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Northeast Bankruptcy Conference and Consumer Forum

Consumer Forum

Sophisticated Debtors, Complicated Cases: Chapter Choice, Income, Crypto, MCAs

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Crypto Currencies and MCAs for Consumer Practitioners

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Part I – Crypto





What is Cryptocurrency?



Cryptocurrency is a digital or virtual currency that uses cryptography for security and operates independently of a central authority like a bank.

Cryptocurrency

Transactions are recorded on a public, decentralized ledger called a blockchain, which is maintained by a network of computers (nodes).

- Popular examples include Bitcoin, Ethereum, and Tether.

President Trump and the current congress are fans of cryptocurrency, with the \$TRUMP meme coin debuting earlier this year. Will be more...

Blockchain technology ensures transparency and security by making transaction records tamper-resistant and publicly verifiable.

Congress is talking about a law for so-called stablecoins, where the value of a cryptocurrency is pegged to some other currency or liquid asset (USD or short-term Treasury bill). The Senate has passed a bill.

State regulations.

Trump Meme Coin



What People Do with Cryptocurrencies

- ☐ Need a digital wallet, which stores the keys needed to access and transfer your crypto.
- ☐ New crypto coins (think Bitcoin) are often created through mining (solving complex computational problems), though some cryptocurrencies use different methods like proof of stake.
- ☐ Equipment can be purchased for individual, but you need dedicated equipment, including a high-performing mining rig.

CRYPTO IN BANKRUPTCY

Over the last few years, we have seen Crypto + Bankruptcy in the news:



Sam



Dorian Nakamoto

Founder of blockchain?



Celebrities Promoting It



Crypto in Consumer Cases

Bankruptcy Estate Asset: Cryptocurrency (or at least an interest in it) is considered property in bankruptcy, so all holdings must be disclosed. This includes current holdings and any sold or exchanged assets shortly before filing. Mining assets?

Value of Crypto for Schedules (primarily): The fluctuating value of cryptocurrencies complicates valuation. Trustees typically use the market value at the filing date, but rapid price changes can affect creditor recoveries.

Chapter 7: Non-exempt crypto assets are usually liquidated quickly to maximize creditor returns. Debtors risk losing all crypto holdings. What about appreciation?

Chapter 13: Debtors may keep their cryptocurrency if its value is included in a repayment plan. The asset's value influences monthly payments, requiring careful valuation and disclosure.

Exemptions and Protections: Most standard bankruptcy exemptions do not explicitly cover cryptocurrency. Some debtors might use wildcard exemptions, but protection is limited and varies by state.

Trends in Crypto Bankruptcies

More Cases: There has been a rise in Chapter 11 bankruptcies among crypto exchanges and lenders due to market uncertainty and investor withdrawals. These cases often involve complex asset tracing and valuation issues. Cases can be expected to rise with the volatile economy, and expansion of use of crypto.

Legal and Procedural Complexities: Complex bankruptcy law and the technical aspects of digital assets. Issues include ownership disputes, asset tracing, and balancing creditor priorities.

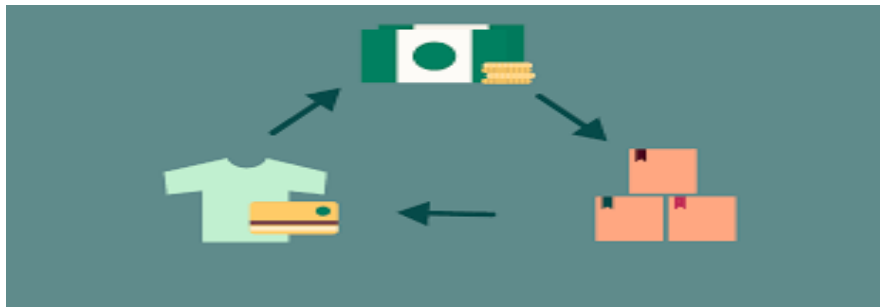
News You Can Use

Preparing a bankruptcy case –

- Crypto should be included in your client intake form. Countless examples of having a wallet or account being discovered (to Debtor's counsel's dismay) at the 341 meeting
- Valuation – How and when is the asset value.
- Chapter 7 context – most often seen after catastrophic loss in value.
- What are people seeing?



Part II – MCAs



Basics of Merchant Cash Advances

- ❖ “[The parties are] engaged in the merchant cash advance industry, which is the merchant-to-merchant equivalent of consumer pay-day lending—an industry allegedly notorious for its predatory practices and extremely high interest rates.” *Fleetwood Servs., LLC v. Complete Bus. Sols. Grp., Inc.*, 374 F. Supp. 3d 361, 366 (E.D. Pa. 2019).
- ❖ An MCA is not a traditional loan; it’s an upfront lump sum given to a business in exchange for a percentage of future sales, usually credit or debit card receipts.
- ❖ Repayment made automatically by deducting a fixed percentage from daily or weekly sales.
- ❖ MCAs are used for quick access to capital.
- ❖ Approval is generally based on the business’s sales history rather than credit score, making MCAs accessible to businesses that may not qualify for bank loans.
- ❖ Instead of interest rates, MCAs use a factor rate. Payments fluctuate with sales volume: businesses pay more on high-sales days and less on slow days, offering flexibility but potentially higher costs than traditional loans.
- ❖ MCAs can be expensive due to high fees and factor rates. Their reach is also expanding – predicted to be \$25 billion within a few years.

