeding.

(July 1, 1898, ch. 541, § 643, formerly § 644, as added June 22, 1938, ch. 575, § 1, 52 Stat. 933, renumbered and amended July 7, 1952, ch. 579, § 49, 66 Stat. 436.)

AMENDMENTS

1952—Act July 7, 1952, renumbered former section 644 of act July 1, 1898, as added by act June 22, 1938, as section 643, and permitted claims to be filed within six months rather than three months when bankruptcy ensues upon failure of a plan.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952, effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER VIII—PROVISIONS OF PLAN

**§ 1046. Contents generally**

A plan under this chapter—

(1) shall include provisions dealing with unsecured debts generally, upon any terms;

(2) may include provisions dealing with secured debts severally, upon any terms;

(3) may provide for priority of payment during the period of extension as between the secured and unsecured debts affected by the plan;

(4) shall include provisions for the submission of future earnings or wages of the debtor to the supervision and control of the court for the purpose of enforcing the plan;

(5) shall provide that the court may from time to time during the period of extension increase or reduce the amount of any of the installment payments provided by the plan, or extend or shorten the time for any such payments, where it shall be made to appear, after hearing upon such notice as the court may designate, that the circumstances of the debtor so warrant or require;

(6) may include provisions for the rejection of executory contracts of the debtor; and

(7) may include any other appropriate provisions not inconsistent with this chapter.

(July 1, 1898, ch. 541, § 646, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CODIFICATION

Provisions on this were contained in former section 202(h) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Rejection of executory contract as breach thereof, see section 103 of this title.

## SUBCHAPTER IX—CONFIRMATION AND CONSUMMATION OF PLANS

**§ 1051. Unanimously accepted plan; confirmation upon deposit by debtor**

A plan which at the meeting of creditors, as provided in section 1033 of this title, has been accepted in writing by all creditors affected thereby, whether or not their claims have been proved, shall be confirmed by the court when the debtor shall have made the deposit required under this chapter and under the plan, and if the court is satisfied that the plan and its acceptance are in good faith and have not been made or procured by any means, promises or acts forbidden by this title.

(July 1, 1898, ch. 541, § 651, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CODIFICATION

Provisions on this subject were contained in former section 202(g) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1052. Majority accepted plan; application for confirmation**

If a plan has not been so accepted, an application for the confirmation of the plan may be filed with the court within such time as the court shall have fixed in the notice of such meeting, or at or after such meeting and after, but not before—

(1) it has been accepted in writing, if unsecured creditors are affected by the plan, by a majority in number of all such creditors whose claims have been proved and allowed before the conclusion of the meeting, which number shall represent a majority in amount of such claims, and by the secured creditors whose claims are dealt with by the plan; and

(2) the debtor has made the deposit of moneys required of him under this chapter and under the plan.

(July 1, 1898, ch. 541, § 652, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

CODIFICATION

Provisions on this subject were contained in former sections 30(b) and 202(e) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1053. Alterations or modifications prior to confirmation**

Alterations or modifications of a plan may be proposed in writing by a debtor, with leave of court, at any time before the plan is confirmed.

(July 1, 1898, ch. 541, § 653, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1054. Acceptance of altered plan**

Unless the court finds that the proposed alteration or modification does not materially and adversely affect the interest of any creditor who has not in writing assented thereto, the court shall adjourn the meeting or, if closed, reopen the meeting, and may enter an order that any creditor who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a rejection of the altered or modified plan, shall be deemed to have accepted the alterations or modifications and the plan so altered or modified, unless the previous acceptance provides otherwise.

(July 1, 1898, ch. 541, § 654, as added June 22, 1938, ch. 575, § 1, 52 Stat. 934.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1055. Notice of adjourned or reopened meeting and of proposed alteration**

At least ten days' notice of the adjourned or reopened meeting, together with a copy of the order, if entered, and of the proposed alteration or modification, shall be given to the creditors and other parties in interest.

(July 1, 1898, ch. 541, § 655, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 1015 of this title.

**§ 1056. Requisites for confirmation**

(a) The court shall confirm a plan if satisfied that—

(1) the provisions of this chapter have been complied with;

(2) it is for the best interests of the creditors and is feasible;

(3) the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of the bankrupt; and

(4) the proposal and its acceptance are in good faith and have not been made or procured by any means, promises, or acts forbidden by this title.

