

SUBCHAPTER V CHAPTER 11 BANKRUPTCY REORGANIZATIONS: USES AND STRATEGIES

August 2023

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Where Law and Business Meet[®]

“SMALL BUSINESS DEBTOR”

- A person or entity
- Engaged in commercial or business activity
 - Single asset real estate excluded
- Up to \$7.5 million of debt
- 50% of debt arises from commercial or business activity

SUBCHAPTER V CHAPTER 11 USES

- Stay Litigation or Creditor Remedies
- Suspend Debt Payments to Lenders
- Restructure Payment Terms with Lenders and Other Creditors
- Bind Creditors to Plan Even If No Agreement
- May Retain Equity Without Paying Creditors in Full
- Able To Obtain New Loans Including Over Objection of Existing Lender
- Accelerated Process, Encourages Resolution of Issues
- No Disclosure Statement Required
- Less Expensive Than Regular Process
- If Necessary, Facilitate Sale of Assets Free and Clear of Liens

CHAPTER 11 CHALLENGES

- Public Process
- Financial Reporting
 - Under Subchapter V, Reporting and Plan Due Early in Case
- Court Approval Required for Many Acts
 - Financing: Use of Cash or New Loans
 - Plan and Other Actions Outside Ordinary Course
- Pay Expenses, Including Lease Payments, As They Come Due After Filing
- Limited Ability to Restructure Equity Without Consent
- One Way Street—Reorganize or Liquidate
- Transactional Expenses and Technical Requirements

THE ENTRY INTO BANKRUPTCY

- Bankruptcy Petition For Each Entity That Needs Bankruptcy Protection
- Automatic Stay Immediately Springs Into Effect
 - Protects Debtor and Debtor's Interest in Property
 - Creditors Such as Lenders May Seek Relief From Stay
 - Debtor Show Secured Creditor's Rights Adequately Protected
- Obtain Use of Cash Collateral
 - Show Use Will Not Harm Value of Collateral
- Debtor In Possession Financing
 - Agreement With Existing Secured Creditors
 - Without Agreement—Junior to Existing Secured Creditors
 - Limited Circumstances Obtain Senior "Priming Lien"
- Court Favors Opportunity to Reorganize

