This chapter examines fiduciary duties in bankruptcy and insolvency, focusing on the bankruptcy trustee’s duties, which are triggered by virtue of appointment in a case. It first provides a background on bankruptcy law in order to elucidate the doctrines and rules affecting fiduciary responsibilities in bankruptcy, citing a number of relevant provisions in the Bankruptcy Code. It then considers the fiduciary, non-fiduciary, and anti-fiduciary obligations of the trustee under the Bankruptcy Code before discussing the fiduciary duties of care and loyalty. In particular, it highlights bankruptcy-related issues raised by the duty of loyalty with respect to secured creditors, priority unsecured creditors, general unsecured creditors, and debtors. It also explores the byzantine protective remedies available to trustees should there be a breach of fiduciary duty and concludes with an analysis of miscellaneous additional duties of the trustee in insolvency, as well as the unique challenges the debtor-in-possession (DIP) faces with its duty of loyalty. The chapter suggests that the Bankruptcy Code has many safeguards designed to confront conflicting creditor incentives, both against the DIP and in insolvency, that help fill the gaps left by reliance upon fiduciary duty law alone.

Keywords: fiduciary duties, bankruptcy, insolvency, bankruptcy trustee, bankruptcy law, Bankruptcy Code, duty of care, duty of loyalty, breach of fiduciary duty, debtor-in-possession

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