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An Overview of Bankruptcy Law for Farmers

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The term “bankruptcy” carries a lot of baggage, but bankruptcy can be an important tool for farm and fishing operations facing severe financial challenges. A successful bankruptcy process can result in a reorganization of some debts as well as a discharge of certain, but not all debts for a farm business, allowing for a financial “fresh start” for the operation. However, bankruptcy can have lasting impacts on a farm or fishing operation and it can be an emotionally overwhelming process. To better understand the myriad factors that a farmer or fishermen should consider before deciding to file bankruptcy, see another bulletin in this series, *Facing Farm Financial Stress: Assessing the Bankruptcy Option*. In this bulletin, we provide an overview of the legal process of bankruptcy for farmers or fishermen who decide to file for bankruptcy and make a fresh financial start.

What is bankruptcy?

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.¹ Bankruptcy is not a cure-all to financial woes, nor does it automatically mean the end of a farming operation. The bankruptcy process provides an opportunity for an individual or business to reassess, reorganize, and reset their financial affairs.

Bankruptcy is governed by federal law and is overseen by special federal courts with jurisdictions that cover all or part of a state.² For example, states like California, New York, Ohio, and Virginia are divided into multiple bankruptcy

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districts, while states like Utah, Vermont, and South Carolina, are covered by a single bankruptcy district. Bankruptcy laws are found in Title 11 of the United States Code, often called the Bankruptcy Code, while procedural rules are contained in the Federal Rules of Bankruptcy Procedure and rules of local bankruptcy courts.

Bankruptcy people and institutions

Bankruptcy proceedings involve various people and institutions. An individual or business entity that files for bankruptcy, formally called a petition, is often 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, the law that deals specifically with farm bankruptcies.³ The bankruptcy proceeding is overseen by a **bankruptcy court**, which is headed by a **bankruptcy judge**. A **bankruptcy trustee** appointed by the court will also be involved in the administration of the legal proceeding as a representative of the estate.⁴ The individual, who is either appointed by the court on a case by case basis or serves in a standing trustee role for a bankruptcy district, 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.⁵

A debtor’s creditors, the individuals or businesses to whom the debtor owes debts, will be involved in the bankruptcy proceeding, typically via an attorney. **Secured creditors** are those who hold a security interest, or lien, in property owned by the debtor as collateral for a debt. **Unsecured creditors** do not hold a security interest in any of the debtor’s property and have no special rights to

collect against the debtor’s property. For a farm operation, an equipment dealer that financed the purchase of a new tractor is likely to be a secured creditor. Alternatively, feed and seed dealers as well as veterinarians may be unsecured creditors.

Bankruptcy options

The Bankruptcy Code includes six basic types of bankruptcies that are detailed in, and often named after, the chapters in which they appear in the law. Each chapter is designed for different types of debtors or for different outcomes for debtors. In general, each type of bankruptcy is either a liquidation or reorganization proceeding. In a liquidation bankruptcy, the trustee takes over many of the debtor’s assets, disposes of those assets, and distributes cash from the disposition to the debtor’s creditors.⁶ In a reorganization bankruptcy, the debtor retains their assets and develops a plan to repay creditors over a period of three to five years; in a business context, the business continues operating throughout and after this period, although the business’s assets and liabilities may be reorganized.⁷

Chapter 7 – Liquidation

Only debtors with net incomes below a certain threshold, as determined by the means test outlined in §707(b)(2) of the Code, are eligible for Chapter 7 relief.⁸ Under Chapter 7, after filing bankruptcy a debtor’s non-exempt assets are disposed of by the bankruptcy trustee who uses the cash to make distributions to creditors. The individual debtor receives a “discharge” that relieves them of personal liability for certain debts. Debtors should be aware that certain debts may not be discharged via bankruptcy, including debts for a tax or customs duty, for domestic support obligations, for credit obtained through fraud, and for other types of debts as specified in the Code.⁹ Those considering bankruptcy should be aware that an attorney for a debtor filing

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Chapter 7 may require payment of fees up-front due to the treatment of attorney fees in Chapter 7 cases, which differs from the treatment of attorney fees in other types of bankruptcy cases.¹⁰

Chapter 13 – Adjustment of debts of an individual with regular income

Chapter 13 of the Bankruptcy Code is limited to individuals (and their spouses) with regular income and unsecured debts totaling less than \$250,000 and secured debts totaling less than \$750,000.¹¹ If a farm or fishing operation is organized as an entity, like a corporation or limited liability company, the entity would not be eligible to file bankruptcy under Chapter 13. Under Chapter 13, an eligible individual debtor proposes a repayment plan for a period of three to five years during which the debtor maintains their assets, makes payments to creditors, and receives a discharge of certain debts following completion of the plan.¹²

Chapter 11 – Reorganization

Chapter 11 of the Bankruptcy Code is available for individuals and entities but is typically used by commercial entities that want to continue operating throughout the course of a three to five-year reorganization plan. Under the reorganization plan, the business can reduce its debts by repaying a portion of its obligations, discharging a portion of its debts, and terminating certain contracts or leases.¹³ In this chapter, the business generally continues to be operated by the business's leadership, referred to as the "debtor in possession."¹⁴ Farm and fishing operations may be eligible to file bankruptcy under Chapter 11, although other chapters may be more desirable.

