

# SMALL BUSINESS BANKRUPTCY AND REORGANIZATION:

Demystifying and Destigmatizing

## Panelists

Honorable Judge  
**Colleen Brown**

Chief United States Bankruptcy Judge for the  
District of Vermont

**Alexandra Edelman**  
Attorney at Law

Primmer Piper Eggleston & Cramer PC and  
Co-Chair of the Vermont Bar Association  
Bankruptcy Section

**Don Hayes**  
Professor of Law

Vermont Law School and Co-Chair of the Vermont  
Bar Association Bankruptcy Section

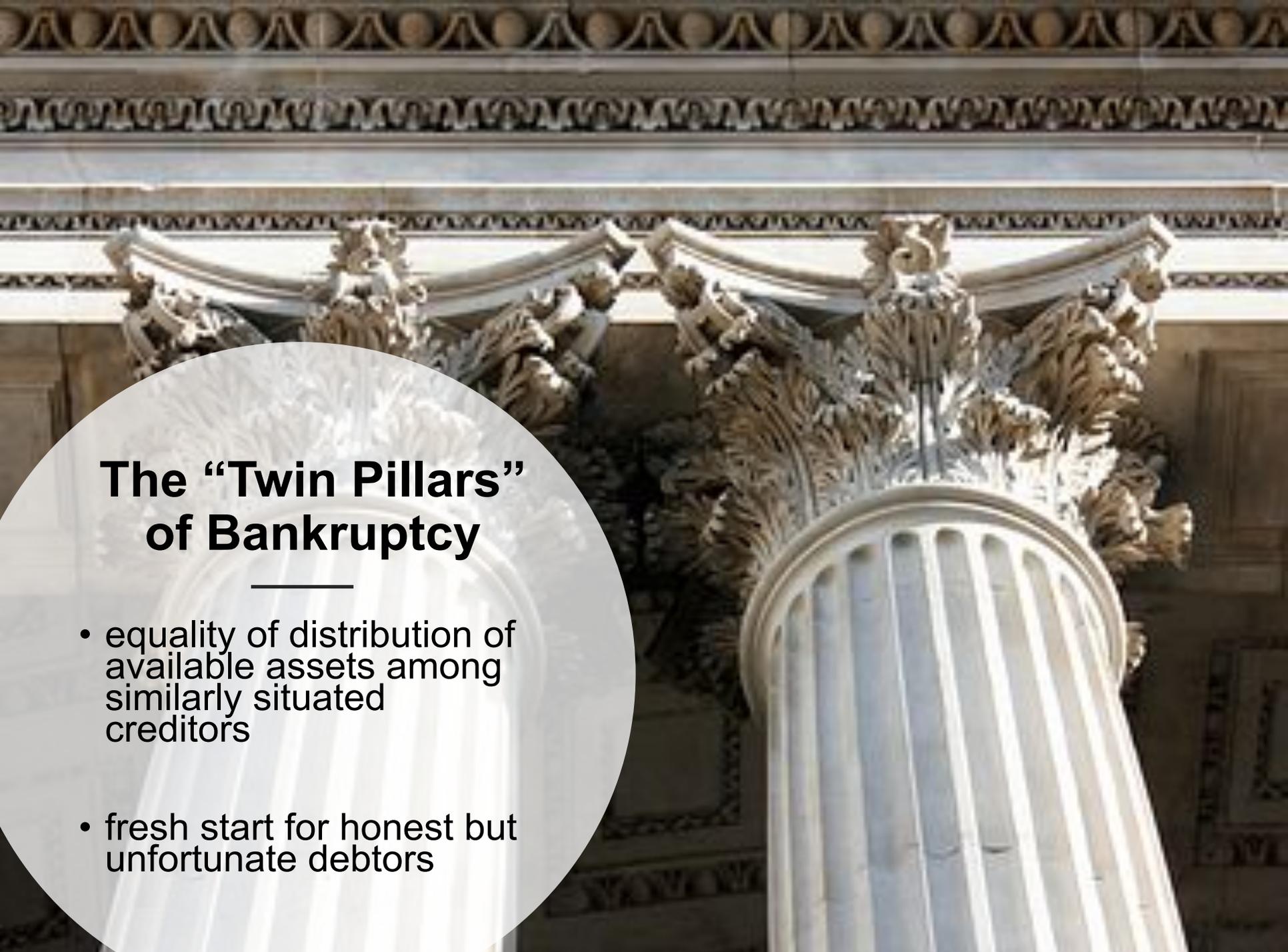
Introductions by Professor **Jeannette Eicks** of Vermont Law School

*\* Thank you to the Federal Judicial Center for providing information for this presentation*

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## The “Twin Pillars” of Bankruptcy

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- equality of distribution of available assets among similarly situated creditors
- fresh start for honest but unfortunate debtors



# Bankruptcy Policies

## Equality of distribution

- Priority given to creditors holding certain types of debt.
- Pro rata distribution for similarly situated creditors preventing a race to the courthouse.

