

Facing Farm Financial Stress: Assessing the Bankruptcy Option



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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. Faced with increasing debt, bankruptcy may seem a viable option. But deciding whether to file for bankruptcy is not a decision to take lightly. Bankruptcy should come as a last resort because it can have lasting impacts on an agricultural operation and its family. If facing farm financial stress, take the following steps and make the following considerations before determining whether bankruptcy is the best option for you.

Build a Support Team

A support team can help you evaluate the situation from an unbiased perspective, 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, or family members.

Evaluate your Situation

- Gather and organize all information about the farm's debts.
- Conduct financial analyses by enterprise.
- Develop a mission and short and long-term goals for your operation.
- Create a list of income sources.
- Understand who has legal responsibilities for the farm.
- Complete a SWOT analysis of your farm business.
- Ask yourself tough questions.
- Update your balance sheet.

Explore Alternatives to Bankruptcy

Consider alternatives to bankruptcy that might put you into a better financial situation and allow you to avoid the bankruptcy process. Be honest as you explore these alternatives and keep in mind that the options aren't exclusive, several may be possible or necessary.

- Consider creditor workouts
- Use mediation programs
- Develop partnerships
- Create additional income streams

- Ask yourself, is it time to retire from farming?

Determine if You're Eligible

The Bankruptcy Code includes six basic types of bankruptcies with specific eligibility requirements regarding debtors, debt thresholds, and other considerations.

Debtors must complete an approved briefing and budget analysis within the 180-days prior to filing. Additional eligibility requirements may apply if you have previously filed bankruptcy.

Strategies for coping with financial stress include:

Share your feelings

Reduce stress

Remember, this is a PROCESS



Consider the Emotional and Social Costs of Bankruptcy

Going through bankruptcy and operating a farm under a bankruptcy repayment plan can be an emotional drain on a farm family. Recognize that parts of the bankruptcy process may be emotional, uncomfortable, or frustrating.

Bankruptcy can also impact family relationships. Consider how the emotions of family members and possible tensions within the family might affect your relationships.

You may feel that your friends, local businesses, and members of your community perceive you differently or possibly disapprove of your situation. The potential of stigmatism and negativity from bankruptcy may change your social relationships.

Proceeding with Bankruptcy

The bankruptcy process involves various people and institutions over a years-long period. Explore the process before jumping in.

Filing for bankruptcy costs money. In addition to court and filing fees, bankruptcy involves attorney fees.

National mean attorney fee for **Chapter 7** cases **\$968**

National mean attorney fee for **Chapter 13** cases **\$2,564**

Agricultural bankruptcy is a specialized area of law and your farm's future depends upon it, so it is important to find a competent attorney. Ask for referrals, conduct background research, and schedule a consultation to "interview" the attorney to help you select someone you trust.

For more information on farm bankruptcy see our series, *Facing Farm Financial Stress: An Overview of the Bankruptcy Option* on nationalaglawcenter.org.

An Overview of the Bankruptcy Process

Hannah Scott and Peggy Kirk Hall, Ohio State University Agricultural & Resource Law Program

Bankruptcy can be an important tool for agricultural operations facing severe financial challenges. From a legal perspective, bankruptcy is a process for an individual or business to obtain financial relief from debts through a court administered procedure of reorganization or asset liquidation. Bankruptcy is not a cure-all to financial woes, nor does it automatically mean the end of a farming operation. This infographic shows the legal process and stages of a bankruptcy proceeding under Chapter 12 of the Bankruptcy Code, for use only by eligible family farmers and fishermen. For more information on farm bankruptcy, see our series on *Facing Farm Financial Stress: An Overview of the Bankruptcy Option* on nationalaglawcenter.org.

1. Pre-Filing



The bankruptcy process begins with gathering your financial information and consulting with your support team of lenders, attorneys financial advisors and family members to consider your options and review your short and long-term goals

for the operation. If you decide to proceed, you'll have to complete an approved **credit counseling** course prior to filing for bankruptcy.

3. Plan Development and Approval

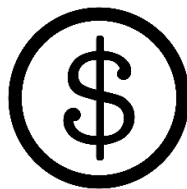
Under Chapter 12, a debtor develops a **plan to pay fixed amounts** to creditors via the trustee on a regular basis throughout the life of repayment plan.



The bankruptcy court must hold a **confirmation hearing to approve the plan** within 45 days of the plan's filing. A bankruptcy judge will rule on whether the plan is feasible and meets the requirements for confirmation detailed in the Code.

5. Discharge of Debt

A Chapter 12 debtor receives a discharge following completion of the repayment plan. After discharge, creditors who were provided for in the Chapter 12 repayment plan are not allowed to initiate or continue collection actions against the debtor to collect a discharged debt. Certain debts are excepted from discharge.



2. Filing

Bankruptcy begins by filing a bankruptcy petition with a bankruptcy court.

What will you need to file for Chapter 12?