Confirmation of a plan shall not be refused solely because the interest of a debtor will be preserved under the plan.

(b) Before confirming any such plan the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt was contracted.

(July 1, 1898, ch. 541, § 656, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935, and amended July 7, 1952, ch. 579, § 50, 66 Stat. 437.)

CODIFICATION

Provisions on this subject were contained in former sections 30(d) and 202(g) of this title.

AMENDMENTS

1952—Subd. (a). Act July 7, 1952, eliminated provisions that a proposed plan shall be "fair and equitable" and added last paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

June 22, 1938, set out as notes under section 1 of this title.

### § 1057. Binding effect of confirmation

Upon confirmation of a plan, the plan and its provisions shall be binding upon the debtor and upon all creditors of the debtor, whether or not they are affected by the plan or have accepted it or have filed their claims, and whether or not their claims have been scheduled or allowed or are allowable.

(July 1, 1898, ch. 541, § 657, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CODIFICATION

Provisions on this subject were contained in former section 202(i) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1058. Powers of court during extension period

During the period of extension, the court—

(1) shall retain jurisdiction of the debtor and his property for all purposes of the plan and its consummation and shall have supervision and control of any agreement or assignment, provided for in the plan, in respect to any future earnings or wages of the debtor; and

(2) may issue such orders as may be requisite to effectuate the provisions of the plan, including orders directed to any employer of the debtor. An order directed to such employer may be enforced in the manner provided for the enforcement of judgments.

(July 1, 1898, ch. 541, § 658, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935.)

CODIFICATION

Provisions on this subject were contained in former section 202(j) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1059. Priority of payment

In advance of distribution to creditors, there shall first be paid in full, out of the moneys paid in by or for the debtor, and the order of payment shall be—

(1) the costs of the referee as specified in paragraph (2) of section 1033 of this title;

(2) the actual and necessary costs and expenses of the trustee;

(3) an additional fee for the referees' salary and expense fund, to be graduated and charged in the manner outlined in paragraph (2) of subdivision (c) of section 68 of this title, and to be computed upon the amount of the payments actually made by or for a debtor under the plan; and commissions to the trustee of not more than 5 per centum to be computed upon and payable out of the payments actually made by or for a debtor under the plan;

(4) such reasonable fee to the attorney for the debtor as the court may allow for the professional services actually rendered by such attorney to the debtor in and in connection with the proceedings under this chapter;

(5) in the case of a pending bankruptcy proceeding superseded by a proceeding under this chapter, the costs, expenses, and fees of such bankruptcy proceeding; and

(6) the debts entitled to priority, in the order of priority, as provided by subdivision (a) of section 104 of this title.

(July 1, 1898, ch. 541, § 659, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935, and amended June 28, 1946, ch. 512, § 17, 60 Stat. 331; May 13, 1959, Pub. L. 86-24, § 2, 73 Stat. 24; July 28, 1959, Pub. L. 86-110, § 7, 73 Stat. 261.)

CODIFICATION

Provisions on this subject were contained in former section 202(j) of this title.

AMENDMENTS

1959—Par. (3). Pub. L. 86-110 substituted "referees' salary and expense fund" for "referees' salary fund". Pub. L. 86-24 substituted "of not more than 5 per centum" for "of 5 per centum".

1946—Pars. (1) and (3). Act June 28, 1946, made fees uniform with other bankruptcy fees.

EFFECTIVE DATE OF 1959 AMENDMENTS

For effective date of amendment of par. (3) of this section by Pub. L. 86-110, see section 8 of Pub. L. 86-110, set out as a note under section 68 of this title.

For effective date of amendment of par. (3) of this section by Pub. L. 86-24, see section 3 of Pub. L. 86-24, set out as a note under section 1006 of this title.

EFFECTIVE DATE, REPEAL, ETC., OF 1946 AMENDMENT

Effective date, repeals, saving provisions, and effect of catchlines of act June 28, 1946, see sections 18 and 19 of act June 28, 1946, set out as notes under section 62 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 65 of this title.

### § 1060. Discharge of debtor

Upon compliance by the debtor with the provisions of the plan and upon completion of all payments to be made thereunder, the court shall enter an order discharging the debtor from all his debts and liabilities provided for by the plan, but excluding such debts as are not dischargeable under section 35 of this title held by creditors who have not accepted the plan.