Legal Issues with MCAs

Automatic Stay Protection: The auto stay stops MCA companies from suing or seizing assets (or pulling money from bank accounts) while the bankruptcy is pending.

Characterization: Whether an MCA is treated as a loan or a sale of receivables in bankruptcy is crucial.

Treatment in Plans: In Chapter 13 and SubV cases, businesses can treat as unsecured. Other creative ways to deal with MCAs?

Claims and Challenges: Debtors may object to MCA claims, arguing the agreements are actually loans with usurious interest rates, or challenge them as fraudulent transfers if the terms are particularly aggressive.

Read the Agreement: MCA agreements are often complex and aggressive, sometimes leading to severe financial distress for businesses. Many of these agreements directly lead to distress and bankruptcy.

MCAs in the Wild



- No cases in the First Circuit?
- Cases:
 - *In re J.P.R. Mech. Inc.*, No. 19-23480 (DSJ), 2025 WL 1550541 (Bankr. S.D.N.Y. May 30, 2025))
 - *In re Williams Land Clearing*, No. 22-02094 (PWM), 2025 WL 1426503 (Bankr. E.D. N.C. May 16, 2025)
 - *But see In re Hill*, 589 B.R. 614 (Bankr. N.D. Ill. 2018) (finding transactions in the ordinary course)
 - *In re GMI Grp., Inc.*, No. 19-52577-PMB, 2019 WL 3774117 (Bankr. N.D. Ga. Aug. 9, 2019)

Where's the Fight?



- Battle Lines:
 - Characterized as loans?
 - Not ordinary course transactions?
 - Usury?
 - Fraudulent transfer?
- Trustees and debtors are filing lawsuits in our area
- Massachusetts – 93A Claims?
- Application in SubV or Chapter 13 in the amount of debt?
- What are people seeing?



Thank you!

Issues for Debtors with Self-employment Income, Income Fluctuations, and Bonus Income

WHAT IS SELF EMPLOYMENT?

Self employment is typically where a Debtor receives income as an independent contractor, freelancer, or business owner or is employed in the gig economy.



TYPES OF SELF EMPLOYMENT

Independent Contractor is an individual who often cover some of the responsibilities typically given to employees and who does not have taxes or benefits taken out of their pay

Freelancer Worker is an individual that perform services for several clients Fiver, Upwork, Freelancer, People Per Hour, Esty and etc.

Business Owner is an owner of a business can be organized as a separate entity or as a DBA

Gig Worker is an individual working with various clients and/or various companies, such as: Instacart, Uber, Lyft, Grubhub, Door dash and etc.

CONSIDERATIONS IN PROJECTING SELF EMPLOYMENT INCOME

- ***Debtors do not have a Crystal Ball to predict the future that is where Counsel must provide assistance to accurately predict income based on various factors.***
- ***Is the job temporary?***
- ***Is the job seasonal?***
- ***Are there fluctuations in hours?***
- ***Are there commissions, tips, bonuses or other incentives?***



COMMON SITUATIONS

- Landscaper, works from March to October then receives unemployment income from November to February.
- Servers who works in a local restaurant and receive tips
- UBER/LYFT Driver income is inconsistent
- Real estate agent whose commissions are inconsistent
- Truck Driver who works sporadically and has out-of-pocket expenses that are not reimbursed.

HOW CAN COUNSEL PROJECT ACCURATE INCOME? SCHEDULE I

How to accurately estimate the concrete number? Need to analyze income from different perspectives. Compare the means test income, evaluate recent paystubs for past two months, examine last two years of Income, review tax returns Discuss with the Debtor any potential changes.

Means Test - How Income is Handled

- *Using the last six months income, is the income too high or too low?*
- *Adjustments under Lanning?*
- *Sample adjustment under Lanning.*
- *Is income employment in the Cannabis industry included?*



Hamilton v Lanning, 130 S.Ct. 2464, 177 L. Ed. 2d 23 (2010)

The Debtor filed for Chapter 13 bankruptcy, proposing a repayment plan based on her actual income rather than a mechanical calculation of her "projected disposable income." The Debtor's income would have been inflated due to a one-time buyout from her former employer, which was not reflective of her ongoing financial situation. The Chapter 13 trustee objected to the Debtor's proposed plan, arguing that it did not commit all of her projected disposable income as required.

"when a bankruptcy court calculates a debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." The mechanical approach can be rebutted by evidence of substantial change in debtor's circumstances.

Blumsack v. Harrington, 657 B.R. 505 (B.A.P. 1st Cir. 2024)

At the time of filing, the Debtor was employed as a "budtender" at a retail cannabis dispensary and later became a general manager, earning income from his employment. The Court ruled that since the debtor's income was derived from an illegal source, the debtor was ineligible to fund his chapter 13 plan with that income as the funds are derived from income which is illegal federally.

