

Chapter 12 Bankruptcy: A Forgotten Tool for Family Farmers?

Amundsen Davis Financial Services Alert
February 22, 2019

Chapter 12 Bankruptcy was a common topic in the 1980's-- the days of the Farm Aid concert and farmers driving tractors to Washington D.C. However, current difficulties are again raising the value of Chapter 12's as a tool for family farmers. Increases in debt load and interest rates, reduction in income caused by weather, political and other problems and the inherent risk of farming have all contributed to these pressures. In short, agricultural lenders are seeing a rise in defaults and Chapter 12 filings.

Chapter 12 provides a simpler and more powerful tool to those who qualify. Chapter 12 cases are administered by a trustee and the court who supervise the debtor until completion of a plan, after which the debtor gets a discharge. The time frames and possible expenses are reduced when compared with Chapter 11 business reorganization. The process is streamlined – there is no disclosure statement or voting on the plan by creditors. Also there is no absolute priority rule and the debtor is given more flexibility in dealing with creditors and restructuring debt, even that secured by equipment and livestock. Finally, there are tax advantages for qualifying family farmers.

To be eligible for Chapter 12, only family farmers or family fishermen with regular income qualify. There are both definitional and debt limitations that must be met. However, if applicable, Chapter 12 can be used to reorganize a family farm operation, downsize or convert from one type of farming to another (e.g., livestock to crop farm), or sell assets. Again there are advantages to qualifying debtors, such as beneficial tax treatment, often reduced costs and a way to get a fresh start.

For several years farmers experienced rising land and decent crop prices which mitigated the need for insolvency relief. During that time, Chapter 12 became a limited use tool in a debtor's arsenal. Current market conditions make it likely its use may increase in the coming years.

PROFESSIONALS

Mark R. Wenzel
Partner

RELATED SERVICES

Agribusiness

Banking & Finance

Bankruptcy & Creditors'
Rights