(July 1, 1898, ch. 541, § 660, as added June 22, 1938, ch. 575, § 1, 52 Stat. 935, and amended July 7, 1952, ch. 579, § 51, 66 Stat. 437.)

AMENDMENTS

1952—Act July 7, 1952, deleted "and all debts denied participation in the plan by section 1043 of this title" preceding "but excluding".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1062 of this title.

**§ 1061. Discharge of debtor after three years**

If at the expiration of three years after the confirmation of a plan the debtor has not completed his payments thereunder, the court may nevertheless, upon the application of the debtor and after hearing upon notice, if satisfied that the failure of the debtor to complete his payments was due to clrcumstances for which he could not be justly held accountable, enter an order discharging the debtor from all his debts and liabilities provided for by the plan, but excluding such debts as are not dischargeable under section 35 of this title held by creditors who have not accepted the plan.

(July 1, 1898, ch. 541, § 661, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936, and amended July 7, 1952, ch. 579, § 52, 66 Stat. 437.)

AMENDMENTS

1952—Act July 7, 1952, deleted "and all debts denied participation in the plan by section 1043 of this title" preceding "but excluding".

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1062 of this title.

**§ 1062. Final decree**

Upon the consummation of a proceeding under this chapter, as provided either in section 1060 or section 1061 of this title, the court shall enter a final decree discharging the trustee, closing the estate and making such provision, by way of injunction or otherwise, as may be equitable.

(July 1, 1898, ch. 541, § 662, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER X—DISMISSAL AND ADJUDICATION

**§ 1066. Procedure upon witbdrawal, abandonment, or failure to accept plan**

If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 1024 of this title, are not duly filed, or if a plan is not proposed at the meeting of creditors or within such further time as the court may fix, or if the plan is withdrawn or abandoned prior to its acceptance, or if the plan is not accepted at the meeting of creditors or within such further time as the court may fix, or if the deposit required under this chapter and under the plan is not made or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the plan is refused, or if after confirmation, a debtor defaults in any of the terms of the plan, or if the plan terminates by reason of the happening of a condition specified in the plan, the court shall—

(1) where the petition has been filed under section 1021 of this title, enter an order dismissing the proceeding under this chapter and adjudging the debtor a bankrupt, if not previously so adjudged, and directing that the bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) where the petition has been filed under section 1022 of this title, enter an order dismissing the proceeding under this chapter or, with the consent of the debtor, adjudging him a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title.

(July 1, 1898, ch. 541, § 666, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936, and amended July 7, 1952, ch. 579, § 53, 66 Stat. 437.)

CODIFICATION

Provisions on this subject were contained in former section 30(e) of this title.

AMENDMENTS

1952—Act July 7, 1952, inserted "If the statement of the executory contracts and the schedules and statement of affairs, as provided by paragraph (1) of section 1024 of this title, are not duly filed, or if a plan is not proposed at the meeting of creditors or within such further time as the court may fix" in the introductory paragraph.

EFFECTIVE DATE OF 1952 AMENDMENT

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1067, 1068 of this title.

**§ 1067. Procedure upon order directing bankruptcy to be proceeded with**

Upon the entry of an order directing that bankruptcy be proceeded with—

(1) in the case of a petition filed under section 1021 of this title, the bankruptcy proceeding shall be deemed reinstated and thereafter shall be conducted, so far as possible, as if such petition under this chapter had not been filed; or

(2) in the case of a petition filed under section 1022 of this title, if an order has been entered adjudging the debtor a bankrupt, as provided in paragraph (2) of section 1066 of this title, the proceeding shall thereafter be conducted, so far as possible, in the same manner and with like effect as if a voluntary petition for adjudication in bankruptcy had been filed and a decree of adjudication had been entered on the day when the petition under this chapter was filed.

(July 1, 1898, ch. 541, § 667, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1068. Exclusive method of adjudication**

Except as provided in section 1066 of this title and elsewhere in this chapter, a debtor shall not be adjudged a bankrupt either in a proceeding under this chapter or in any proceeding instituted under this title, during the pendency of a proceeding under this chapter.