The Blumsack Court kept the door open for the feasibility that a chapter 13 debtor may be able to fund a chapter 13 plan with funds from another source.

"We perceive no reason to prohibit segregation and tracing as tools in the case of a debtor employed in the marijuana industry seeking to fund a chapter 13 plan. In short, the Trustee's concerns about the fungibility of money do not warrant the restrictive eligibility bar that he advocates on appeal."

What About Income on the Statement of Financial Affairs?

How do you determine income when the Debtor has not filed a Tax Return?

The Debtor brings a box of deposits and receipts, how do you handle it?

To be Determined? Approximation?



How Schedule J affects projecting income

- Debtors often forget expenses
- Self employed Debtors often Double Dip on expenses, taking the expense as a deduction on the income statement and then including the expense on Schedule J
- Taxes can have a significant impact, generally with self employed Debtors there are no taxes taken out. Considerations need to be taken so the Debtor has a proper allocation for taxes.
- Expenses must also be reasonable, what is reasonable?

BONUSES

- Is the Bonus is guaranteed every year? every quarter? Every month? Listed the bonus on Schedule I?
- If random - if can be projected list the bonus on Schedule? If not what are the consequences?
- Super random bonuses list on Schedule I? What is super random?



HELP YOUR 341 MEETING GO SMOOTHLY - TIPS

- If you have issues relative to income/and or expenses or any other complication, contact the trustee ahead of time. A quick email or call can save a lot of aggravation at a 341 meeting.
- Provide Supporting documents - income submitted timely for the trustee to review. Do not have numbers on integrated in the petition without documentation to back it up.
- Notes on Schedule I and J Why does the income fluctuate? Raises, seasonal income, bonuses. It helps the trustees ascertain why there is a difference income. Expenses without explanation or supporting documentation can cause delays at the 341 meeting.
- Keep in contact with the Debtor and make sure there are no changes, Our office calls the Debtor the day before and inquires as to any changes. You don't want to find out that the Debtor obtained a new job is now doing Uber or received a raise or lost their job at the meeting.

TAXES ISSUES FOR INCOME SELF EMPLOYMENT

- How does the Debtor handle taxes? Does the Debtor pay quarterly or at the end of the year or is the Debtor even paying taxes?
- How do you calculate what the Debtor should pay?
- Does the Debtor receive a tax refund? Is it prorated on Schedule I?



The Harsh Realty Business v. Hobby

- Is the Debtor really making money?
- What do the bank statements, tax returns, printouts of income and income statements tell you
- Sometimes you must diplomatically inform the Debtor they are not in business

QUESTIONS???



BUDGET WORKSHEET Name: _____

PLEASE LIST AMOUNT MONTHLY (See notes)

Residence Mortgage _____ Mortgage/HELOC _____ Mortgage/HELOC _____ Rent _____ Real Estate Taxes _____ Insurance: Homeowners _____ Insurance: Renters _____ Service Contract _____ Landscaping & Lawn Care _____ Snow Plowing _____ Repairs & Maintenance _____ Furniture Lease _____ Replacement Appliances _____ Condominium Fees _____ Subtotal	Utilities Electric _____ Oil _____ Solar _____ Gas _____ Pellets _____ Propane _____ Wood _____ Cable _____ Internet _____ Trash Removal _____ Water/Sewer _____ Land Line _____ Cell Phone _____ Alarm System Maint Fees _____ Subtotal	Vehicle #1 Car Insurance _____ Loan/Lease _____ Gas _____ Tolls _____ Parking _____ Repairs _____ Maintenance _____ Excise Tax _____ Service Contract _____ Onstar _____ AAA Road Membership _____ Registration _____ Inspection _____ Subtotal
Food Groceries _____ Take Out _____ Dine Out _____ Coffees _____ Snacks _____ School Lunches _____ Work Lunches _____ Vending Machine _____ Subtotal	Personal Care Hair Care _____ Makeup _____ HB&A _____ Nails/Massage & Other _____ Gym Membership _____ Vitamins _____ Subtotal	Vehicle 2 Loan/Lease _____ Gas _____ Tolls _____ Parking _____ Repairs _____ Maintenance _____ Excise Tax _____ Service Contract _____ Onstar _____ AAA Road Membership _____ Registration _____ Inspection _____ Subtotal
Entertainment/Hobbies Hobby Membership _____ Hobby Supplies _____ Books/Magazines _____ Movies _____ Lottery Tickets _____ Gambling _____ Hulu/Netflix/Sirius/Amazon/Spotify/Etc _____ Other Internet Subscriptions _____ Alcohol _____ iTunes _____ Subtotal	Education Tuition _____ Student Loans _____ Books _____ Supplies _____ Fees _____ Subtotal	Other Transportation MBTA/Commuter Pass _____ Uber/Lift/Taxi _____ Bike Cost/Repairs _____ Subtotal

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BUDGET WORKSHEET Name: _____

Children	
Daycare	_____
Diapers/Wipes	_____
Toys/Video Games/iTunes	_____
Sports/Clubs/Dance/Group	_____
Field Trips	_____
School Supplies	_____
Software Costs	_____
Books	_____
Subtotal	

