

COMPARISON OF KEY ASPECTS OF BANKRUPTCY CHAPTERS OF RELIEF THAT ARE AVAILABLE TO SMALL BUSINESSES ¹ FOR SBDC

| Criteria | Chapter 11 – Reorganization for a Business Debtor that Designates Itself a Small Business | Subchapter V of Chapter 11 – Reorganization Specifically for a Small Business Debtor (<i>eff 2/20</i>) | Chapter 13 – Adjustment of Debts for an Individual w/ Regular Income | Chapter 12 – Adjustment of Debts for a Family Farmer or Fisherman w/ Regular Income |
|--------------------------------|---|---|--|--|
| Debt Limits² | <p>\$2,725,625 cap on aggregate secured & unsecured debts as of petition date is (excluding debts owed to affiliates or insiders). At least 50% of the debt must be from commercial or biz activities of the debtor.</p> | <p>Same as a “small business debtor” <i>except</i> the \$2,725,625 cap is increased to \$7,500,000 until 3/27/21.</p> | <p>\$1,257,850 cap on secured debt, and \$419,275 cap on unsecured debt.</p> | <p>\$10,000,000 cap on aggregate secured & unsecured debt (<i>cap raised as of 2019</i>).</p> |
| Who is Eligible | <p>An individual or corporation engaged in commercial or biz activities (including any of their affiliates in bankruptcy) with debt that meets above debt limits.</p> | <p>An individual or corporation engaged in commercial or biz activities (including any of their affiliates in bankruptcy) with debt that meets above debt limits.</p> | <p>An individual (or married couple) who has regular (i.e., predictable) income.</p> | <p>An individual (or married couple) or family-owned corporation with sufficiently stable and regular income to fund a ch 12 plan. And at least 50% of the debt is farm related.</p> |

¹ **DISCLAIMER:** This chart was prepared by Chief Judge Colleen A. Brown (U.S Bankruptcy Court, Dist of Vt) and Chief Judge Peter G. Cary (U.S. Bankruptcy Court, Dist of ME). and updated by Judge Brown for this presentation. This chart has no precedential value or binding authority and may not be cited in any court hearing. This chart is not legal advice and should not be relied upon in lieu of consulting with a bankruptcy attorney in connection with any bankruptcy filing.

² The debt limits are indexed and change at three-year intervals.

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| Property of the Estate (i.e., assets that fund plan of reorganization) | Includes ALL property the debtor owns or has an interest in, anywhere in the world, on the day the case is filed, PLUS some assets the Debtor acquires in first 180 days, AND earnings from services debtor performs during case if the debtor is an individual. | If chapter 11 plan is <u>consensually</u> confirmed, then includes only property the debtor had on the date case was filed + 180-day property. If plan is <u>non-consensually</u> confirmed, then also includes earnings from services debtor performs during case if the debtor is an individual. | Includes ALL property the debtor owns or has an interest in, anywhere in the world, on the day the case is filed, PLUS some assets the Debtor acquires in first 180 days, AND earnings from services debtor performs during case if the debtor is an individual. | Same as chapter 13 |
| Case Filing Fee | \$1,738 | \$1,738 | \$313 | \$278 |
| UST Fees | Yes, payable quarterly based on amount of disbursements; ranges from \$325 to \$250,000 per quarter. | None. | None. | None. |
| Time for Filing a Plan | Only the debtor may file a plan during first <u>180 days</u> of the case. Outside deadline for any party to file plan is during the first <u>300 days</u> of the case. | Only the debtor may file a plan, and the plan must be filed within the first <u>90 days</u> of the case. | Plan due during first <u>14 days</u> of the case. | Plan due within first <u>90 days</u> of the case. |
| Due Date of First Plan Payment | First payment due upon plan confirmation, but debtor will likely need to make payments to secured creditors every month, to avoid falling behind during the case. | First payment due upon plan confirmation, but debtor will likely need to make payments to secured creditors every month, to avoid falling behind during the case. | First plan payment due within 30 days of case filing (by wage withholding, ACH or TFS). | First payment not due until plan is confirmed. Payments can be scheduled around flow of farmer's income. |
| Maximum Plan Length | No limit on the term or length of the plan. | Generally a plan term may be up to <u>3 to 5 years</u> , but subchapter V does not expressly prohibit plan payments beyond 5 years. | Maximum plan term is <u>60</u> months. | Maximum plan term is <u>60 months</u> but may pay secured claims over longer period. |