Chapter 12 – Adjustment of debts of a family farmer or fisherman with regular income

Chapter 12 of the Bankruptcy Code, as the name indicates, is intended specifically for family farmers and fishermen. It is the only chapter of the Code that is limited to a specific type of private debtor.¹⁵ Family farmers and fishermen may file for bankruptcy under other chapters for which they are eligible, for example Chapter 11 or 13; Chapter 12 simply offers another alternative for family farmers and fishermen who meet the chapter's eligibility requirements.

Chapter 12 may be a more desirable course for farmers and fishermen as Chapter 11 can be more complex and expensive while Chapter 13 may not be available due to debt limits and the ineligibility of operations organized as separate entities like corporations or limited liability companies.¹⁶ A former agricultural lender shared that Chapter 12 offers farmers and fishermen "considerable control over how the business is reorganized within the Code's requirements," allowing them to use their past experience and future plans to help drive their farm toward financial success. The lender shared that Chapter 12 allows a farmer or fisherman to plan for a more successful operation in a way that can allow them to maintain good relations with creditors.¹⁷

Those who meet the eligibility requirements for Chapter 12 propose a plan to pay creditors over a period of three years, or in certain cases up to five years, while continuing to operate the business. A bankruptcy trustee administers payments under the plan, among other duties, and following successful completion of the plan, the debtor receives a discharge of certain debts.¹⁸

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To qualify as a **family farmer** under Chapter 12

An **individual** or an individual debtor and spouse must:

1. Own and be engaged in a farming operation, which includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state;
2. Have aggregate debts of less than \$10,000,000;
3. Have at least half of his or her debts arising out of the farming operation, excluding debt on a principal residence; and
4. Receive more than 50% of his or her gross income from the farming operation in the preceding taxable year or both the second and third preceding taxable years.¹⁹

A **corporation or partnership** must:

1. Be at least 50% owned by one family and its relatives;
2. Have farming operations that are conducted by the family or its relatives;
3. Have at least 80% of its value derived from assets related to the farming operation;
4. Have aggregate debts of less than \$10,000,000;
5. Have at least half of its debts arising out of the farming operation; and
6. Not have publicly traded stock.²⁰

To qualify as a **family fisherman** under Chapter 12

An **individual** or an individual debtor and spouse must:

1. Own or operate a commercial fishing operation, which includes catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species or aquaculture activities consisting of raising for market any of these species or products;
2. Have aggregate debts of less than \$1,500,000;
3. Have at least 80% of his or her debts arising out of the commercial fishing operation, excluding debt on a principal residence; and
4. Receive more than 50% of his or her gross income from the commercial fishing operation in the preceding taxable year.²¹

A **corporation or partnership** must:

1. Be at least 50% owned by one family that conducts the commercial fishing operation or one family and its relatives that conducts the commercial fishing operation;
2. Have at least 80% of its value derived from assets related to the commercial fishing operation;
3. Have aggregate debts of less than \$1,500,000;²²
4. Have at least 80% of its debts arising out of the commercial fishing operation; and
5. Not have publicly traded stock.²³

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Understanding the process

The bankruptcy process can be complex and time-consuming, so it will be helpful for farmers and fishermen considering bankruptcy, and debtors just beginning the bankruptcy process, to understand the basics of the process. This section explains the general bankruptcy process with a focus on Chapter 12. See our infographic on *The Chapter 12 Bankruptcy Process* for a visual illustration of the process.

1. Before filing a bankruptcy case

Prior to filing for bankruptcy, farmers and fishermen should consider whether bankruptcy is necessary given their current financial situation. This decision should be made using updated and comprehensive financial information for the farm or fishing operation. The information required for a bankruptcy petition will be helpful for these considerations and will include: (i) a list of all creditors and the amounts and types of their claims; (ii) the source, amount, and frequency of the debtor's income; (iii) a list of all of the debtor's property; (iv) a list of all of the debtor's monthly farming and living expenses, including but not limited to food, shelter, utilities, medicine, transportation, feed, fertilizer, and taxes.²⁴

Farmers and fishermen should have a clear understanding of their operation's short-term and long-term goals and should discuss these goals and the bankruptcy process with key support team members, including family members, lenders, financial advisors, and attorneys.