Medical - out of pocket	
Health Insurance (not in pay)	_____
Co-pays	_____
Dental Costs	_____
Prescriptions	_____
Over the Counter Meds	_____
Contact Lenses & Solution	_____
Glasses	_____
Medical Equipment	_____
Deductible	_____
Subtotal	

Unreimbursed Work Exp	
Life Ins (not in Pay)	_____
Life Ins (not in Pay)	_____
Subtotal	

Financial/Legal	
Bank Maintenance Fee	_____
Overdraft Fees	_____
ATM Charges	_____
Tax Preparation	_____
Bookkeeper	_____
Statement Charge	_____
Legal Fees	_____
Court Fines	_____
Subtotal	

Home/Office	
Ink/toner Cartridges	_____
Stamps/Postage/Delivery	_____
Office Supplies	_____
Subtotal	

Unreimbursed Work Exp	
Pro License	_____
Pro Insurance	_____
Continuing Ed	_____
Union Dues (not in pay)	_____
Tools/supplies	_____
Subtotal	

Other	
Cigarettes/Cigars/Tobacco	_____
Vape	_____
Holiday and Birthday Gifts	_____
Donations to Religious Entities	_____
Other Donations	_____
Pet Care Food/Vet/Grooming	_____
Pet Insurance	_____
Subtotal	

Clothing	
Clothing in General	_____
Work Clothes	_____
Uniforms-Work	_____
Uniforms-School	_____
School Shopping	_____
Sports Clothing	_____
Workout Clothing	_____
Winter Clothing	_____
Special Occasion	_____
Subtotal	

Payments on Non Dischargeable Debt	
Student Loans	_____
Alimony - Current	_____
Child Support - Current	_____
Alimony - Past Due	_____
Child Support - Past Due	_____
Subtotal	

HELPFUL HINTS FOR CONVERTING NUMBERS

To convert from Year to Month - Divide by 12

i.e. you pay 250 for excise tax

$$250/12 = 20.83$$

To convert weekly to Month multiply by 4.33

i.e. you purchase \$200 of food each week

$$200*4.3=860.00$$

Expenses MUST be listed on a monthly basis

Expenses should be the exact figure for fixed expenses

For expenses that vary, please use your best approximation

The expenses should be the average during the entire year

There may be fluctuation for expenses like heat/electric and oil

Add up what you spend all year and divide by 12

RAVOSA LAW OFFICES PC

Six Month Income Statement

Name: _____

RAVOSA LAW OFFICES PC

	Jan 2025	Feb 2025	Mar 2025	Apr 2025	May 2025	Jun 2025
GROSS INCOME - ALL MONEY RECEIVED FOR THE BUSINESS						
Auto Repair						
Bank Fees						
Car Payment*						
Cell/ Office Phone						
Electric: Only if own or rent for Bus						
Gas-Auto (see below)						
Meals/Food: Only bus related						
Office Supplies						
Parking						
Postage						
Rent for Business						
Insurance (Car)						
Employees/Contractors						
Marketing						
Insurance WC/Business/Other						
Other: _____						
Other: _____						
Supplies						
EXPENSES						
NET INCOME						
TOTAL 6 MONTH INCOME						

Gross Income should be any and ALL MONIES received in the business: Checks, Money Orders, Case, Venmo, Paypal, Cash App and Etc.

The expenses should not be personal, they should only be those that are necessary to generate income for the business.
Do not include personal expenses.

If you put any vehicle expenses your business should be a business in which you use your vehicle mostly for business use

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Fill in this information to identify your case:

Debtor 1 _____

Debtor 2 _____

(Spouse, if filing)

United States Bankruptcy Court for the: DISTRICT OF MASSACHUSETTSCase number
(if known) _____

Check if this is:

☐ An amended filing☐ A supplement showing postpetition chapter 13
income as of the following date:

MM / DD / YYYY _____

Official Form 106I

Schedule I: Your Income

12/15

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. Fill in your employment information.

If you have more than one job, attach a separate page with information about additional employers.

Include part-time, seasonal, or self-employed work.

Occupation may include student or homemaker, if it applies.

Employment status

Occupation

Employer's name

Employer's address

How long employed there?

Debtor 1

☒ Employed☐ Not employed

Debtor 2 or non-filing spouse

☐ Employed☒ Not employed**Part 2:** Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write \$0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

2. List monthly gross wages, salary, and commissions (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.

3. Estimate and list monthly overtime pay.

4. Calculate gross income. Add line 2 + line 3.

For Debtor 1

For Debtor 2 or
non-filing spouse2. \$ 8,608.28 \$ 0.003. +\$ 0.00 +\$ 0.004. \$ 8,608.28 \$ 0.00

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Debtor 1
Debtor 2

Case number (if known)