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| Appointment and Role of Case Trustee | Generally, no trustee appointed; occurs only upon a showing of cause, including fraud, dishonesty, incompetence or gross mismanagement of the debtor’s affairs. Debtor remains in possession. | A trustee is appointed in every subchapter V case. Trustee’s role is to help debtor and creditors reach a consensual plan. May also distribute payments to creditors, but optional. Debtor remains in possession. | A trustee is appointed in every chapter 13 case. Trustee’s role is to collect monthly payments from debtor and distribute them to creditors, per terms of plan. Debtor remains in possession. | A trustee is appointed in every chapter 13 case. Trustee’s role is to collect monthly payments from debtor and distribute them to creditors per the terms of plan. Debtor remains in possession, |
| Disclosure Statement | Court may determine the plan provides adequate information and that no disclosure statement is required; OR conditionally approve a disclosure statement subject to final approval at plan confirmation hearing. Typically 20-100 pages long. | Not required, unless the court orders one. But the plan must include a brief history of the debtor’s business operations, a liquidation analysis and feasibility projections. | None required. | None required. |
| Time Between Filing and Confirmation | No required time period but in Vt, expectation is generally 6 - 9 mos. | No required time period but in Vt, expectation is generally 3 - 6 mos. | In VT, confirmation usually occurs within 60-90 days. | In VT, confirmation typically within 6 - 9 mos. Often, timing depends on nature of farm ops & extent of creditor support for the plan. |
| Type of Relief Available in the Plan | Can be a financial restructuring, operational reorganization, partial liquidation, total liquidation, or any other reorganization the debtor proposes will make the debtor viable and support payments proposed in plan. | Same as conventional chapter 11 case – though usually not as complex since debtors are smaller. | Usually a repayment plan with payments over 36-60 months. But debtor can also file a sale plan that requires debtor to sell some or all of their assets, by a date certain, during the plan, to fund plan. | Debtor can sell or transfer part or all of the farm property, convey farm to the next generation, restructure or change nature of operations, change the type of crop grown, or market served. Significant tax benefits. |

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| Who Votes, or Has Control over Whether Plan is Confirmed | All holders of allowed impaired claims may vote. To get plan confirmed, at least 1 class of impaired creditors must accept the plan by <ul style="list-style-type: none"> - 50% of the number, and - 2/3 of the amount of the claims held by the creditors who voted. | All creditors may vote. This determines whether the plan is confirmed as a consensual or a non-consensual plan. | No creditors vote but any creditor may object to the Plan. The Court rules on objections. | No creditors vote but any creditor may object to the Plan. The Court rules on objections. |
| Cramdown of Secured Claims (i.e., reduction in principal amount due on secured claims) | The plan may reduce (and pay) a secured creditor a sum equal to the value of collateral securing the claim, rather than full amount due. Only exception is mortgages on the debtor’s principal residence. | Secured claim reduction is possible even over the objections of members of an impaired class, if the Court approves it. | The plan may reduce (and pay) a secured creditor a sum equal to the value of collateral securing the claim, rather than full amount due. Only exception are mortgages on the debtor’s principal residence. | The plan may reduce (and pay) a secured creditor a sum equal to the value of collateral securing the claim, rather than full amount due, <i>including</i> mortgages on the debtor’s principal residence. |
| Discharge (Debt Forgiveness) | Order granting discharge (or forgiveness) of debt is entered AFTER D makes all plan payments. Court may grant an earlier discharge under certain circumstances. Debts for marital or family support, most taxes, fines, student loans are generally not discharged (forgiven). | Timing of the entry of discharge order depends on whether the plan is confirmed consensually. If confirmed <u>consensually</u> the discharge enters upon confirmation. If <u>not consensually</u> confirmed, discharge not entered until after all plan payments are made. No early discharge option | Order granting discharge (or forgiveness) of debt is entered AFTER D makes all plan payments (i.e., 3-5 years after case was filed). | Order granting discharge (or forgiveness) of debt is entered AFTER D makes all plan payments (i.e., 3-5 years after case was filed). |
| Overall Cost (varies wildly from case to case) | Less expensive than conventional chapter 11 but usually at least \$30,000. | Least expensive chapter 11 option. Still new, but appears likely to cost at least \$15,000. | Typically, fees range from \$2,500 to \$5,000. Additional fees may apply in a biz case. | A wide range because so many options: \$5,000-\$50,000. |