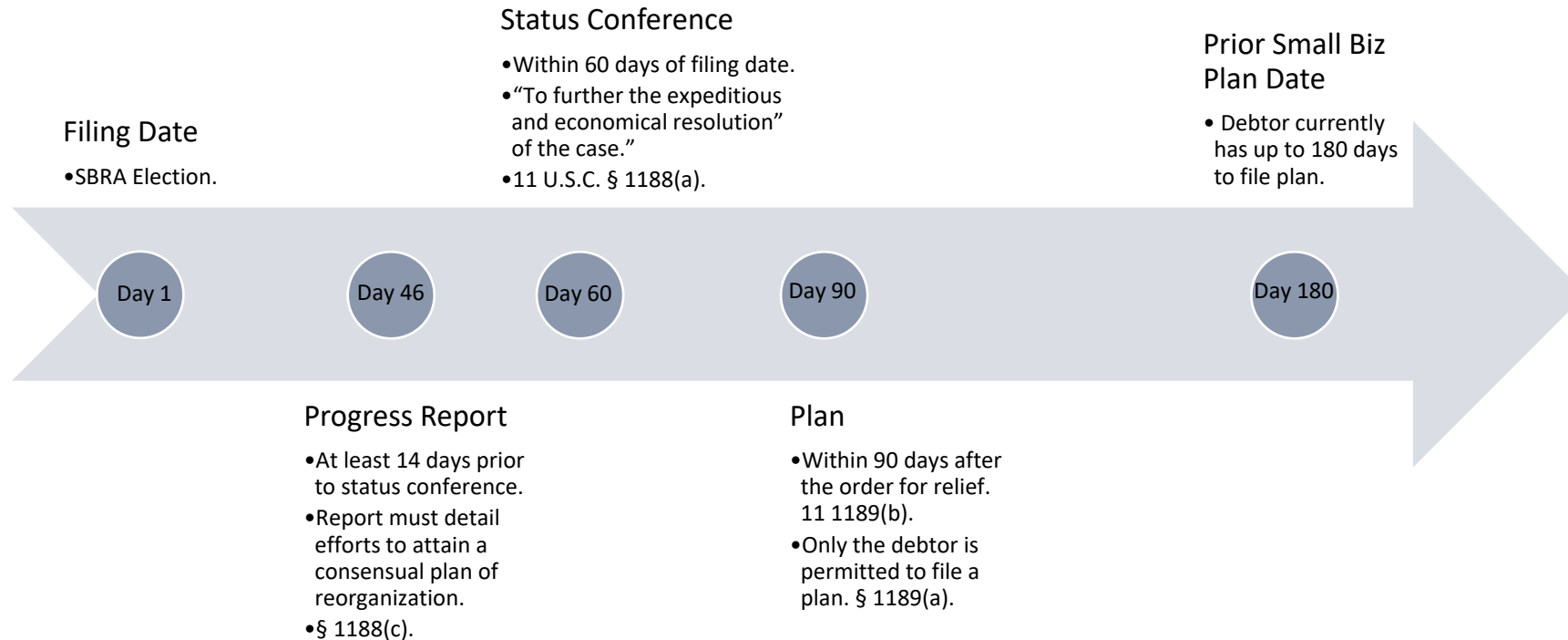
SUBCHAPTER V TRUSTEE

- Standing Trustee
- In Part, Replaces Committee of Unsecured Creditors
- Role
 - Investigate and File Reports
 - Appear and Be Heard on Any Matter
 - Facilitate Consensual Plan
 - Collect and Distribute Plan Payments

TWO EXITS FROM BANKRUPTCY

- Plan of Reorganization
 - Contract With All Creditors And Equity
 - Restructure Payment Terms
 - Vehicle to Inject Debt or Equity
 - Bind Holdout Creditors
- Sales Free and Clear

SUBCHAPTER V ACCELERATED REORGANIZATION PROCESS



BASICS OF PLAN PROCESS

- No Disclosure Statement Required
- Plan of Reorganization
 - Debtor exclusive right to file plan
 - Due within 90-days of filing
 - Classification of Claims—secured creditors, unsecured creditors, etc.
 - Class Voting – 2/3 in \$'s and 1/2 in #'s
 - Assume or Reject Contracts
 - Negotiations and Binding Effect

KEYS FOR CONFIRMATION OF PLAN

- “Best Interests” of Creditors
 - Each creditor receive at least as much under Plan as compared to liquidation
- Feasibility
 - More likely than not Plan projections met
- Administrative Claims May Be Paid Over Life of Plan
- Creditors Accept
 - Class Voting – 2/3 in \$’s and 1@ in #’s

CRAMDOWN AND RETAIN EQUITY

- “Cramdown”—Confirm Plan Where One or More Classes Reject
- No “Absolute Priority” Rule Under Subchapter V
 - Need not obtain acceptance or pay all creditors in full to retain equity
- Even if No Class Accepts, Under Subchapter V Retain Equity When
 - Not “discriminate unfairly”, and
 - “Fair and equitable”
 - pay creditors from “projected disposable income” over 3 to 5 years
 - excludes income needed to support debtor or dependents or ensure continuation or operation of business
- Test for Secured Creditor – Receive “Indubitable Equivalent”:
 - Retain liens
 - Cash payments over time equal to present value of secured claim

BASICS OF SALE

- Section 363 Sales
 - All or part of assets
 - Outside ordinary course of business
 - Free of liens if:
 - Lienholder consents
 - Property sells for more than value of liens
 - Bona fide dispute of secured claim
 - Liens attach to proceeds
 - Auction process