	For Debtor 1	For Debtor 2 or non-filing spouse	
Copy line 4 here	4. \$ 8,608.28	\$ 0.00	
5. List all payroll deductions:			
5a. Tax, Medicare, and Social Security deductions	5a. \$ 1,203.89	\$ 0.00	
5b. Mandatory contributions for retirement plans	5b. \$ 664.15	\$ 0.00	
5c. Voluntary contributions for retirement plans	5c. \$ 0.00	\$ 0.00	
5d. Required repayments of retirement fund loans	5d. \$ 0.00	\$ 0.00	
5e. Insurance	5e. \$ 0.00	\$ 0.00	
5f. Domestic support obligations	5f. \$ 0.00	\$ 0.00	
5g. Union dues	5g. \$ 99.58	\$ 0.00	
5h. Other deductions. Specify: <u>Life</u>	5h. \$ 3.45	\$ 0.00	
<u>Health Insurance</u>	\$ 263.66	\$ 0.00	
6. Add the payroll deductions. Add lines 5a+5b+5c+5d+5e+5f+5g+5h.	6. \$ 2,234.73	\$ 0.00	
7. Calculate total monthly take-home pay. Subtract line 6 from line 4.	7. \$ 6,373.55	\$ 0.00	
8. List all other income regularly received:			
8a. Net income from rental property and from operating a business, profession, or farm <small>Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.</small>	8a. \$ 0.00	\$ 0.00	
8b. Interest and dividends	8b. \$ 0.00	\$ 0.00	
8c. Family support payments that you, a non-filing spouse, or a dependent regularly receive <small>Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.</small>	8c. \$ 0.00	\$ 0.00	
8d. Unemployment compensation	8d. \$ 0.00	\$ 0.00	
8e. Social Security	8e. \$ 0.00	\$ 1,350.00	
8f. Other government assistance that you regularly receive <small>Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies.</small>	8f. \$ 0.00	\$ 0.00	
8g. Pension or retirement income	8g. \$ 0.00	\$ 1,515.04	
8h. Other monthly income. Specify: _____	8h. \$ 0.00	\$ 0.00	
9. Add all other income. Add lines 8a+8b+8c+8d+8e+8f+8g+8h.	9. \$ 0.00	\$ 2,865.04	
10. Calculate monthly income. Add line 7 + line 9. <small>Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.</small>	10. \$ 6,373.55 + \$ 2,865.04	= \$ 9,238.59	
11. State all other regular contributions to the expenses that you list in Schedule J. <small>Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives. Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in Schedule J.</small>			
Specify: <u>Pension from National</u>		11. +\$ 202.00	
12. Add the amount in the last column of line 10 to the amount in line 11. The result is the combined monthly income. <small>Write that amount on the Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data, if it applies.</small>			
		12. \$ 9,440.59	
			Combined monthly income
13. Do you expect an increase or decrease within the year after you file this form?			
<input type="checkbox"/> No.			
<input checked="" type="checkbox"/> Yes. Explain:			
<p>The Debtor spouse has retired as of March 2023. Debtor received a stipend of \$6,900 on her May 26, 2023 paystub to reimburse for a work trip expenses. This one-time reimbursement is not income and will not be received moving forward.</p> <p>Debtor was temporarily teaching an extra course, causing increased income in June, but this has ended and her income moving forward is reflected above. She does not expect this to occur again in the future.</p>			

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Fill in this information to identify your case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: DISTRICT OF MASSACHUSETTS

Case number _____
(If known)

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing postpetition chapter 13 expenses as of the following date:

MM / DD / YYYY _____

Official Form 106J

Schedule J: Your Expenses

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach another sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Your Household

1. Is this a joint case?

☐ No. Go to line 2.

☒ Yes. Does Debtor 2 live in a separate household?

☒ No

☐ Yes. Debtor 2 must file Official Form 106J-2, *Expenses for Separate Household of Debtor 2*.

2. Do you have dependents? ☒ No

Do not list Debtor 1 and Debtor 2.

☐ Yes. Fill out this information for each dependent.....

Do not state the dependents names.

Dependent's relationship to Debtor 1 or Debtor 2

Dependent's age

Does dependent live with you?

☐ No

☐ Yes

☐ No

☐ Yes

☐ No

☐ Yes

☐ No

☐ Yes

3. Do your expenses include expenses of people other than yourself and your dependents?

☒ No

☐ Yes

Part 2: Estimate Your Ongoing Monthly Expenses

Estimate your expenses as of your bankruptcy filing date unless you are using this form as a supplement in a Chapter 13 case to report expenses as of a date after the bankruptcy is filed. If this is a supplemental *Schedule J*, check the box at the top of the form and fill in the applicable date.

Include expenses paid for with non-cash government assistance if you know the value of such assistance and have included it on *Schedule I: Your Income* (Official Form 106I.)

Your expenses

4. The rental or home ownership expenses for your residence. Include first mortgage payments and any rent for the ground or lot.