To be eligible to file bankruptcy under any chapter, debtors must complete approved budget and credit counseling no more than 180-days before filing.²⁵ For more information about this requirement and to locate an approved credit counseling agency, review information available from the U.S. Department of Justice.²⁶

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2. Filing a bankruptcy case

The petition. A bankruptcy case begins when the debtor files a petition with the bankruptcy court where the individual lives or where the corporation or partnership has its principal place of business or principal assets. The debtor's filing will include schedules detailing the debtor's assets and liabilities, current income and expenses, current contracts and unexpired leases, and current financial affairs. The official forms needed for filing are available from the U.S. Courts.²⁷ Upon filing, the debtor will be required to pay filing and administrative fees; a current fee schedule is also available from the U.S. Courts.²⁸ The bankruptcy clerk will notify creditors listed in the filing about the bankruptcy case.²⁹

Meeting of the creditors. Generally, within 35 days after filing the petition, the trustee appointed to the case will convene a meeting of the debtor and the creditors – this meeting may be referred to as a “meeting of creditors,” or a “341 meeting,” after the section of the Code that requires the meeting.³⁰ During this meeting, the debtor will answer questions, under oath, from creditors and the trustee regarding the debtor's financial affairs and proposed repayment plan.³¹

Creation of the bankruptcy estate. Filing a bankruptcy petition automatically creates a “bankruptcy estate.”³² The estate is made up of the debtor's property that will be used to repay creditors, either through liquidation in Chapter 7 or through a reorganization and repayment plan under Chapter 11, 12, and 13.

In a Chapter 12 bankruptcy of a family farmer or fisherman, the estate will generally include: all of the debtor's legal or equitable interests as of the filing of the petition; all property that the debtor acquires after filing the petition and before the case is closed, dismissed, or converted; and earnings from services the debtor performs after



the petition is filed and before the case is closed, dismissed, or converted.³³ Proceeds, product, offspring, rents, and profits from property of the estate also become property of the estate while the bankruptcy case is pending.³⁴ For example, if livestock are a part of the estate, any offspring from those livestock born while the bankruptcy case is pending become part of the estate. Similarly, crops growing at the time a bankruptcy case is filed are property of the estate and proceeds from the sale of those crops become property of the estate. A family farmer or fisherman debtor retains possession of property of the estate during the bankruptcy case, unless that debtor is removed for fraud, dishonesty, incompetence, or gross mismanagement.³⁵

A family farmer or fisherman who has filed as an individual debtor and not as a corporation or partnership may exempt certain property from the estate using federal or state law, making the property unavailable for use in the repayment of creditors.³⁶ Depending on the law used, such exempt property may include the individual debtor's principal residence, a motor vehicle, and personal property, among other categories and subject to specific value limitations.³⁷

A debtor who acquires or becomes entitled to property from an inheritance, divorce settlement or decree, or as a life insurance beneficiary within the 180 days after filing a bankruptcy petition must disclose such property to the bankruptcy court.³⁸

The automatic stay. Filing a bankruptcy petition automatically stays, or stops, a variety of debt collection actions against the debtor, the debtor's property, and property of the bankruptcy estate.³⁹ For example, a creditor cannot enforce a lien against property of the estate or attempt to collect a debt once the automatic stay is in effect.⁴⁰ The automatic stay allows debtors some freedom from debt collection actions and an

opportunity to inventory the estate's assets.⁴¹ Creditors who violate the automatic stay may be required to pay damages.⁴²

However, creditors may request relief from the automatic stay, essentially allowing them to collect debts, repossess property, or take other actions against the debtor while the bankruptcy case is pending, where relief is necessary to protect the creditor from unreasonable risk of loss.⁴³ For example, a creditor may request relief from the automatic stay where there is a "lack of adequate protection of an interest in property," such as where the value of the property in which they have an interest is depreciating.⁴⁴ A debtor may be required to protect a creditor's interest in property by making cash payments to the creditor, providing a replacement lien, or other relief.⁴⁵

3. Repayment plan development and approval

Under Chapter 12, a debtor develops a plan to pay fixed amounts to the trustee on a regular basis throughout the life of the plan, which is typically three years but not more than five years, and submits the plan to the court for approval.⁴⁶ A Chapter 12 debtor is required to file a repayment plan within 90 days of filing the bankruptcy petition. A court may extend this 90-day period if an extension is necessary because of circumstances "for which the debtor should not justly be held accountable."⁴⁷ Failure to timely file a repayment plan is grounds for dismissal of a Chapter 12 case.⁴⁸ The debtor can modify a plan at any time prior to confirmation.⁴⁹

In developing a plan that is feasible and meets the short- and long-term goals of their farm operation, the debtor should consult with members of their support team, as discussed in our bulletin on *Facing Farm Financial Stress: Assessing the Bankruptcy Option*. According to a former agricultural lender with experience developing Chapter 12 plans, it is important for farmers and

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fishermen to base a plan on their own past production expenses and income and to be realistic. The lender recommended, “have someone help you look at your operation with a realistic eye or a third-party viewpoint to help identify issues with a proposed plan because you want to make sure the plan is attainable,” and explained that an unattainable plan simply puts a

debtor back in the tough position they were in pre-bankruptcy – not being able to pay creditors.⁵⁰

