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Facing Farm Financial Stress: Assessing the Bankruptcy Option

**Peggy Kirk Hall¹ Chris Zoller,² David Marrison,³ and
Hannah Scott⁴**

Ohio State University Extension

Farming and fishing have always been unpredictable ways to make a living, and the financial risk that comes with these businesses contribute to that unpredictability. A farming or fishing family can face rising debt for a number of reasons—poor financial decision making and management may be factors along with uncontrollable factors like down markets, weather impacts, a death in the family, medical issues, and a host of unforeseen circumstances. Faced with increasing debt and demands for payment, a farmer or fisherman might consider filing bankruptcy.

Although bankruptcy law can provide some relief from certain financial stressors, bankruptcy can have long lasting impacts on a farming or fishing operation and its family. Deciding whether to file

for bankruptcy involves closely evaluating the operation's situation, considering alternatives, consulting with family and professional advisors, assessing the costs of bankruptcy, determining eligibility, and understanding the bankruptcy process. Bankruptcy comes down to a business decision, but it should be solidly based on personal circumstances, long term goals, and family and community relationships.

Because of its consequences, bankruptcy is not a decision to take lightly. Instead, bankruptcy should come as a last resort. In this bulletin, we offer steps to take and considerations to make when deciding whether bankruptcy is the appropriate financial stress solution for farmers and fishermen (hereafter referred to collectively as "farmers"). Throughout the bulletin, we

¹ Assoc. Professor and Director, Ohio State University Agricultural & Resource Law Program

² Assoc. Professor, Agriculture & Natural Resources, Tuscarawas County, Ohio State University Extension

³ Assoc. Professor, Agriculture & Natural Resources, Coshocton County, Ohio State University Extension

⁴ Program Manager, Center for Cooperatives, The Ohio State University and Law Fellow, OSU Agricultural & Resource Law Program

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provide “Farmer to Farmer Advice” boxes. These contain quotes from farmers and farm families who’ve been through the bankruptcy process to provide additional insight into the assessment of bankruptcy as an option for addressing financial stress.

Build a support team

A support team can help you evaluate the situation from an unbiased perspective, review your goals, gauge performance trends, identify problems, discuss alternatives, and develop a plan that may allow you to avoid bankruptcy. Your support team might include your primary lender, input suppliers, accountant, financial planner, Extension Educator, attorney, family counselor or religious leader, and family members. Perhaps different support team members can contribute to different steps as you work through your situation and options.

Should you decide to proceed with bankruptcy, this team can help you through the process and serve as an “accountability” team that will help you stay with and work through bankruptcy and take steps to thrive after completion of the bankruptcy plan.

Evaluate your situation

Taking stock of your situation is a necessary step to understanding your options for addressing farm financial debt. It might be painful, but a careful financial analysis that provides an up-to-date and accurate financial picture and a review of your long-term goals might reveal opportunities to improve your situation. Evaluating your situation should be done well ahead of time to provide ample time to evaluate your situation and help in your decision making. Not only will this assessment help you decide what to do next, it should prove useful if you decide to move forward

with the bankruptcy process. Actions you can take to evaluate your situation include:

Gather and organize all information about the farm’s debts. Include all loan documents and outstanding balances on accounts with input suppliers, parts dealers, veterinarians, credit card companies, and others. Identify all creditors, determine the total outstanding debt for each item, remaining balance owed, whether the debt is secured by collateral, and final payment date. Use this process to put an accurate number on your total debt.

Update your balance sheet. Your balance sheet should include all of your assets and liabilities. For assets, make certain you are using realistic values. Use your loan and account documents to list your liabilities. For assistance, refer to resources like *The Basics of a Farm Balance Sheet*.

Create a list of all income sources. Include amounts, type, and frequency or timing of payments and other types of income you receive.

Conduct a financial analysis by enterprise.