## Fresh start

- Automatic stay freezes collection activity to give debtor a “breathing spell.”
- Discharge releases debtor from personal liability for certain specified types of debt; a permanent injunction on collection.
- Federal and state laws allow debtors to keep certain assets (exempt property).



# Bankruptcy Policies

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## Maximizing value of assets and distributions

- Obtain best possible price for assets, financing, and new equity to maximize recovery for creditors.
- Reorganizing and rehabilitating businesses can preserve jobs.

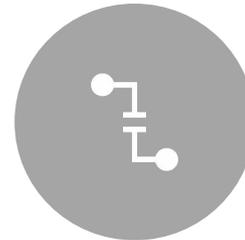




# Who are the parties?



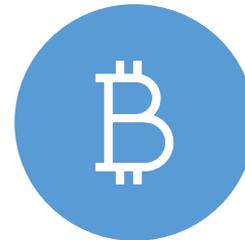
**Debtor:** Individual or organization that has voluntarily filed a bankruptcy petition or, in rare cases, is the subject of an involuntary bankruptcy commenced by creditors.



**Debtor-in-possession:** Debtor in a case that maintains possession and control of its assets (i.e., existing management remains in place) in bankruptcy.



**Creditors:** Individuals or organizations to which the debtor owes money or that claim to be owed money by the debtor.



**Trustee:** Representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of unsecured creditors.

*Trustee is always appointed or elected in Chapters 7, 12, 13 and 11 Sub V*



# Types of Debt



## **Secured Debt:**

Debt backed by a mortgage, pledge of collateral, or other lien. Examples include home mortgages, auto loans and tax liens.



## **Nonpriority Unsecured**

**Debt:** Debt for which a creditor holds no special assurance of payment that is generally dischargeable. Examples include credit card debt, medical expenses and personal loans.



## **Priority Unsecured**

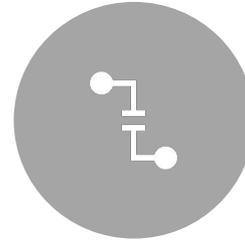
**Debt:** Debt that receives special treatment and gets paid before other unsecured debt. Examples include alimony, child support, employee wages & benefits, consumer deposits, and most tax obligations.



# Who are the Creditors?



**Secured Creditors:** A creditor who has a lien on certain property of the debtor and the right to take and hold or sell that property of the debtor in satisfaction of some or all of its claim, such as banks and credit unions.



**General Unsecured Creditors:** A creditor without a lien that has no priority in payment; gets same percentage of distribution as any other similarly situated creditors, from any funds that remain after professional fees, secured claims and priority unsecured claims are paid.



**Priority Unsecured Creditors:** A creditor without a lien that is entitled to be paid ahead of other unsecured claims, such as the IRS, and employees who are owed petition wages.

# Bankruptcy Chapters

CH.	DEBTOR(S)	DESCRIPTION
<b>7</b>	Business or Individual	Provides for “liquidation” or sale of the debtor’s nonexempt property and the distribution of proceeds to creditors. Liquidation is administered by a trustee.
<b>11</b>	Business or individual	Provides for “reorganization,” usually of a larger corporation or partnership; a Chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and to pay creditors over time; people in business and individuals can also seek relief under Chapter 11. Court holds a confirmation hearing and at least one class of creditors must support the plan.
<b>11-Sub V</b>	Small Business	Provides for “reorganization” of small businesses; allows a debtor to pay its creditors over time; a trustee is automatically appointed, but the debtor retains control of its assets and operations. The process is quicker than traditional Chapter 11 and has less administrative costs.
<b>12</b>	Business or individual	Provides for adjustment of debts of a “family farmer” or “family fisherman.”
<b>13</b>	Individual	Provides for adjustment of debts of an individual with regular income; a Chapter 13 debtor pays debts over 3-5 years; can also include voluntary sales of property.