The trustee will distribute payments to creditors according to the plan. The amount paid to a creditor under the plan depends on the type of claim owed to the creditor. The box below explains the different types of claims:⁵¹

Types of creditor claims in Chapter 12 bankruptcy

Priority claims. For public policy reasons, the Bankruptcy Code gives special treatment, called priority treatment, to certain types of claims. For example, claims for domestic support obligations like child support and the administrative costs of bankruptcy receive priority treatment.⁵² Under Chapter 12, a repayment plan generally must provide for the full repayment of priority claims, subject to some specific exceptions.⁵³

Secured creditor claims. A secured creditor is one who holds a legal interest in a debtor’s property as collateral that secures the loan in the event of nonpayment. A Chapter 12 plan may modify the rights of secured creditors, but the secured creditor must receive the full value of its collateral via the repayment plan.⁵⁴ A debtor can either surrender the collateral to the creditor or, if the creditor accepts the plan, pay the secured creditor the value of the collateral plus interest. If a secured creditor is owed more than the value of its collateral, its claim is broken into two claims – one secured and one unsecured.⁵⁵ For example, if a farmer owes a creditor \$100,000 that is secured by equipment valued at \$75,000, the creditor has a secured claim of \$75,000 and an unsecured claim of \$25,000. These two claims are treated differently, making the valuation of an asset extremely important to both the debtor and creditor. If the debtor keeps the collateral, the secured creditor retains a lien in the collateral.⁵⁶ Where a Chapter 12 debtor owes a long-term obligation to a secured creditor that would last beyond the term of the repayment plan, such as a real estate mortgage, the plan may cure a default by the debtor and reinstate the debt’s original contract terms, so long as a foreclosure sale has not already taken place. Essentially, the Code allows the debtor to modify the secured claim and repay the creditor over a period that is longer than the plan’s length, assuming the debtor complies with other provisions of the Code regarding secured claims.⁵⁷

Unsecured creditor claims. A Chapter 12 plan may also modify the rights of unsecured creditors who do not have rights in the debtor’s property to secure their loans.⁵⁸ An unsecured creditor is not entitled to full payment of their claim under a Chapter 12 plan if the debtor has committed all of their disposable income to plan payments and the unsecured creditor receives as much under the plan as they would have under a Chapter 7 liquidation bankruptcy case.⁵⁹

Under a Chapter 12 repayment plan, a debtor may also assume, assign, or reject contracts that are awaiting performance by all parties to the agreement as well as unexpired leases, subject to the requirements of the Code.⁶⁰

Repayment plan confirmation hearing. Within 45 days of the plan’s filing, the bankruptcy court will hold a confirmation hearing to examine whether the plan complies with the requirements of the Code, including whether the plan is feasible given the farm or operation’s historic performance and objective data like county average yields.⁶¹

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Once the court confirms a plan, it is binding on the debtor, creditors, and equity holders or partners in the business. Additionally, property of the estate re-vests in the debtor, although the plan or confirmation order may provide otherwise.⁶²

4. Operating under the plan

In addition to making required payments under the plan, the debtor is authorized by Chapter 12 to continue operating their farm business or fishing operation.⁶³ The debtor will be subject to various requirements in the course of the bankruptcy plan, including: accounting for estate property received and payments made to the trustee;⁶⁴ furnishing information to parties in interest upon request;⁶⁵ and filing periodic reports about the business's operations.⁶⁶ While the debtor may enter transactions in the ordinary course of business without prior approval from the bankruptcy court, transactions that are outside of the ordinary course of business may require court approval.⁶⁷

Trustees are responsible for collecting and disbursing payments by the debtor under the repayment plan and the trustee's fees are collected as a percentage of those plan payments.⁶⁸

After the initial plan has been confirmed, it may be modified upon request by the debtor, the trustee, or an unsecured creditor in order to change the payment amounts to a particular class of creditors, to extend or reduce the time for payments, or to change the amount to be distributed to a creditor to account for a payment on the claim from outside of the plan.⁶⁹ A modified plan must still meet the requirements of the Code for the initial plan.⁷⁰

Voluntary conversion or dismissal. If it becomes clear that a repayment plan is unworkable and the debtor still wants to pursue the "fresh start"

granted by bankruptcy, a Chapter 12 debtor has an absolute right to convert a Chapter 12 case to a Chapter 7 liquidation case upon motion and without the need for a hearing.⁷¹ Conversions from Chapter 12 to Chapter 11 or 13 must be approved by the court and debtors must be eligible to file a petition under those chapters. However, some courts have denied Chapter 12 debtors' ability to voluntarily convert to Chapter 11 or 13, so debtors should talk to a bankruptcy attorney about the opportunities for conversion in their jurisdiction.⁷²

Additionally, a debtor has a right to request dismissal of a Chapter 12 case upon motion and without hearing if the case has not previously been converted from Chapter 7 or 11.⁷³