This type of analysis can help you determine the areas in which you are making and losing money. Can you expand the enterprise that is providing consistent profits? Discuss completing an enterprise financial analysis with your lender, accountant, or

Extension Educator. Where available, consider resources like Ohio State University Extension’s Farm Business Planning and Benchmarking Program, Iowa’s Farm Financial Planning Program,

Farmer to Farmer Advice
We were struggling to find which of our enterprises was draining equity from the farm. Our Extension Farm Management Specialist completed a FINPACK financial analysis, which allowed us to benchmark our operation against other farms and identify enterprises that were underperforming.

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or the University of Minnesota Center for Farm Financial Management.

Develop a mission and short and long-term goals for your operation. Goals help carry out your identified mission for the farm business, and should establish the standards for measuring progress toward achieving that mission. “SMART” operational goals should focus on specific needs, have a means for tracking achievement, be action-oriented and realistic, and should include a realistic timeline, further described in the fact sheet, *Developing Goals for the Agricultural Business*. If you have family members involved in or hoping to be involved in the farm, now is a good time to talk with them and assess how they fit into the short and long-term goals for the operation. Goals can help everyone involved in the business focus on the betterment of the operation.

Understand who has legal responsibilities for the business. Review the legal structure for the business: is it a sole proprietorship, partnership, or incorporated as a legally entity, like a Limited Liability Company (LLC), or even set up as multiple legal entities? Identify who is involved in each legal entity and their role. Refer to your list of the farming assets compiled in your balance sheet, and note who owns the asset, whether it is pledged as collateral for a debt obligation, and whether you or others involved in your operation have provided personal guarantees for debts. This understanding of your legal structure and legal responsibilities is particularly important when a farming operation involves multiple family members like siblings or parents or other business partners. The information will be integral if you decide to move forward with bankruptcy.

Complete a SWOT analysis of your farm business. As a final step to evaluating your situation, consider completing a comprehensive analysis to identify the strengths, weaknesses, opportunities,

and threats (SWOT) for your business. Identifying your strengths and weaknesses forces you to examine the internal workings of your farm business, factors that are within your control. The analysis of opportunities and threats requires you to look outside your business at issues that you cannot control but can manage to enhance or reduce their impact on your business. A SWOT analysis can help you plan strategically for the future. For additional information, refer to the fact sheet, *Conducting a SWOT Analysis of Your Agricultural Business*.

Ask yourself tough questions. Now that you have a current picture of your situation, ask yourself a few questions before examining options that may fit your situation. Consider these questions:

- Why are you not able to make your debt payments—is it a financial problem or something else? If a financial problem, what’s driving the problem—reduced revenues, increased costs, management decisions, or other factors? If it’s another problem, such as unexpected expenses like medical bills, divorce, or a death, how long will it continue?
- What assets do you own that are underutilized or not contributing to cash flow? Do you need to hold onto those assets?
- Are there realistic business ideas that could positively affect the situation? Do you have the ability to implement those ideas?
- Are the creditors who are contacting you about debt willing to work with you? If you don’t know the answer to this question, perhaps it’s time to find out.

Explore alternatives to bankruptcy

Although it may seem like your only option, there may be alternatives to bankruptcy. Many businesses suffering from financial stress might

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find bankruptcy appealing because it protects them from the calls and demands of creditors. Don't let this temporary relief overshadow other options, however. Instead, consider alternatives that may put you into a better financial situation and allow you to avoid the bankruptcy process. You might find help exploring options through programs like *Farm Financial Counseling* from the University of Minnesota.

It's critical to be brutally honest as you ask these questions and explore alternatives to filing bankruptcy. Overestimating values and income and making poor decisions at this time might just be delaying the inevitable rather than solving your financial situation. And keep in mind that the options aren't exclusive from one another—perhaps a combination of several options is possible or necessary.