4. \$ 2,161.04

If not included in line 4:

4a. Real estate taxes

4a. \$ 0.00

4b. Property, homeowner's, or renter's insurance

4b. \$ 0.00

4c. Home maintenance, repair, and upkeep expenses

4c. \$ 250.00

4d. Homeowner's association or condominium dues

4d. \$ 419.39

5. Additional mortgage payments for your residence, such as home equity loans

5. \$ 0.00

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Debtor 1 _____ Debtor 2 _____	Case number (if known) _____
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6. Utilities: 6a. Electricity, heat, natural gas 6b. Water, sewer, garbage collection 6c. Telephone, cell phone, Internet, satellite, and cable services 6d. Other. Specify: <u>Electric</u> <u>gas</u> <u>Alarm System Maint</u> <u>Cable & Internet</u> <u>Cell Phone</u>	6a. \$ 0.00 6b. \$ 55.00 6c. \$ 0.00 6d. \$ 250.00 \$ 275.00 \$ 20.00 \$ 110.00 \$ 115.00
7. Food and housekeeping supplies	7. \$ 1,216.00
8. Childcare and children's education costs	8. \$ 0.00
9. Clothing, laundry, and dry cleaning	9. \$ 200.00
10. Personal care products and services	10. \$ 231.00
11. Medical and dental expenses	11. \$ 380.00
12. Transportation. Include gas, maintenance, bus or train fare. Do not include car payments.	12. \$ 404.00
13. Entertainment, clubs, recreation, newspapers, magazines, and books	13. \$ 250.00
14. Charitable contributions and religious donations	14. \$ 100.00
15. Insurance. Do not include insurance deducted from your pay or included in lines 4 or 20.	
15a. Life insurance	15a. \$ 0.00
15b. Health insurance	15b. \$ 25.00
15c. Vehicle insurance	15c. \$ 225.00
15d. Other insurance. Specify: _____	15d. \$ 0.00
16. Taxes. Do not include taxes deducted from your pay or included in lines 4 or 20. Specify: <u>Excise Tax</u> Specify: <u>Excise Tax</u>	16. \$ 40.00 \$ 40.00
17. Installment or lease payments:	
17a. Car payments for Vehicle 1	17a. \$ 608.82
17b. Car payments for Vehicle 2	17b. \$ 679.78
17c. Other. Specify: _____	17c. \$ 0.00
17d. Other. Specify: _____	17d. \$ 0.00
18. Your payments of alimony, maintenance, and support that you did not report as deducted from your pay on line 5, Schedule I, Your Income (Official Form 106I).	18. \$ 0.00
19. Other payments you make to support others who do not live with you. Specify: _____	19. \$ 0.00
20. Other real property expenses not included in lines 4 or 5 of this form or on Schedule I: Your Income.	
20a. Mortgages on other property	20a. \$ 0.00
20b. Real estate taxes	20b. \$ 0.00
20c. Property, homeowner's, or renter's insurance	20c. \$ 0.00
20d. Maintenance, repair, and upkeep expenses	20d. \$ 0.00
20e. Homeowner's association or condominium dues	20e. \$ 0.00
21. Other: Specify: <u>Stamps/Postage/Delivery</u>	21. +\$ 5.00
<u>Ink/Toner</u>	+\$ 30.00
<u>Pro License</u>	+\$ 25.00
<u>Cont Education</u>	+\$ 25.00
<u>Union Dues (not in pay)</u>	+\$ 50.00
22. Calculate your monthly expenses	
22a. Add lines 4 through 21.	\$ 8,190.03
22b. Copy line 22 (monthly expenses for Debtor 2), if any, from Official Form 106J-2	\$ _____
22c. Add line 22a and 22b. The result is your monthly expenses.	\$ 8,190.03
23. Calculate your monthly net income.	
23a. Copy line 12 (your combined monthly income) from Schedule I.	23a. \$ 9,440.59
23b. Copy your monthly expenses from line 22c above.	23b. -\$ 8,190.03
23c. Subtract your monthly expenses from your monthly income. The result is your monthly net income.	23c. \$ 1,250.56

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Debtor 1
Debtor 2

Case number (if known)

24. Do you expect an increase or decrease in your expenses within the year after you file this form?

For example, do you expect to finish paying for your car loan within the year or do you expect your mortgage payment to increase or decrease because of a modification to the terms of your mortgage?

☐ No.

☒ Yes.

Explain here: Debtor has a special diet as ordered by her doctor and is medically necessary. The health insurance and union dues listed here are in addition to the payroll deductions.

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Debtor 1
Debtor 2

Case number (if known)

Part 2: Determine Your Disposable Income Under 11 U.S.C. § 1325(b)(2)

39. Copy your total current monthly income from line 14 of Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period. \$ **14,756.58**

40. Fill in any reasonably necessary income you receive for support for dependent children. The monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I of Form 122C-1, that you received in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child. \$ **0.00**

41. Fill in all qualified retirement deductions. The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in 11 U.S.C. § 362(b)(19). \$ **0.00**

42. Total of all deductions allowed under 11 U.S.C. § 707(b)(2)(A). Copy line 38 here => \$ **9,679.44**

43. Deduction for special circumstances. If special circumstances justify additional expenses and you have no reasonable alternative, describe the special circumstances and their expenses. You must give your case trustee a detailed explanation of the special circumstances and documentation for the expenses.