Involuntary conversion or dismissal. Finally, any party in interest, such as a secured creditor, may request that a Chapter 12 case be dismissed for cause, including for unreasonable delay or gross mismanagement by the debtor that is prejudicial to creditors, nonpayment of fees, failure to file a plan timely, material default by the debtor with respect to a term of a confirmed plan, and continuing losses to or decrease in the value of the estate where there is no reasonable likelihood that the case can be rehabilitated, among other reasons.⁷⁴

A party in interest may also request that a Chapter 12 case be converted to a Chapter 7 liquidation case after showing that the debtor "committed fraud in connection with the case."⁷⁵

5. Discharge

After the debtor has completed all payments under the Chapter 12 plan, paid and certified all current domestic support obligations, and if the debtor has not waived discharge of a debt, the debtor is entitled to a discharge of certain debts, including those provided for in the plan.⁷⁶ Debtors

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should be aware that certain debts are excepted from discharge under the Bankruptcy Code, including those debts that have payments remaining after the plan period as well as debts for a tax or customs duty, for domestic support obligations, for credit obtained through fraud, and for other types of debts.⁷⁷

A debtor who fails to make all of the payments under their Chapter 12 plan may be eligible for a hardship discharge if the debtor's failure to complete the plan is due to circumstances "for which the debtor should not justly be held accountable." A hardship discharge is only available if modification of the debtor's plan is not practicable and unsecured creditors have been paid at least as much as they would have been paid under a Chapter 7 liquidation case.⁷⁸ If the debtor obtained a discharge by fraud, the discharge may be revoked later.⁷⁹

Following a bankruptcy 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.⁸⁰

Life after bankruptcy

When a debtor has successfully completed a repayment plan under Chapter 12 and received a

¹ *Bankruptcy*, Black's Law Dictionary (11th ed. 2019).

² UNITED STATES COURTS, ABOUT FEDERAL COURTS: COURT WEBSITE LINKS, <https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>.

³ Sara Schafer, "The 411 On Chapter 12 Bankruptcy," AgWeb, (April 25, 2019), <https://www.agweb.com/article/the-411-on-chapter-12-bankruptcy>.

⁴ 11 U.S.C. §323.

⁵ BLOOMBERG LAW: BANKRUPTCY TREATISE, pt. VI, ch. 201, at IV(B). Section 1202(b)(1): Duties, (Samir D. Parikh et al. eds., 2020), www.bloomberglaw.com/content/bankruptcytreatise (hereinafter *Bankruptcy Treatise*).

⁶ ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, BANKRUPTCY JUDGES DIVISION, BANKRUPTCY BASICS (2011)m (hereinafter *Bankruptcy Basics*), <https://www.uscourts.gov/sites/default/files/bankbasics-post10172005.pdf>.

discharge, the legal proceeding is formally concluded. However, bankruptcy can have a lasting impact on a farm or fishing operation, including on the operation's ability to access credit, on business relationships, and on family relationships. An important first step for farmers and fishermen emerging from bankruptcy is to develop a plan for continued operations and address rehabilitating credit, implementing sound financial management practices, and revisiting the farm's long-term goals. Working with a support team that includes family members, business partners, lenders, accountants, and other support providers, such as Extension educators, can be valuable. For more on continuing a farming operation after bankruptcy, see our bulletin and infographic on *Thriving after a Farm Bankruptcy*.

More from the Bankruptcy Series

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

⁷ *Id.*

⁸ *Id.*; 11 U.S.C. §707(b)(2).

⁹ 11 U.S.C. §1228(a); 11 U.S.C. §523(a).

¹⁰ Adam D. Herring, *Problematic Consumer Debtor Attorney's Fee Arrangements and the Illusion of "Access to Justice,"* reprinted from American Bankruptcy Journal, Vol. XXXVII, No. 10, Oct 2018, https://www.justice.gov/ust/file/abi_201810.pdf/download.

¹¹ 11 U.S.C. §109(e). Note that these figures are regularly updated and are subject to change.

¹² *Bankruptcy Basics*, *supra* note 6.

¹³ *Id.*

¹⁴ *Bankruptcy Treatise*, *supra* note 5 at pt. V, ch. 153, at I. Introduction.

¹⁵ *Bankruptcy Treatise*, *supra* note 5 at pt. VI, ch. 199, at I. Introduction.

¹⁶ *Id.*

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¹⁷ Interview with Frankie Stith-Scott, former Farm Loan Manager, U.S. Department of Agriculture Farm Service Agency Farm Loan Programs, (2020) (hereinafter *Interview*).

¹⁸ *Bankruptcy Basics*, *supra* note 6.

¹⁹ 11 U.S.C. §101(21); 11 U.S.C. §101(18)(A). Note that the aggregate debt figure is regularly updated and subject to change.

²⁰ 11 U.S.C. §101(18)(B). Note that the aggregate debt figure is regularly updated and subject to change.