(July 1, 1898, ch. 541, § 668, as added June 22, 1938, ch. 575, § 1, 52 Stat. 936.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

**§ 1069. Proceedings following confirmation of arrangement**

Where, after the confirmation of a plan, the court shall enter an order directing that bankruptcy be proceeded with—

(1) the trustee shall, upon his appointment and qualification, be vested with the title to all the property of the debtor as of the date of the entry of the order directing that bankruptcy be proceeded with;

(2) the unsecured debts incurred by the debtor after the confirmation of the plan and before the date of the entry of the final order directing that bankruptcy be proceeded with shall, unless and except as otherwise provided in the plan or in the order confirming the plan, share on a parity with the prior unsecured debts of the same classes, provable in the ensuing bankruptcy proceeding, and for such purpose the prior unsecured debts shall be deemed to be reduced to the amounts respectively provided for them in the plan or in the order confirming the plan, less any payment made thereunder; and

(3) the provisions of chapters 1 to 7 of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this section, apply to the rights, duties, and liabilities of the creditors holding debts incurred by the debtor after the confirmation of the plan and before the date of the final order directing that bankruptcy be proceeded with, and of all persons with respect to the property of the debtor, and, for the purposes of such application, the date of bankruptcy shall be taken to be the date of the entry of the order directing that bankruptcy be proceeded with.

(July 1, 1898, ch. 541, § 669, as added July 7, 1952, ch. 579, § 54, 66 Stat. 437.)

EFFECTIVE DATE

Amendment by act July 7, 1952 effective 3 months after July 7, 1952, see section 57 of act July 7, 1952, set out as a note under section 1 of this title.

## SUBCHAPTER XI—PLANS, WHEN SET ASIDE OR MODIFIED

**§ 1071. Fraud in procuring plan**

If, upon the application of parties in interest filed at any time within six months after a plan has been confirmed, it shall be made to appear that fraud was practiced in the procuring of such plan and that knowledge of such fraud has come to the petitioners since the confirmation of such plan—

(1) if the debtor has been guilty of or has participated in the fraud or has had knowledge thereof before the confirmation and has failed to inform the court of the fraud, the court may set aside the confirmation and thereupon (a) where the petition was filed under section 1021 of this title, reinstate the pending bankruptcy proceeding, adjudge the debtor a bankrupt, if he has not already been so adjudged, and direct that the bankrupty [1] proceeding be proceeded with, or (b) where the petition was filed under section 1022 of this title, reinstate the proceeding, adjudge the debtor a bankrupt, and direct that bankruptcy be proceeded with pursuant to the provisions of this title; or

(2) the court may set aside the confirmation, reinstate the proceeding under the petition filed under this chapter, and hear and determine applications for leave to propose, within such time as the court may fix, alterations or modifications of the plan for the purpose of correcting the fraud; or

(3) the court may reinstate the proceeding under the petition filed under thls chapter and modify or alter the plan for the purpose of correcting the fraud, but may not materially modify or alter the plan adversely to the interests of any party who did not participate in the fraud and who does not consent to such modification or alteration, or to the prejudice of any innocent person who, for value, subsequent to the confirmation, acquired rights in reliance upon it.

(July 1, 1898, ch. 541, § 671, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

CODIFICATION

Provisions on this subject were contained in former sections 31 and 202(k) of this title.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act

[1] So in original. Probably should be "bankruptcy".

June 22, 1938, set out as notes under section 1 of this title.

## SUBCHAPTER XII—GENERAL PROVISIONS

### § 1076. Suspension of statutes of limitation, etc.

All statutes of limitation affecting claims provable under this chapter and the running of all periods of time prescribed by this title in respect to the commission of acts of bankruptcy, the recovery of preferences and the avoidance of liens and transfers shall be suspended while a proceeding under this chapter is pending and until it is finally dismissed.

(July 1, 1898, ch. 541, § 676, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1077. Notice by mail

Unless otherwise directed by the court, all notices required by this chapter may be given by mail to the parties entitled thereto to their addresses ascertained in the manner prescribed for other notices in section 94 of this title.

(July 1, 1898, ch. 541, § 677, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Notices generally, see section 1015 of this title.

### § 1078. District director of internal revenue and Federal agencies; notices

The court shall, in every case instituted under any provisions of this chapter, mail or cause to be mailed a copy of the notice of the first meeting of creditors to the district director of internal revenue for the district in which the court is located. Whenever the schedules of the debtor, or the list of creditors of the debtor, or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof (except for any internal revenue obligation payable to the Secretary of the Treasury or his delegate), a notice of the first meeting shall be mailed as well to the head of such department, agency, or instrumentality.