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| Primary Benefits for a Small Biz Seeking Reorg | Less complicated, less expensive and more streamlined process than conventional chapter 11. Moves more quickly. May not need a disclosure statement. | Even more streamlined, have assistance and expertise of trustee, more options for confirmation even when creditors object. No disclosure statement required. | Once set up on payment system, trustee monitors payments. Allows reinstatement of home mtges as matter of course. | Provides most potent tools for restructuring secured debt, including home mortgages, more flexibility on timing of payments, huge tax benefits. |
| Primary Draw-Backs for a Small Biz Seeking Reorg | Particular debt limits and eligibility requirements apply, and although may not require a DS, it is still complex and expensive. | Short time period for getting plan filed, many aspects of relief depend on getting all creditors on board in that short time frame. | Low debt limits for small biz and is only available if biz is operated by individuals (corp entities not eligible). | Only available to small biz that is engaged in farming or fishing. |

ADDITIONAL CONSIDERATIONS

1. The filing of a bankruptcy case freezes all collection activity and creates predictability of the business, to facilitate a focus on reorganizing.
2. A successful reorganization benefits both the debtor and all creditors. It allows the debtor to stay in business, continue to employ Vermonters, and contribute to the economy; while getting the creditors more money than they would recover in a liquidation of the debtor; and opening the door for them to have an ongoing business relationship with the debtor.
3. Bankruptcy offers many options for reorganization – it is not limited to liquidations – and allows debtors to retain a sense of dignity while also retaining their business.
4. It is not prudent to seek bankruptcy relief without an attorney who is a bankruptcy expert.
5. Vermont has a very experienced and savvy bankruptcy bar (on both the debtor and creditor sides) and many professionals (accountants, appraisers, etc.) who have the skills and experience in bankruptcy cases to provide critical advice. These attorneys and other professionals understand the value of bankruptcy reorganizations, are able to offer pragmatic guidance to parties in bankruptcy cases, and have a track record of facilitating positive outcomes.
6. Vermont has one of the highest success rates in the country, in bankruptcy reorganization cases, due largely to the effective collaboration – and the shared view of the value of reorganizations – among the bankruptcy attorneys, trustees, and court.
7. The biggest mistake businesses make in pursuing bankruptcy relief is to wait too long before doing so. It is crucial for the debtor to begin a reorganization process, if at all possible, before they run out of cash and/or goodwill with their creditors. The more the debtor has of each of these, the more likely it is to succeed in its reorganization.
8. The information in the chart set out above is general and many exceptions and caveats apply. It is not intended as legal advice and should not be relied upon to determine whether to seek bankruptcy relief. It is merely an overview to illustrate the breadth and variety of relief available through bankruptcy reorganizations.

CHRONOLOGY OF A BANKRUPTCY REORGANIZATION

- Day 1 business files a reorganization **petition** listing all debts, assets, answering Qs about financial circumstances;
- **stay goes into effect**
- 14-180 days later business must file a **plan of reorganization** (*due date determined by type of reorganization*)
- must set out how restructured business will operate, when & how creditors will get paid/ source of pmts
 - during this time creditors filed proofs of claim setting out the amount they claim due & why
- 60-120 days later business must appear at a **confirmation hearing** to prove its plan is feasible & fair
- creditors present their positions, if necessary, witnesses testify, Court decides whether to confirm the plan
- 3-5 yrs following business performs the confirmed plan, makes payments to creditors and stays current on ongoing debts
- business required to file regular operating reports setting out status of operations, assets, payments, etc.
- After plan done business exits bankruptcy, reorganized, with a fresh start
- and if it is an individual (as opposed to a corporate entity), remaining debts forgiven