

LII > U.S. Code > Title 11 > CHAPTER 5 > SUBCHAPTER III > § 546

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Title

Section

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11 U.S. Code § 546 - Limitations on avoiding powers

U.S. Code Notes

(a) An action or proceeding under section [544](#), [545](#), [547](#), [548](#), or [553](#) of this title may not be commenced after the earlier of—

(1) the later of—

(A) 2 years after the entry of the order for relief; or

(B) 1 year after the appointment or election of the first trustee under section [702](#), [1104](#), [1163](#), [1202](#), or [1302](#) of this title if such appointment or such election occurs before the expiration of the period specified in subparagraph (A); or

(2) the time the case is closed or dismissed.

(b)

(1) The rights and powers of a trustee under sections [544](#), [545](#), and [549](#) of this title are subject to any generally applicable law that—

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) If—

(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and

(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

(c)

(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

(d) In the case of a seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business (as such terms are defined in [section 557 of this title](#)) or in the case of a United States fisherman who has caught fish sold to a fish processing facility owned or operated by the debtor in the ordinary course of such fisherman's business, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common law right of such producer or fisherman to reclaim such grain or fish if the debtor has received such grain or fish while insolvent, but—

(1) such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing, reclamation of such grain or fish before ten days after receipt thereof by the debtor; and

(2) the court may deny reclamation to such a producer or fisherman with a right of reclamation that has made such a demand only if the court secures such claim by a lien.

(e) Notwithstanding sections [544](#), [545](#), [547](#), [548\(a\)\(1\)\(B\)](#), and [548\(b\)](#) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section [101](#), [741](#), or [761](#) of this title, or settlement payment, as defined in section [101](#) or [741](#) of this title, made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract, that is made before the commencement of the case, except under [section 548\(a\)\(1\)\(A\) of this title](#).

(f) Notwithstanding sections [544](#), [545](#), [547](#), [548\(a\)\(1\)\(B\)](#), and [548\(b\)](#) of this title, the trustee may not avoid a transfer made by or to (or for the benefit of) a repo participant or financial participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under [section 548\(a\)\(1\)\(A\)](#) of this title.

(g) Notwithstanding sections [544](#), [545](#), [547](#), [548\(a\)\(1\)\(B\)](#) and [548\(b\)](#) of this title, the trustee may not avoid a transfer, made by or to (or for the benefit of) a swap participant or financial participant, under or in connection with any swap agreement and that is made before the commencement of the case, except under [section 548\(a\)\(1\)\(A\)](#) of this title.

(h) Notwithstanding the rights and powers of a trustee under sections [544\(a\)](#), [545](#), [547](#), [549](#), and [553](#), if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under [chapter 11 of this title](#) and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

(i)

(1) Notwithstanding paragraphs (2) and (3) of section [545](#), the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7-209 of the Uniform Commercial Code, as in effect on the date of enactment of the [Bankruptcy Abuse Prevention and Consumer Protection Act of 2005](#), or any successor to such section 7-209.

(j) Notwithstanding sections [544](#), [545](#), [547](#), [548\(a\)\(1\)\(B\)](#), and [548\(b\)](#) the trustee may not avoid a transfer made by or to (or for the benefit of) a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section [548\(a\)\(1\)\(A\)](#) and except to the extent that the trustee could otherwise avoid such a transfer made under an

individual contract covered by such master netting agreement.

([Pub. L. 95-598](#), Nov. 6, 1978, [92 Stat. 2597](#); [Pub. L. 97-222](#), § 4, July 27, 1982, [96 Stat. 236](#); [Pub. L. 98-353](#), title III, §§ 351, 393, 461, July 10, 1984, [98 Stat. 358](#), 365, 377; [Pub. L. 99-554](#), title II, §§ 257(d), 283(l), Oct. 27, 1986, [100 Stat. 3114](#), 3117; [Pub. L. 101-311](#), title I, § 103, title II, § 203, June 25, 1990, [104 Stat. 268](#), 269; [Pub. L. 103-394](#), title II, §§ 204(b), 209, 216, 222(a), title V, § 501(b)(4), Oct. 22, 1994, [108 Stat. 4122](#), 4125, 4126, 4129, 4142; [Pub. L. 105-183](#), § 3(c), June 19, 1998, [112 Stat. 518](#); [Pub. L. 109-8](#), title IV, § 406, title IX, § 907(e), (o)(2), (3), title XII, § 1227(a), Apr. 20, 2005, [119 Stat. 105](#), 177, 182, 199; [Pub. L. 109-390](#), § 5(b), Dec. 12, 2006, [120 Stat. 2697](#).)



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