Sell off assets. You may find there are assets you own that aren't used or aren't making a financial contribution to the operation. Could these assets be sold and the amount applied to your

Farmer to Farmer Advice
As we looked for ways to raise revenue, we offered and sold ¼ acre of property to owners of the adjoining subdivision. This raised capital while getting rid of our unproductive land.

debts? If so, what is their worth and how much financial stress would that alleviate? Sell assets with caution, however. First, make sure to visit with your tax accountant as there may be recapture of depreciation or other tax obligations due to the sale of an asset. Second, be aware that if an asset is pledged as collateral for debts, creditors have legal rights to those assets. Also understand that if you do end up filing bankruptcy, certain transactions that give preference to unsecured creditors that occur close to filing bankruptcy can later be reversed¹ or be construed as a “fraudulent transfer” that must be voided.²

Consider creditor workouts.

Many lenders are willing to work with their clients to help them be successful and entirely avoid the bankruptcy process, especially those “unsecured creditors” who may suffer a financial loss in a bankruptcy situation.

Farmer to Farmer Advice

We had run up a sizable feed bill with the local feed mill. I wanted to hide from them. I felt ashamed. But I went and talked with them and they waived all the back interest charges and worked out a settlement which I was able to pay by delivering corn at harvest.

A key here is having open and honest communication with your lenders early, as it is better if you begin the conversation as opposed to the lender contacting you. Share your updated balance sheet with creditors so that they can assess your total assets and liabilities. Let them know that bankruptcy is one option you're considering. A creditor might be willing to work out a new agreement with you that could defer payments for a short period of time, reduce interest rates, spread payments over a longer term, or take secured interests in additional collateral. Consider a similar approach to working with landlords from whom you rent real estate; explore whether you can renegotiate rental agreements by changing the timing of payments or updating the leasing model to a flexible cash rent or crop share lease. If you're not comfortable dealing with creditors, negotiating assistance from a debt counseling service can be helpful.

Use mediation programs. Many states have agricultural mediation programs funded by the U.S. Department of Agriculture that address agricultural credit issues and other types of conflicts. In mediation, a trained neutral facilitator encourages the parties to reach a mutually agreeable solution. The mediation program services are available at little or no cost

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to the farmer. Refer to the Coalition of Agricultural Mediation Programs or the USDA for listings of states with agricultural mediation programs. Other mediation services may be available in states without agricultural mediation programs. Note also that some states require formal mediation before a creditor can bring a lawsuit against a debtor, creating a higher incentive for the creditor to work out the debt situation.

Develop partnerships.

Partnerships can help you balance expenses, income, and labor for your operation. Are there any investors, family members, or neighboring farmers who are willing to partner with you? If you have such opportunities, how long lasting are they, and how might they change your financial situation?

Farmer to Farmer Advice

After analyzing our capital equipment, we could not justify owning all the equipment needed for planting, spraying and harvesting our corn for our cattle. Now our neighbors grow our corn and we use our forage equipment to bale their hay and straw.

Create additional income streams. One natural reaction to financial stress is to think about how to generate additional income. Consider whether you could implement a new business idea that capitalizes on your existing resources, such as adding an agritourism activity to your farm. Could you begin offering custom work using equipment you currently own or get an off-the-farm job? Another possibility is to enhance your expertise or labor force or reduce your labor costs through

Farmer to Farmer Advice

We have a family cabin and pond. With increased hunting in our area, we were able to rent out the cabin on Airbnb. We've been shocked with the amount of people who have rented our cabin!

internship-type programs. Review your goals to identify other income possibilities that make the most of your resources.

Ask yourself, is it time to retire from farming? It may become apparent that retiring from farming makes financial and emotional sense. Consider life after farming. Depending upon your age and financial situation, you may be able to transfer your assets or transition the operation and retire completely. Or you may want to assess your skill set and find other employment that eases you into retirement. Perhaps the timing is right to make the retirement decision now.

Determine if you're eligible for bankruptcy

Bankruptcy won't be an option if you're not eligible to file a bankruptcy under the U.S. Bankruptcy Code. The Bankruptcy Code includes six types of bankruptcies that are detailed in, and often named after, the chapters in which they appear in the law.³ Each chapter is designed for different types of debtors and outcomes. There are specific eligibility requirements related to debt thresholds and the type of debtor that may file under the chapter. Our bulletin, *An Overview of Bankruptcy Law for Farmers*, explains the eligibility requirements for each chapter.