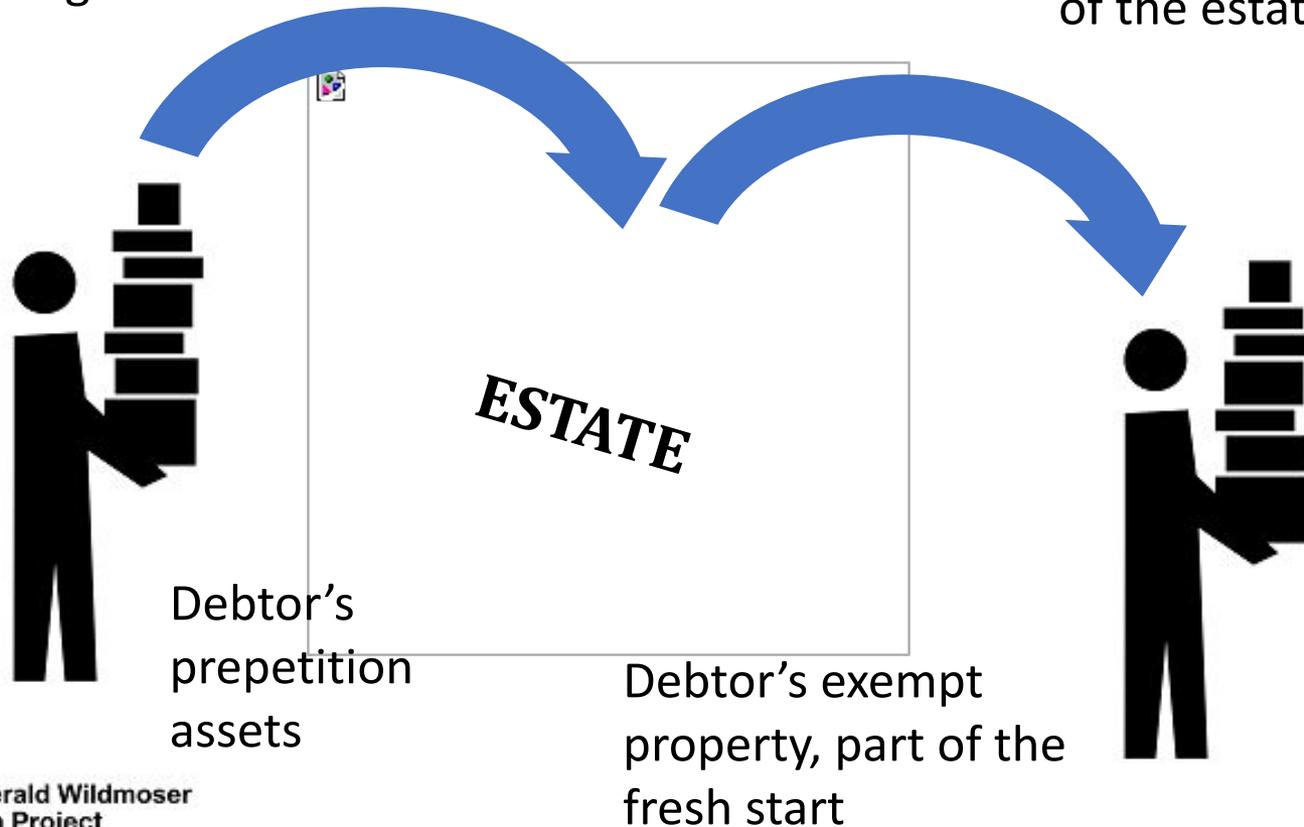
# Questions to consider

- What is the business trying to accomplish?
  - Continuing Operations? Expanding Operations?
  - Changing or Streamlining the Scope or Nature of the Business?
  - Workout of Debt Directly with Lenders?
  - Selling All or Part of the Business? Orderly Liquidation?
  - Reorganizing Operations or Restructuring Business Entity?
  - Winding Down Operations? Immediate Liquidation?