(July 1, 1898, ch. 541, § 678, as added June 22, 1938, ch. 575, § 1, 52 Stat. 937, and amended July 12, 1960, Pub. L. 86-631, § 1, 74 Stat. 466.)

AMENDMENTS

1960—Pub. L. 86-631 substituted requirement that a copy of the first meeting of creditors shall be sent to the district director of internal revenue for the district in which the court is located and that whenever the schedules of the debtor or any other papers filed in the case disclose a debt to the United States acting through any department, agency, or instrumentality thereof (except for any internal revenue obligation payable to the Secretary of the Treasury or his delegate), a notice of the first meeting shall be mailed as well to the head of such department, agency or instrumentality, for former requirement that petitions, notices, orders, and other papers in wage earners' plans proceedings be transmitted to the Secretary of the Treasury.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

### § 1079. Taxes; income or profit from modification of indebtedness

No income or profit, taxable under any law of the United States or of any State now in force or which may hereafter be enacted, shall, in respect to the adjustment of the indebtedness of a debtor in a proceeding under this chapter, be deemed to have accrued to or to have been realized by a debtor by reason of a modification in or cancellation in whole or in part of any such indebtedness in a proceeding under this chapter: *Provided, however,* That if it shall be made to appear that the plan had for one of its principal purposes the evasion of any income tax, the exemption provided by this section shall be disallowed.

(July 1, 1898, ch. 541, § 679, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

CROSS REFERENCES

Application of this section to compositions and extensions confirmed under former section 202 of this title, see section 1086 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1086 of this title.

### § 1080. Assessment and payment of taxes; acceptance of arrangement by taxing agency

Any provision in this chapter to the contrary notwithstanding, all taxes which may be found to be owing to the United States or any State from a debtor within one year from the date of the filing of a petition under this chapter, and have not been assessed prior to the date of the confirmation of a plan under this chapter, and all taxes which may become owing to the United States or any State from a debtor shall be assessed against, may be collected from, and shall be paid by the debtor: *Provided, however,* That the United States or any State may in writing accept the provisions of any plan dealing with the assumption, settlement, or payment of any such tax.

(July 1, 1898, ch. 541, § 680, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 7430.

## SUBCHAPTER XIII—WHEN CHAPTER TAKES EFFECT

### § 1086. Proceedings to which chapter applies

(1) On and after the effective date of this amendatory Act, this chapter shall apply to debtors and their creditors, whether their rights, claims, and interests of any nature whatsoever have been acquired or created before or after such date;

(2) a petition may be filed under this chapter in a proceeding in bankruptcy which is pending on the effective date of this amendatory Act;

(3) the provisions of sections 201 and 202 of this title shall continue in full force and effect with respect to proceedings pending under those sections upon the effective date of this amendatory Act;

(4) section 1079 of this title shall apply to compositions and extensions confirmed under section 202 of this title before the effective date of this amendatory Act and to compositions and extensions which may be confirmed under section 202 of this title on and after such effective date; and

(5) confirmation of a plan under this chapter shall not be refused because of a discharge granted or a composition confirmed prior to the effective date of this amendatory Act.

(July 1, 1898, ch. 541, § 686, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

REFERENCES IN TEXT

Sections 201 and 202 of this title, referred to in subds. (3) and (4), were omitted. See Codification notes under those sections for distribution of subject matter.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

## CHAPTER 14—MARITIME COMMISSION LIENS

Sec.

1101. United States Maritime Commission as trustee or receiver; corporations operating vessels to foreign countries.

1102. Continued operation of vessels; payment of operating loss.

1103. Injunction powers; United States as creditor under preferred ship mortgage

CODIFICATION

Sections 30, 31, 201, 202, 206, and 207 of this title were amended and incorporated as this chapter and chapters 10, 11, 12, and 13 of this title by act June 22, 1938, ch. 575, § 1, 52 Stat. 840.

### § 1101. United States Maritime Commission as trustee or receiver; corporations operating vessels to foreign countries

Notwithstanding any provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of the Merchant Marine Act, 1936 [46 U.S.C. 1101 et seq.], may constitute and appoint the United States Maritime Commission as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Commission as trustee or receiver shall become effective upon the ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. In no such proceeding shall the Commission be constituted as trustee or receiver without its express consent.