²¹ 11 U.S.C. §101(7A); 11 U.S.C. §101(19)(A). Note that the aggregate debt figure is regularly updated and subject to change.

²² 11 U.S.C. §101(19)(A). Note that this figure is regularly updated and subject to change.

²³ 11 U.S.C. §101(19)(B).

²⁴ *Id.*

²⁵ 11 U.S.C. §109(h)(1).

²⁶ See <https://www.justice.gov/ust/credit-counseling-debtor-education-information>.

²⁷ See <https://www.uscourts.gov/forms/bankruptcy-forms>.

²⁸ See <https://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule>.

²⁹ *Id.*

³⁰ 11 U.S.C. §341.; *Bankruptcy Basics*, *supra* note 6.

³¹ 11 U.S.C. §343.

³² 11 U.S.C. §541(a).

³³ 11 U.S.C. §541(a); 11 U.S.C. §1207.

³⁴ 11 U.S.C. §541(a)(6).

³⁵ 11 U.S.C. §1207(b); 11 U.S.C. §1204.

³⁶ 11 U.S.C. §522(b)(1).

³⁷ 11 U.S.C. §522(d).

³⁸ 11 U.S.C. §1007(h).

³⁹ 11 U.S.C. §362(a); *Bankruptcy Treatise*, *supra* note 5 at pt. I, ch. 45, at II. Overview of Section 362,

⁴⁰ 11 U.S.C. §362(a)(4); 11 U.S.C. §362(a)(6).

⁴¹ *Bankruptcy Treatise*, *supra* note 5 at pt. I, ch. 45, at II. Overview of Section 362.

⁴² 11 U.S.C. §362(k)(1); 11 U.S.C. §362(k)(2).

⁴³ 11 U.S.C. §362(d); Bloomberg Treatise.

⁴⁴ §362(d)(1); *Bankruptcy Treatise*, *supra* note 5 at pt. I, ch. 45, at VIII(C)(1) Lack of Adequate Protection.

⁴⁵ 11 U.S.C. §361.

⁴⁶ *Bankruptcy Basics*, *supra* note 6; 11 U.S.C. §1222(c).

⁴⁷ 11 U.S.C. §1221.

⁴⁸ 11 U.S.C. §1208(c)(3).

⁴⁹ 11 U.S.C. §1223.

⁵⁰ *Interview*, *supra* note 17.

⁵¹ *Bankruptcy Basics*, *supra* note 6.

⁵² 11 U.S.C. §507.

⁵³ 11 U.S.C. §122(a)(2).

⁵⁴ *Bankruptcy Treatise*, *supra* note 5 at pt. VI, ch. 209, at IV(C). Section 1222(b)(2): Modifying Secured or Unsecured Claimholders' Rights.

⁵⁵ *Bankruptcy Treatise*, *supra* note 5 at pt. VI, ch. 212, at III(F)(1) Allowing the Creditor's Secured Claim: Section 506(b).

⁵⁶ *Id.*

⁵⁷ *Bankruptcy Treatise*, *supra* note 5 at pt. VI, ch. 209, at IV(J) Section 1222(b)(9): Paying Secured Claims Under Section 1225(a)(5) over More Than Five Years; 11 U.S.C. §1229(b)(9); 11 U.S.C. §1222(b)(5).

⁵⁸ 11 U.S.C. §1222(b)(2); 11 U.S.C. §122(b)(1).

⁵⁹ 11 U.S.C. §1225; *Bankruptcy Basics*, *supra* note 6.

⁶⁰ 11 U.S.C. §1222(b)(6); 11 U.S.C. §365.

⁶¹ 11 U.S.C. §1224; *Bankruptcy Treatise*, *supra* note 5 at pt. VI, ch. 212, at III(G)(2) Historical Performance and Projections.

⁶² 11 U.S.C. §1227.

⁶³ 11 U.S.C. §1203.

⁶⁴ 11 U.S.C. §704(a)(2).

⁶⁵ 11 U.S.C. §704(a)(7).

⁶⁶ 11 U.S.C. §704(a)(8).

⁶⁷ 11 U.S.C. §363.

⁶⁸ 11 U.S.C. §1226.

⁶⁹ 11 U.S.C. §1229(a).

⁷⁰ 11 U.S.C. §1229(b)(1).

⁷¹ 11 U.S.C. §1208(a); 11 U.S.C. §1017(f)(1).

⁷² *Bankruptcy Treatise*, *supra* note 5 at pt. VI, ch. 207, at VII(B). Debtor Cannot Convert if Otherwise Ineligible; §1208(e)

⁷³ 11 U.S.C. §1208(b); 11 U.S.C. §1017(f)(1).

⁷⁴ 11 U.S.C. §1208(c).

⁷⁵ 11 U.S.C. §1208(d).

⁷⁶ 11 U.S.C. §1228.

⁷⁷ 11 U.S.C. §1228(a); 11 U.S.C. §523(a).