# The Bankruptcy Estate

1. Debtor's assets go into the estate upon filing

2. Property claimed as exempt comes out of the estate

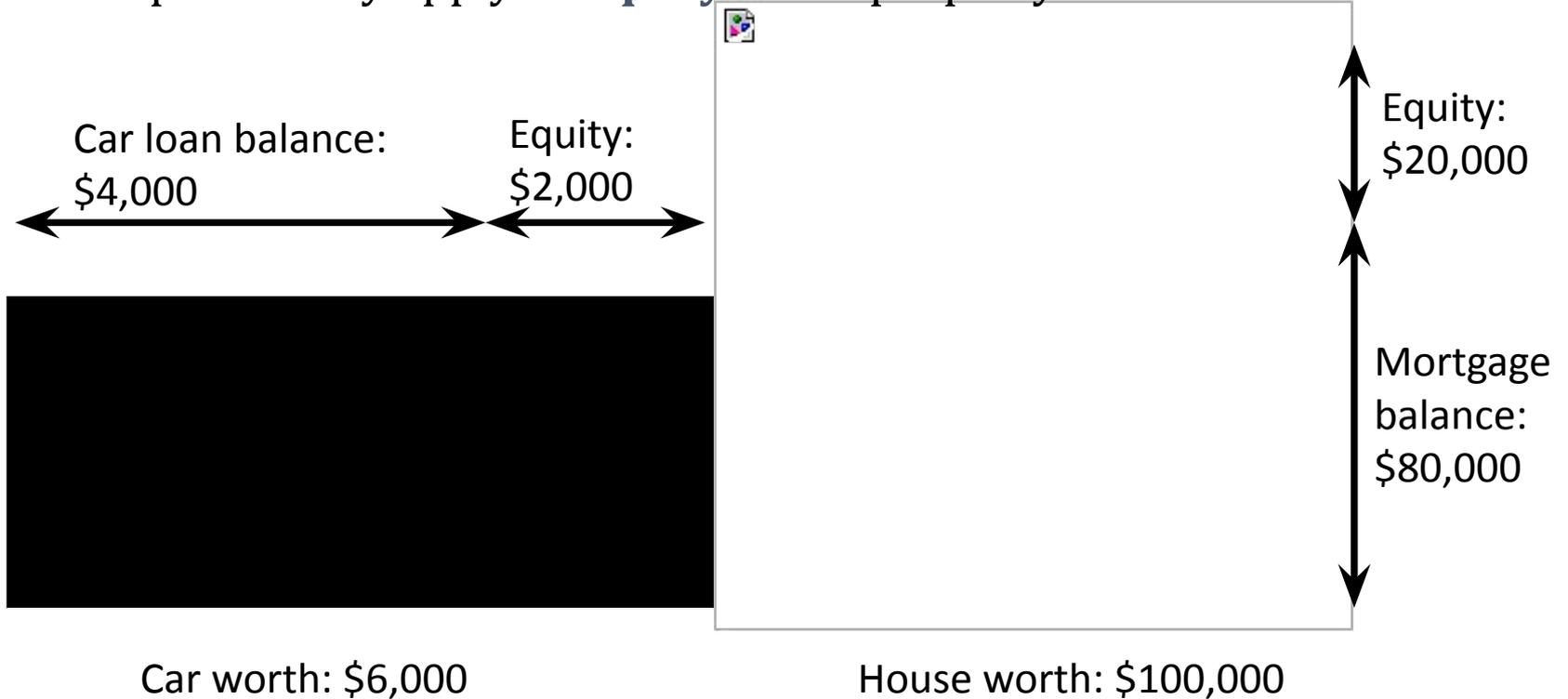


# Common VT and Federal Exemptions for Individuals

Item	Vermont State Limit	Federal Limit
Equity in Your Home	\$125,000	\$25,150
Equity in Your Car or Truck	\$2,500	\$4,000
Tools of the Trade	\$5,000	\$2,525
Household goods	\$2,500 total	\$625/item, up to \$13,400 total
Wild Card*	\$400	\$1,325
Unused Amount of other allowed exemptions	Up to \$7,000	Up to \$12,575
Benefits (examples: SSI, unemployment compensation; veteran's benefits, public assistance)	No Limit	No Limit

# Calculating Exemptions

Exemptions only apply to **equity** in the property



A \$2,000 vehicle exemption and a \$20,000 real estate exemption would fully exempt this car and house

# Why file under Chapter 13?



Stop foreclosure and reinstate home mortgage



Chapter 13 debtors can cure defaulted secured debts over plan term



Chapter 13 debtors can pay delinquent taxes over five years with no postpetition interest

# Why file under Chapter 11 Sub-V?



Exclusively for small businesses



Less costly and quicker than Ch. 11 process



Increased flexibility to restructure debts with creditors



Debt limits increased to no more than \$7.5 million to help small businesses, though March 2021

# Why file under Chapter 12?



Exclusively for “family farmers” and “family fishermen” with “regular annual income”



Chapter 12 is more streamlined, less complicated, and less expensive than chapter 11



Chapter 12 makes allowance for situations in which family farmers or fishermen have income that is seasonal in nature



Tax benefits; sale of part of farm results no capital gain liability

**Thank you for joining us.**



**Questions?**

# Where to go for more information:

## General Business Questions:

[SBDC@VtSBDC.org](mailto:SBDC@VtSBDC.org)



[VtSBDC.org](http://VtSBDC.org)



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## Finding a Lawyer:

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