The Bankruptcy Code also includes general eligibility requirements that apply to every type of bankruptcy. You must be an individual, partnership, or corporation that resides or has a place of business or property in the U.S. Additionally, you must participate in a briefing and budget analysis by an approved non-profit budget and credit counseling agency within 180-days prior to filing.⁴ If you or your farm operation previously filed for bankruptcy and the case was dismissed or voluntarily withdrawn for certain reasons, you may be subject to a 180-day waiting

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period before being eligible to file bankruptcy again.⁵ If you or your farm operation received a discharge of debts in a prior bankruptcy, the Bankruptcy Code restricts a second bankruptcy discharge within certain time periods, depending on the type of discharge received and the type of bankruptcy to be filed.⁶

Consider the emotional and social costs of bankruptcy

There are obvious financial costs to filing for bankruptcy, but there are also hidden costs to consider. How much emotional strength will it require to get through bankruptcy, and how will bankruptcy affect family and community relationships? Think about the potential emotional and social costs of bankruptcy when determining whether bankruptcy is the best option for you and your family.

Emotional stress.

Going through bankruptcy and operating a farm under a bankruptcy repayment plan can be an emotional drain on a farm family. Research indicates that

Farmer to Farmer Advice
The most humiliating day was answering the questions in front of the judge. I felt like a criminal. I wish someone had told me how stressful it was going to be.

farmers have deep attachments to their farms.⁷ It follows that farmers can be highly emotionally invested in their businesses, both when they succeed and when they fear failure. The development of a repayment plan, the meeting with the creditors, and the confirmation hearing can be humbling and embarrassing experiences. Also, you will be required to maintain records and provide reports about your operations; this oversight may make you uncomfortable, ashamed, or frustrated. How might the emotions

you experience negatively affect your identify, self-esteem and confidence?

Family impacts. Bankruptcy also can impact your family relationships. Everyone may handle the stress differently, which can lead to marital and family tension. Not surprisingly, financial problems can strain a marital relationship. Studies repeatedly find that financial disagreements are one of the strongest predictors of marital strain and divorce.⁸ It's possible that family members will feel critical and angry with you, insecure about the future, or nervous about the prospect of bankruptcy. Consider how these emotions and tensions within the family might affect your relationships with your spouse and children.

Social relationships. Unfortunately, stigma can be an enduring byproduct of bankruptcy that has negative effects on a debtor.⁹ Once filed, your bankruptcy documents and financial information are matters of public record. Lenders, fellow farmers, nose neighbors, and agri-businesses will be able to access the details of your bankruptcy. You may feel that your friends, local businesses and members of your community perceive you differently or possibly judge or disapprove of your situation. The potential of stigmatism and negativity from bankruptcy may change your social relationships now and in the coming years.

Recognizing your emotions. Before you can begin to deal with the emotions involved in facing bankruptcy, you may need to allow yourself to feel them. Doing so may take you through the stages of grief and loss experienced when losing a loved one, as identified by psychiatrist Elisabeth Kubler-Ross.¹⁰ Understanding the stages and recognizing that you're experiencing them might help you cope with your emotions.

As applied to a farm bankruptcy situation, the stages you might experience could include:

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Shock and denial. It may seem impossible to be in a financial position that causes you to explore bankruptcy. Your immediate reaction might be, “How did we get here?” In a marital situation, one of the spouses may bear the responsibility of paying the bills and have a better grasp of the financial issues in-depth. In

contrast, the other spouse may stay in denial for a longer period of time. Denial can cloud your ability to accurately examine the reality of the financial position, or to make you bank on next year’s crops or higher prices as a way to solve the farm’s financial issues.

Anger. Once shock and denial wears off, anger can set in. Why us? It’s not fair! How could this happen? Who is to blame? Anger can be expressed in a variety of ways. Some people may show overt expressions of anger such as verbal outbursts, rage or sarcasm while others may pull their anger inward as silent bitterness. Expressions of anger might come out against family members but might also be directed toward those you deal with in the business, such as creditors and suppliers.