Describe the special circumstances	Amount of expense
	\$
	\$
	\$
Total	\$ 0.00

Copy here=> \$ **0.00**

44. Total adjustments. Add lines 40 through 43 => \$ **9,679.44** Copy here=> -\$ **9,679.44**

45. Calculate your monthly disposable income under § 1325(b)(2). Subtract line 44 from line 39. \$ **5,077.14**

Part 3: Change in Income or Expenses

46. Change in income or expenses. If the income in Form 122C-1 or the expenses you reported in this form have changed or are virtually certain to change after the date you filed your bankruptcy petition and during the time your case will be open, fill in the information below. For example, if the wages reported increased after you filed your petition, check 122C-1 in the first column, enter line 2 in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
<input checked="" type="checkbox"/> 122C-1		Debtor received stipend to reimburse work expenses	5/26/2023	<input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease	\$ 1,150.00
<input type="checkbox"/> 122C-2	14			<input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease	\$ 2,884.55
<input checked="" type="checkbox"/> 122C-1		Debtor taught temporary class.	6/30/2023	<input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease	\$ 876.34
<input type="checkbox"/> 122C-2	14			<input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease	\$
<input checked="" type="checkbox"/> 122C-1		Spouse retired - wage income ceased	3/09/2023	<input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease	\$
<input type="checkbox"/> 122C-2	14			<input type="checkbox"/> Increase <input checked="" type="checkbox"/> Decrease	\$

SMALL BUSINESS DEBTORS AND COMPLEX BANKRUPTCY ISSUES

**Conflict of Interest Issues Involving Small Businesses Filing Under
Subchapter V and the Dual Representation of the Small Business Principal**

**The Pros and Cons of Small Business Debtors Filing Under Chapter 13 vs.
Subchapter V and How Projected Disposable Income Is Determined Under Both**

**I. CONFLICT OF INTEREST ISSUES INVOLVING SMALL BUSINESSES
FILING UNDER SUBCHAPTER V AND THE DUAL REPRESENTATION
OF THE SMALL BUSINESS PRINCIPAL**

A. Subchapter V Filings

1. Introduction

Congress created Subchapter V through the Small Business Reorganization Act of 2019 by adding numerous provisions to the United States Bankruptcy Code at 11 U.S.C. §§ 1181-1195. Subchapter V became effective on February 19, 2020. To a large extent, a small business reorganization filing under Subchapter V is governed by the Chapter 11 reorganization provisions, with several notable exceptions in an effort to streamline the small business reorganization efforts. *See* 11 U.S.C. § 1181(a).

To be eligible to file under Subchapter V, a "small business debtor" currently means a person "engaged in commercial or business activities . . . that has aggregate noncontingent liquidated secured and unsecured debts as of the date of filing of the petition . . . in an amount not more than \$3,424,000 . . . not less than 50 percent of which arose from the commercial or business activities of the debtor." *See* 11 U.S.C. § 101(51D). Further, to be eligible to file under Subchapter V, the small business debtor's primary activity cannot be owning single asset real estate.

Importantly, small business debtors may be sole proprietorships, partnerships, LLCs, or corporations. Under 11 U.S.C. § 1191(a), the court shall confirm a *consensual* Subchapter V Plan of Reorganization if all requirements of 11 U.S.C. § 1129(a), except paragraph 15, which refers to individual debtors, are met. Nonconsensual Subchapter V Reorganization Plans will be confirmed under § 1191(b) where most of the requirements

of § 1129(a) are met, and if the plan is fair and equitable with respect to each class of claims or interests which are impaired and has not accepted the plan. These nonconsensual Subchapter V Reorganization Plans are sometimes referred to as “cram-down” plans.

To be confirmed, a nonconsensual Subchapter V Plan must provide that the debtor's projected disposable income is received between three and five years and will be applied to make the plan payments. There must also be a reasonable likelihood that the debtor will be able to make all plan payments. *See* 11 U.S.C. § 1191(c). Disposable income is defined as income not necessary for maintenance or support of the debtor; or for a domestic support obligation; or for the payment of expenditures necessary for the continuation, preservation, or operation of the debtor's business. *See* 11 U.S.C. § 1191(d).

2. Sole Proprietorships vs. Corporations

Unlike corporations and LLCs, a sole proprietorship is not a legal entity separate from its owner. Importantly, there are no bars to a sole proprietorship from filing under Subchapter V if the sole proprietorship otherwise qualifies as a small business debtor, as defined above. A sole proprietorship and the owner, however, are considered the same and no distinction exists between business and personal assets or debts. This means that the sole proprietorship owns the business property outright, along with personal property. It also means that a creditor who wins a money judgment against a sole proprietorship may execute on both business and personal property.

B. Conflicts of Interest in Representing the Debtor in Possession

1. Employment Standards Under 11 U.S.C. § 327

Because small businesses and their individual owners can have different interests and objectives when filing for bankruptcy protection, conflicts of interest may arise when an attorney represents both the small business debtor and the principal.

Under Subchapter V, because the debtor in possession has all of the rights of the trustee under 11 U.S.C. § 1184, including operating the business of the debtor, the debtor in possession must be represented by a disinterested person pursuant to 11 U.S.C. § 327 with court approval. *Cal. Palms Addiction, Recovery Campus, Inc. v. Vara*, Case No. 4:22-CV-0812, 2023 U.S. Dist. LEXIS 52022 (N.D. Ohio Mar. 27, 2023). Section 327 requires that the attorney representing the debtor in possession cannot hold interests adverse to the estate.