⁷⁸ 11 U.S.C. §1228(b).

⁷⁹ 11 U.S.C. §1228(d).

⁸⁰ *Bankruptcy Basics*, *supra* note 6.



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Facing Farm Financial Stress: Assessing the Bankruptcy Option

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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

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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>.

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Thriving After a Farm Bankruptcy

David L. Marrison¹, Chris Zoller² and Peggy Kirk Hall³

Ohio State University Extension

In the midst of a 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 viability and success of the farm business. The goal of this bulletin is to help you set a course for thriving after bankruptcy and avoiding a return to financial hardship.

Getting through bankruptcy requires making tough decisions about your assets and operation and adhering to your repayment plan. You are earning a fresh start by strengthening your balance sheet and downsizing your debt. Now is the time to put a plan in place for moving beyond bankruptcy. This plan should include relying on an accountability team, focusing on your business goals, maintaining records, establishing business spending protocols, rebuilding your credit,

engaging in financial training, repairing relationships, and listening to advice from those who've been through the bankruptcy process. We provide information on each of these parts of the plan below. With a plan in place, you can thrive after bankruptcy. Because yes, there is life after a farm bankruptcy.

Rely on an accountability team

A key suggestion from those who have been through the bankruptcy process is to develop a team of support members. You may have already created a support team when considering whether to proceed with bankruptcy. If not, consider drawing in your accountant, tax professional, Extension educator, attorney, counselor, pastor, and others who will help you

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monitor your progress and financial performance and benchmark your farm's profitability. The team could also assist in providing emotional support as you re-engage with creditors, especially those who were part of the bankruptcy process. Meeting with your team on a regular basis may help ensure that you keep moving forward on your plan.

Focus on your business goals

In another bulletin in this series, *Facing Farm Financial Stress: Assessing the Bankruptcy Option*, we discuss the importance of conducting a business financial analysis and establishing a mission and short and long-term goals for the operation. These strategies also apply to the post-bankruptcy period. They're critical if your operation changed as a result of the bankruptcy process. Now may be the perfect time to examine your new financial situation and set goals for the future. What do you want the operation to look like in one year, five years, and beyond? Is each enterprise profitable? Are there changes you can make to ensure cash flow? Revisit this type of review of your business situation and your goals regularly. For assistance with conducting a financial analysis of your operation, consider resources like Ohio State University Extension's Farm Business Planning and Benchmarking Program, Iowa's Farm Financial Planning Program. To learn more about setting goals, refer to the fact sheet, *Developing Goals for the Agricultural Business*.¹

Maintain your bankruptcy records

While you might prefer to keep the bankruptcy out of your mind, there are a few reasons to have your bankruptcy records organized and readily accessible. The bankruptcy petition provides detailed information about your financial history and your bankruptcy discharge order indicates

debts that have been paid and discharged. A lender may ask to review this information when deciding whether to extend new credit to you, as it gives more insight into your history than a credit report provides. You might also have to rely on your bankruptcy records if a previous creditor or debt collector claims that you still owe a debt. The bankruptcy records offer proof of the debts you've satisfied. Be sure to keep the paperwork organized and in a safe place so that you can provide it if necessary.

Implement business spending protocols

There's a lot of good that can come with good habits. Adopting and following formal procedures for how you manage your spending can keep your expenses in check and your payments on time. With the support of your team, develop business spending protocols that will help you stay on track, which might include the following:

- Hold weekly or monthly financial meetings to review your budget and analyze cash flow.
- It seems like a no-brainer, but be sure to organize and schedule your bills so that you pay them on time.
- Implement a double signature policy on expenses over a set amount. You may need to utilize your accountability team to review expenditures outside of an established budget. These measures force careful analysis of big spending decisions.
- Be careful about taking out new loans. But if you must do so, shop around for loan interest rates. Some creditors may charge higher than normal rates for debtors coming out of a bankruptcy. Explore loans from governmental agencies as they typically offer lower rates.
- Try to conduct most of your financial business through one financial institution and develop a personal relationship with that lender. Note

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that being a member in good standing can lead to better account terms and perks later.

Review and build your credit

Your credit score is a three-digit number that represents your “creditworthiness,” or the probability that you will repay your debts. The higher the number, the more appealing you are to creditors. Building your credit score will be a process as you move forward after bankruptcy.

You have several different credit scores that are calculated by the three major credit bureaus. The scores may vary, based upon who is computing the score and the method used for the calculation. Generally, factors that determine your score are:

- Your history of making payments.
- Credit utilization, which is the amount of credit you’re using versus how much credit is available to you.
- The length of your credit history.
- The number and forms of credit accounts you have.
- Whether you’ve recently obtained new credit.²

Patience, discipline and having a plan will be key. Securing new credit may be a challenge, as the bankruptcy will appear on your credit report for seven years. Recognize that some suppliers you do business with may require cash on delivery. The business spending protocols you put in place will help you rebuild your credit score. Here are other actions that can be helpful:

- As a first step, make sure to periodically review your credit report for its accuracy. It is not uncommon for creditors to report negative balances even after debts have been discharged through bankruptcy. Keep monitoring the report and take action to

ensure current reporting by your creditors, if necessary.