Dialoging and bargaining. The bargaining stage centers on a hope that you can postpone or delay the situation. Can’t you just give us another year on our operating loan? Maybe we can convert short-term debt to long-term debt to get us through until prices improve? You may look to

Farmer to Farmer Advice

I had been telling my husband for months that our finances were in trouble. He refused to look at the numbers I tried to show him. He kept saying don’t worry, the corn looks great. When harvest rolls around we will be ok. He did not know how stressed I was. It wasn’t until our Extension Educator and accountant sat down with us that he would accept how bad it had gotten.

buy time to avoid the reality of the situation and tough decisions that must be made. This could include delaying decisions because of the false notion that this year’s harvest is going to pull the operation out of its financial woes.

Depression and detachment. At this stage, you may be overcome by sadness and depression. You might isolate yourself from the issue and from your community, avoid trips to town, and stop socializing with friends and families. The certainty of the situation weighs heavy during this stage, and you might be asking, “Who cares anymore?”

Acceptance. Finally, you may begin to accept things for what they are and reflect on how you can change your financial habits and situation. You might begin to think it is going to be okay and that, with help, you can put a plan together that will resolve your financial situation.

Coping strategies. It should be noted that each person may go through each emotional phase in a personal way and at a different pace. Despite individual differences, there are strategies for coping with the emotions of financial stress and bankruptcy, which include:

Share your feelings. If you have a range of emotions, share them and do not shut out your family and friends. Recognize that keeping the weight of the situation on your own shoulders rather than sharing your concerns with others may lead to long term health issues. You’re not doing yourself, your family, or your business any favors by keeping your emotions a secret. A professional counselor may be able to help you talk about the emotions and concerns you’re feeling.

Reduce your stress level. Find a way to cope with the stress around you. Some find this through reading or physical activity, while others relieve stress by getting involved in a community service

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activity. What brings you peace? Is it time on a tractor, fishing with a grandchild, or reading a book under a shade tree? Whatever it is, take time to do it and reduce your stress level.

Remember, it is a process. It may take some time to deal with your financial situation. Keep focused on the long-term outcome, knowing that it could be a long-term process that you'll need to follow in order to get yourself back on track.

Proceeding with bankruptcy

What does it take to proceed with a bankruptcy case if you think it's a viable option? A few final considerations relate to the importance of understanding the legal process, financial costs, and the legal help you'll need to get through a bankruptcy case.

The legal process. The bankruptcy process can be complex and involve many people and institutions over a years-long period. You will be required to compile detailed financial information, file petitions, maintain records, attend hearings, submit reports and develop and operate under a repayment plan. Be prepared by gaining an understanding of the legal process before it begins. You can learn more about the bankruptcy process in the second bulletin in this series, *An Overview of Bankruptcy Law for Farmers*, and corresponding infographics on the bankruptcy process, and bankruptcy people and institutions.

The financial costs of bankruptcy. Filing for bankruptcy costs money. There will be court and filing fees that are established by the Bankruptcy Court. The fee schedules are available online. A significant cost component will be attorney fees, which vary according to the type and complexity of the bankruptcy. Attorney fees are subject to oversight by the court and may be cancelled or returned if they exceed the "reasonable value" of

such services.¹¹ A study of consumer bankruptcy costs from 2003-2009 found that the national mean attorney fee in Chapter 13 cases was \$2,564 while the national mean in Chapter 7 cases was \$968.¹² Similar data is not available for Chapter 12 bankruptcies.

