

Bankruptcy 101: The “Estate” and “Property of the Estate”

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This entry is part of Nelson Mullins’s ongoing “Bankruptcy Basics” blog series that is intended to address foundational aspects of bankruptcy for non-bankruptcy practitioners and professionals. This entry will explain the concepts of the bankruptcy “estate” and “property of the estate” and the importance thereof.

Upon a debtor’s filing of a bankruptcy case, the bankruptcy “estate” is immediately formed. It is constituted of all of the debtor’s property, both tangible and intangible, as of the filing of the petition. The debtor in a chapter 7 and 13 case can exempt certain property from entering the estate. These estate exemptions are typically governed by state law, but the bankruptcy code does include an exemption list for states that do not have their own.

The importance of the estate and property of the estate is critical, as the debtor can no longer simply use estate property as he or she sees fit. The estate is created for the benefit of the debtor’s creditors and is afforded protections. In chapter 7 and 13 cases, this protection is primarily in the form of the appointed chapter 7 or 13 trustee, who has control over the assets of the estate. As a neutral, third-party, the trustee is imbued with fiduciary duties to the debtor’s creditors to ensure that estate property is properly managed and maintained for the benefit of those creditors. In chapter 11, the filing debtor typically takes on the role of “debtor-in-possession,” and is given the same powers as the trustee. That said, chapter 11 cases have additional checks on the debtor-in-possession’s exercise of authority over estate property, including the creation of an official committee of unsecured creditors in many cases, as well as oversight from the United States Trustee.

Because the estate includes all tangible and intangible assets of the debtor, the scope of the estate can be very large. Lawsuits that the debtor was in the process of prosecuting are property of the estate, and the trustee can decide whether or not to continue litigating those cases. Similarly, claims that the debtor has but has not yet filed, also constitute property of the estate. In many instances, these claims include “preference” actions against creditors who were given preferential payment treatment by the debtor in the run-up to the bankruptcy case. Beyond legal claims, all other intangible property rights, including rights to payment, constitute property of the estate.

Certain property is excluded from the estate. Primarily, property that the debtor holds in trust for another is not property of the estate. This distinction can be hard to draw at times, and litigation can arise over whether certain money or property was, in fact, held for the benefit of another and, thus, not property of the estate.

All actions by creditors against the debtor and property of the estate are stayed by the automatic stay at the outset of the bankruptcy case. This ensures that the estate is maintained and that all property can be properly accounted for prior to any determination as to how the estate is going to be administered.

Put simply, the estate can be thought of as every asset of the debtor, grouped into a single pool, so that the trustee and creditors can determine the value of the estate and the various claims against the estate. While there are certain exemptions and exceptions, the estate is effectively all-encompassing.

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