

I. What is property of the Bankruptcy Estate?

A. Defined in 11 USC § 541 of the Bankruptcy Code.

“...all legal or equitable interests of the debtor in property as of the commencement of the case”. 11 USC §541(a)(1).

B. Includes:

1. All interests of the debtor **and the debtor’s spouse** in the community property as of the commencement of the case so long as it is under the sole, equal, or joint management and control of the debtor. 11 USC 541(a)(2).
2. Any property that the trustee recovers under § 329(attorney fees from Debtor’s attorney); § 543 (by a turnover action); § 550 (recovery of transfers avoided as preferences, fraudulent transfers or unauthorized post petition transfers); § 553 (from an improper set off); and § 723 (recoveries from other general partners).
3. Any interest in property that debtor acquires or becomes entitled to acquire within 180 days after the Petition:
 - a. That is a bequest, devise or inheritance;
 - b. As a result of a property settlement agreement or interlocutory or final divorce decree; or
 - c. As a beneficiary of a life insurance policy.
4. Proceeds, products, rents, offspring or profits from property of estate **except** wages.
5. Any interest in property that the estate acquires after the Petition.

C. Does not include:

1. Any power that debtor may exercise solely for the benefit of another.
2. Any interest in a lease of nonresidential property terminated before the commencement of the case.
3. Any interest in participation under student loan programs.
4. Any interest in educational IRA deposited more than 1 year before Petition (subject to certain dollar amounts for 2 years).
5. Property in which the debtor only holds legal title-the property of the estate is only the legal title and not equitable interest.

D. Property of Estate expanded in reorganization chapters 11(for individuals), 12, and 13.

1. Property includes:
 - a. All property debtor acquires after Petition until case is closed, dismissed or converted, whichever first occurs. See 11 USC §1115(a)(1), §1207(a)(1), §1306(a)(1); and
 - b. Earnings until case is closed, dismissed or converted, whichever first occurs. See 11 USC §1115(a)(2), §1207(a)(2), §1306(a)(2).

E. Things to consider:

1. Lawsuits pending at time the bankruptcy case commences.
2. Trustee controls property of estate in chapter 7, but debtor in all other cases.
3. Income from property-dividends etc. are not wages and therefore remain property of estate until case closes-not when discharge is entered.
4. Automatic stay under 11 USC § 362(a) continues related to property of the estate until it is no longer property of the estate see 11 USC 362(c)(1).
5. Property remains property of the estate until it is abandoned and remains property of the estate if it is not scheduled and not administered. See 11 USC § 554(c) even if case is closed.
6. An interest of debtor in property becomes property of the estate even if an agreement restricts or conditions the transfer and even if it is conditioned on the insolvency or financial condition of the Debtor **but** a restriction on the transfer of a beneficial interest of the Debtor in a trust that is enforceable under nonbankruptcy law is enforceable in a bankruptcy proceeding-example spend thrift clause. See 11 USC §541(c).

II. Settlements in a Bankruptcy Case.

Controlled by Rule 9019 of the Federal Rules of Bankruptcy Procedure.

A. Rule states:

“On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.” Rule 9019(a).

B. 9th Circuit has held that bankruptcy courts should, in determining the fairness, reasonableness and adequacy of a proposed settlement agreement, consider:

1. The probability of success in the litigation;
2. The difficulties, if any, to be encountered in the matter of collection;
3. The complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
4. The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Martin v. Kane, et. al. (In Re A & C Properties), 784 F.2d 1377(9th Cir. 1986).

- C. Most Bankruptcy Judges including the Judges in the District in Idaho expect parties filing motions seeking approval of a compromise to set forth a written analysis of the so- called A & C factors in their motion.**
- D. See Sample Motion attached**