Finding a competent attorney. Because your farm's future depends upon it, take care to find a competent attorney who practices in the agricultural bankruptcy arena. Ask for referrals from other farmers, local attorneys, business owners, state bar associations, or trusted organizations such as your local Extension or Farm Bureau. You may have to go outside of your community to find an attorney with experience in farm bankruptcy law. Note that there are programs that certify attorneys as specialists in bankruptcy law, but such specializations might not encompass Chapter 12 farm bankruptcies. Once you have a few names, conduct background research to "vet" potential candidates. Talk with those who may know an attorney's reputation. Search the internet for reviews and ratings, but be careful to rely on reputable websites. Look for written articles on bankruptcy or materials presented at meetings and conferences and search for potential ethics complaints or lawsuits. A final step that can be helpful in selecting an attorney is to schedule an initial consultation to "interview" the attorney. For example, learn how many agricultural bankruptcies they've represented, how they manage communications, their fees, and whether they would involve other attorneys or assistants in your case. Consider how comfortable you are with the attorney and whether the attorney listened and communicated effectively. Remember, you'll have to share a great deal of information with your attorney, so it's important to select someone you trust. Placing your financial situation in the hands of a competent attorney will help ensure that you are on your way to thriving after bankruptcy.

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Next steps

To continue learning about bankruptcy and agriculture refer to our other publications in this series, available on the National Agricultural Law Center website, <https://nationalaglawcenter.org>.

An Overview of Bankruptcy Law for Farmers
Chapter 12 Bankruptcy Process
Chapter 12 Bankruptcy People and Institutions
Thriving After a Farm Bankruptcy

¹ 11 U.S.C. §547.

² 11 U.S.C. §548.

³ ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, BANKRUPTCY JUDGES DIVISION, BANKRUPTCY BASICS (2011). <https://www.uscourts.gov/sites/default/files/bankbasics-post10172005.pdf>

⁴ 11 U.S.C. §109.

⁵ 11 U.S.C. §109(g).

⁶ 11 U.S.C. §727(a)(8); 11 U.S.C. §727(a)(9); 11 U.S.C. §1328(f).

⁷ Courtney E. Quinn and Angela C. Halfacre, *Place Matters: An Investigation of Farmers' Attachment to Their Land*, *Human Ecology Rev.*, Vol. 20, No. 2 (2014).

⁸ Jeffrey Dew, et al, *Examining the Relationship Between Financial Issues and Divorce*, *Family Relations, Interdisciplinary J. of Applied Family Sci.*, Vol. 61, Issue 4 (2012).

⁹ Yvana L.B.H. Mols, *Bankruptcy Stigma and Vulnerability: Questioning Autonomy and Structuring Resilience*, *Emory Bankruptcy Dev. J.*, Vol. 29, Issue 1 (2012).

¹⁰ Elisabeth Kübler-Ross, *On Death and Dying*. New York: Collier Books/Macmillan 1970, c1969.

¹¹ 11 U.S.C. §329.

¹² Lois R. Lupica, *The Consumer Bankruptcy Fee Study Final Report*, 20 *Am. Bankr. Inst. L. Rev.* 17 (2012), <http://digitalcommons.maine.gov/faculty-publications/32>.

The Basics of a Farm Balance Sheet, Ohio State University Extension Fact Sheet ANR-64, <https://ohioline.osu.edu/factsheet/anr-64>.

Developing Goals for the Agricultural Business, Ohio State University Extension Fact Sheet ANR-45, <https://ohioline.osu.edu/factsheet/anr-45>.

Farm Business Planning and Benchmarking Program, Ohio State University Extension, <https://farmprofitability.osu.edu>.

Farm Financial Planning Program, Iowa State University Extension and Outreach, <https://www.extension.iastate.edu/farmanalysis>.

University of Minnesota Center for Farm Financial Management, <https://www.cffm.umn.edu>.

Farm Financial Counseling, University of Minnesota Extension, <https://Extension.Umn.Edu/Get-Help/Farm-Financial-Counseling>.

Coalition of Agricultural Mediation Programs, <https://agriculturemediation.org/about-mediation>.

Agricultural Mediation Program Fact Sheet, U.S. Department of Agriculture, <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/agricultural-mediation-program-factsheet.pdf>.

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Donald L. Swanson, *The 1980s Farm Crisis: Some Lessons Learned*, Iowa State University, Jan.12, 2015, <https://www.calt.iastate.edu/article/guest-article-1980s-farm-crisis-some-lessons-learned>.

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