- a list of all of your creditors and the amounts and types of their claims;
- a list of the source, amount, and frequency of your income;
- a list of all of your property; and
- a list of all of your monthly farming and living expenses.



A **bankruptcy filing** will: create a bankruptcy estate, impose an automatic stay on creditor collection activities, and notify creditors of the bankruptcy case via the court clerk.

Generally, within 35 days of filing, the trustee will convene a meeting of the debtor and their creditors. At this meeting, the debtor will answer questions about their financial affairs under oath.

4. Operating Under The Plan

Debtors continue operating their farm or fishing operation according to the terms of the court-approved repayment plan for three-to-five years subject to various requirements, including: accounting for estate property received and payments made to the trustee;



furnishing information to parties in interest upon request; and filing periodic reports about the business's operations.

Trustees collect and disburse the debtor's payments to creditors according to the repayment plan terms.

6. Life After Bankruptcy

See our bulletin and infographic on *Thriving after a Farm Bankruptcy* on nationalaglawcenter.org.



An Overview of Bankruptcy Law for Farmers: Bankruptcy People and Institutions

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Bankruptcy proceedings involve various people and institutions and utilize special terminology. This infographic introduces those people, institutions, and terms so that individuals exploring bankruptcy better understand the process and are better prepared for conversations with professionals in the bankruptcy world.

An individual or business entity that files for a **petition** for bankruptcy is referred to as the “**debtor**” or “petitioner.” The debtor may be represented by an **attorney** who practices bankruptcy law. For farmers and fishermen, it can be important to work with an attorney who understands Chapter 12 bankruptcy law.



A **bankruptcy judge** oversees the bankruptcy proceeding in a federal bankruptcy court.



Bankruptcy courts are special federal courts with jurisdictions that cover all or part of a state.



Filing a bankruptcy petition automatically creates a bankruptcy **estate** consisting of the debtor’s property. The estate will be used to repay creditors through either a liquidation or a reorganization and repayment plan.

The court appoints a **bankruptcy trustee** for the bankruptcy estate. The trustee represents the estate and does not represent the debtor or creditors. The trustee is responsible for accounting for property, examining claims, furnishing information, making reports and accounts to the court, appearing at certain hearings and sales, investigating the debtor’s affairs when ordered to do so, and opposing a debtor’s discharge where appropriate.



Under **Chapter 12**, the section of the Bankruptcy Code available specifically for family farmers and fishermen, a debtor develops a **repayment plan** and submits it to the court for approval. The plan lays out how to pay fixed amounts to creditors on a regular basis, through the bankruptcy trustee

A debtor’s **creditors**, those individuals or businesses to whom the debtor owes debts, will be involved in the bankruptcy proceeding, typically with an **attorney** representing their interests.

Secured creditors hold a security interest, or lien, in property owned by the debtor as collateral for a debt. **Unsecured creditors** have no special rights to collect against the debtor’s property.



A Chapter 12 debtor is entitled to a **discharge** of certain debts, including those provided for in the plan, after completing all payments under the repayment plan. Creditors who were provided for in the repayment plan are not allowed to initiate or continue collection actions against the debtor to collect a discharged debt.

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Thriving After a Farm Bankruptcy

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In the midst of bankruptcy, it is easy to focus your energy on getting through the process. But what happens after the bankruptcy is critical in determining the long-term success and viability of the farm business. With a plan in place, you can thrive after bankruptcy.



Rely on an Accountability Team

Consider getting help from your accountant, tax professional, Extension educator, attorney, counselor, or others who can help you monitor your progress and benchmark your farm's financial performance.

Consider Financial Training

Continued education in financial management can help you better manage your finances and debt. Seek programs from educational and financial institutions.



Implement Business Spending Protocols to Stay on Track

- Hold weekly or monthly meetings to review your budget and analyze cash flow.
- Organize and schedule your bills so you pay them on time.
- Implement a double signature policy on expenses over a set amount. Utilize your accountability team to approve expenditures outside of your budget.
- Be careful about taking out new loans, but if you must do so, shop for lower interest loan sources, such as government programs.
- Try to conduct most of your business through one financial institution and develop a personal relationship with that lender. Being a member in good standing can lead to better account perks later.

Focus on your Business Goals and Maintain your Bankruptcy Records

Now is the time to examine your new financial situation and set goals for the future. Review your business situation and goals regularly. Keep the paperwork from your bankruptcy organized and in a safe place so that you can refer to it if necessary.

Review and Build your Credit

Rebuilding your credit score is a process. Generally, factors that determine your credit scores are:

- Your history of making payments.
- The amount of credit you're using versus how much credit is available to you.
- The length of your credit history.
- Number and forms of credit accounts you have.
- Whether you've recently obtained new credit.



Reestablish Community Relationships

Some community relationships may have been damaged and it can take time to rebuild them. Your accountability team can be an important resource as you restore relationships.



Address Family Relationships

Monitor how the bankruptcy process impacts each family member and the dynamics within the family unit. Counseling may be helpful to address family tensions, especially when family members continue working together.

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