- Pay your bills on time and if possible, in full.
- Using credit cards after bankruptcy may seem counterintuitive, but having a credit card that you use and pay regularly is one way to rebuild your credit score. The key is to only charge what you can afford and to pay the entire balance each month. Using a secured credit card is a good first step. A secured card requires a cash deposit that establishes the credit limit and is a security for the creditor. Using a secured credit card for a regular payment that you make is a good way to establish a positive record of payments.
- Apply for new credit sparingly as the number of credit inquiries can lower your credit scores.

Consider financial training

Some types of bankruptcy require that debtors complete a course in personal financial management prior to receiving a discharge of their debts through the bankruptcy court.³ However, Chapter 12, available to family farmers and fishermen, does not have this requirement. Even though it is not required, continued education in financial management can help you better manage your finances and debt in the future. Seek out programs from educational institutions such as Extension or the Center for Farm Financial Management and from your local financial institutions, particularly agricultural lenders.

Reestablish community relationships

Some community relationships may have been damaged during the bankruptcy process and it can take time to rebuild these relationships. Do you need to talk directly to your lender, former creditors, businesses you use, or friends? Perhaps explaining your bankruptcy story—why it happened and steps you’re taking to prevent a

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repeat—will be helpful. What other actions can you take to rebuild these relationships? Your accountability team can be an important resource to guide you as you restore these relationships, so consider seeking advice from team members.

Address family relationships

Family relationships can also suffer from bankruptcy. It is important to monitor how the process impacts each family member as well as the dynamics within the family unit. As with your community relationships, you may need to be honest and direct in communicating your situation and emotions with family members. But you might also need to check in with your family members to discuss their emotions and concerns. How are they feeling? Do they have fears, insecurities, or other emotions they aren't sharing with anyone? Are they distancing themselves from you or the farm operation? Counseling may be helpful in addressing the stresses and strains family members may have, and is especially important when members are still working together in the family business. As with the bankruptcy survival process itself, however, be aware that time and patience may be necessary for resolving family relationship issues.

Take advice from farm families who've gone through bankruptcy

Experience is a wise teacher. We asked farm families who've gone through bankruptcy, "what advice do you have for farm families facing a similar road?" The box to the right presents their advice for regaining your ability to thrive after bankruptcy.

Farmer to Farmer Advice: Thriving after Bankruptcy

- Bust your tail! Make a plan and stick to it. It will take a lot of hard work, but you can do it.
 - Develop a sound financial system. Knowing your financial numbers and developing budgets for each enterprise is key.
 - Live within your means. Create budgets for both the farm and for personal living expenses and stick to them.
 - Create a savings account for emergencies.
 - Not all professionals understand bankruptcy. Make sure to find professionals who do know bankruptcy. It is a complicated process.
 - Reinvent yourself and your farm. If you always do what you have always done, you will end up back in the same financial situation.
 - Instead of looking at one financial solution, look for little solutions that add up.
 - Think outside the box. What other enterprises can you raise or what services can you provide to increase farm income?
 - One or more members of the family may need to seek off-farm employment. This can help the family with medical and retirement benefits.
 - Communicate. It is so easy to hide from the world when you are facing financial struggles. My banker, accountant, and Extension Educator became the team that helped keep me focused on what I needed to do.
-

¹ Ohio State University Extension Fact Sheet ANR-45, <https://ohioline.osu.edu/factsheet/anr-45>.

² Caezilia Loibl, Credit Score Basics, *Live Smart Ohio*, Ohio State University Extension Family and Consumer Sciences,

Aug. 28, 2017, <https://livesmartohio.osu.edu/money/loibl-3osu-edu/credit-score-basics/>.

³ 11 U.S.C. §727(a)(11) (2018); 11 U.S.C. §1328(g)(1) (2018)

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Facing Farm Financial Stress: Assessing the Bankruptcy Option



Peggy Kirk Hall, Chris Zoller, David Marrison and Hannah Scott
Ohio State University Agricultural & Resource Law Program

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.

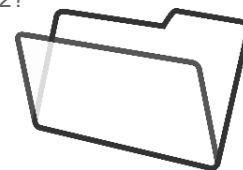


2. Filing

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.

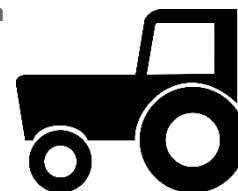


A **bankruptcy filing** will: create a bankruptcy estate, impose an automatic stay on creditor collection activities, and notify creditors of the bankruptcy case via the court clerk.

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

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



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.

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

Thriving After a Farm Bankruptcy

David Marrison, Chris Zoller and Peggy Kirk Hall
Ohio State University Agricultural & Resource Law Program



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.

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