(July 1, 1898, ch. 541, § 701, as added June 22, 1938, ch. 575, § 1, 52 Stat. 938.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, which is classified generally to chapter 27 (§ 1101 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46 and Tables volume.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix te Title 5, Government Organization and Employees, abolished the Federal Maritime Board, including the offices of the members of the Board. Functions of the Board were transferred either to the Federal Maritime Commission or to the Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

The United States Maritime Commission was abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, which transferred part of its functions and part of the functions of its Chairman to the Federal Maritime Board and the Chairman thereof, such Board having been created by that Plan as an agency within the Department of Commerce with an independent status in some respects, and transferred the remainder of such Commission's functions and the functions of its Chairman to the Secretary of Commerce, with power vested in the Secretary to authorize their performance by the Maritime Administrator, the head of the Maritime Administration, which likewise was established by the Plan in the Department of Commerce with the provisions that the Chairman of said Federal Maritime Board should, ex officio, be such administrator.

All executive and administrative functions of the Maritime Commission were transferred to the Chairman of the Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069 set out in the Appendix to Title 5, Government Organization and Employees.

### § 1102. Continued operation of vessels; payment of operating loss

If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Commission cer-

tifies to the court that the continued operation of such vessels is, in the opinion of the Commission, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of the Merchant Marine Act, 1936, as amended [46 U.S.C. 1101 et seq.], the court may permit the Commission to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Commission, if the Commission undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty Act [46 U.S.C. 741 et seq.]. The Commission shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Commission may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Commission on account of the operation of such vessels.

(July 1, 1898, ch. 541, § 702, as added June 22, 1938, ch. 575, § 1, 52 Stat. 939.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, which is classified principally to chapter 27 (§ 1101 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46 and Tables volume.

The Suits in Admiralty Act, referred to in text, is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, which is classified generally to chapter 20 (§ 741 et seq.) of Title 46. For complete classification of this Act to the Code, see Tables volume.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

Abolition of Federal Maritime Board, including the offices of the members of the Board and transfer of functions either to the Federal Maritime Commission or to the Secretary of Commerce, see note under section 1101 of this title.

**§ 1103. Injunction powers; United States as creditor under preferred ship mortgage**

No injunction powers vested in the courts of bankruptcy under this title shall be construed or be deemed to affect or apply to the United States as a creditor under a preferred ship mortgage, as defined in the Ship Mortgage Act, 1920, as amended [46 U.S.C. 911 et seq.], unless the Commission files with the court a written waiver of the provisions of this section.

(July 1, 1898, ch. 541, § 703, as added June 22, 1938, ch. 575, § 1, 52 Stat. 939.)

REFERENCES IN TEXT

The Ship Mortgage Act, 1920, referred to in text, is section 30 of act June 5, 1920, ch. 250, 41 Stat. 1000, which is classified generally to chapter 25 (§ 911 et seq.) of Title 46, Shipping. For complete classification of section 30 to the Code, see section 984 of Title 46 and Tables volume.

EFFECTIVE DATE AND CONSTRUCTION

Effective date and construction of act June 22, 1938, known as the Chandler Act, see sections 6 and 7 of act June 22, 1938, set out as notes under section 1 of this title.

TRANSFER OF FUNCTIONS

Abolition of Federal Maritime Board, including the offices of the members of the Board and transfer of functions transferred either to the Federal Maritime Commission or to the Secretary of Commerce, see note under section 1101 of this title.

## CHAPTER 15—RAILROAD ADJUSTMENTS

**§§ 1200 to 1255. Omitted**

CODIFICATION

This chapter, chapter XV of the Bankruptcy Act of July 1, 1898, ch. 541, §§ 700 to 755, as added by act Oct. 16, 1942, ch. 610, 56 Stat. 787, terminated by its own provisions on Nov. 1, 1945, except with respect to proceedings initiated on or before that date.

A prior chapter 15 of this title, chapter XV of the Bankruptcy Act of July 1, 1898, ch. 541, §§ 700 to 755, as added by act July 28, 1939, ch. 393, 53 Stat. 1134, terminated by its own provisions on July 31, 1940, except with respect to proceedings initiated on or before that date.