Further, to be "disinterested," as defined under 11 U.S.C. § 101(14), the attorney must (1) not be a creditor or insider; (2) not be a director or officer of the debtor; and (3) not have "an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." *See* 11 U.S.C. § 101(14). In *In re Martin*, 817 F.2d 175 (1st Cir. 1987), the court emphasized that "disinterested" means not just not having a clear conflict of interest, but also not having the appearance of a conflict, stating:

There is no question that the purpose of the incorporation of the disinterest requirement of 11 U.S.C. § 327 was to prevent even the appearance of a conflict irrespective of the integrity of the person or firm under

consideration. Certainly a 'disinterested' person should be divested of any scintilla of personal interest which might be reflected in his decision concerning estate matters.

In re Martin, 817 F.2d at 181 (quoting *In re Codesco, Inc.*, 18 B.R. 997, 999 (Bankr. S.D.N.Y. 1982)).

In addition, § 327(a) and Fed. R. Bankr. P. 2014(a) require that the court-approved professional must disclose to the court all connections between him- or herself and the debtor, the creditors, and any other persons of interest. The rule implies a duty of continuous disclosure throughout the case. *In re Granite Partners, LP*, 219 B.R. 22 (Bankr. S.D.N.Y. 1998).

The requirements of 11 U.S.C. § 327(a) to hire disinterested professional persons to represent a debtor in possession are considered basic threshold requirements. Even if the employment is proper under § 327, the attorney may be disqualified if an actual conflict is shown to exist in the course of the representation. *In re Interwest Bus. Equip., Inc.*, 23 F.3d 311 (10th Cir. 1994). Where there is a clear potential for conflict, disqualification is likely. In *In re W.F. Development Corp.*, 905 F.2d 883 (5th Cir. 1990), *cert. denied*, 499 U.S. 921, 111 S. Ct. 1311, 113 L. Ed. 2d 245 (1991), the court disqualified the attorney who represented both limited and general partners in the bankruptcy case because of the clear potential of conflict.

2. **Dual Representation of a Subchapter V Debtor and Its Owner/Principal and Possible Conflicts of Interest**

Dual representation of a debtor organization and the owner/principal, whether under Subchapter V or any other bankruptcy chapter, raises inherent challenges where the

debtor organization is a small business debtor or a closely held corporation. The potential challenges include:

- > The intertwining financial affairs of owners and their entities and the difficulties inherent in distinguishing between personal assets and liabilities and business assets and liabilities.
- > Conflicts which arise during the course of the attorney's representation of a corporate debtor in possession, and its owners, when the attorney can no longer maintain the best interests of the corporate client, or where an appearance of impropriety arises.
- > A debtor in possession could become a potential claimant against the owner if there is the possibility of clawbacks.

Although there are inherent conflict of interest issues which could arise, particularly when a sole practitioner files for Subchapter V bankruptcy, because of the novelty of Subchapter V case law, there are few reported decisions which specifically address conflict of interest issues when lawyers represent both the small business organization and its principal. The following are cases where conflicts of interest arise in Chapter 11 cases, including some Subchapter V decisions:

In re R & R Associates, 402 F.3d 257 (1st Cir. 2005), before the enactment of Subchapter V, exemplifies how a breach of legal obligation arises when attorneys engage in dual representation. After two rounds before the New Hampshire bankruptcy court, the First Circuit found in favor of the Chapter 7 trustee and held that the attorneys who represented both the debtor, R&R Associates ("R&R"), in a Chapter 11 bankruptcy, later converted to a Chapter 7, and R&R's general partners in separate individual matters, engaged in gross breaches of their legal duties of care and loyalty to the debtor, R&R. Prior to filing for bankruptcy under Chapter 11, the attorneys from

the Thomas Law firm represented R&R's general partners, Gaudette and Choate, and arranged for the transfer of substantial sums of Gaudette's individually owned property to family limited partnerships ("FLP") for the purpose of removing the assets from possible creditor's claims.

Six months later, these same Thomas Law firm attorneys initiated the Chapter 11 bankruptcy on behalf of R&R after the bankruptcy court ordered the retainment of the attorneys under 11 U.S.C. § 327(a). The court appointment of the attorneys was based on the attorneys' representations to the court that they held no interests adverse to the debtor in possession or the Chapter 11 estate. Yet, the attorneys did not disclose their ongoing legal representation of Gaudette and Choate, R&R's general partners.

After R&R's only asset, real estate property, sank in value, and the proposed reorganization of the debtor could not be achieved, the bankruptcy case was converted to Chapter 7. Throughout the bankruptcy case, the Thomas Law firm attorneys never pursued R&R's general partners to transfer assets to save R&R, even with R&R's real estate asset failing. After the Chapter 7 case ended and the attorneys were awarded \$18,887.00 in fees, the Chapter 7 trustee commenced an adversary proceeding against the attorneys. On appeal, the First Circuit articulated the obvious problems with the attorneys' dual representation as follows:

The defendants unquestionably were duty-bound to render their representation to R&R free from any and all actual conflicts of interest. The dual representation of a general partnership and its general partners almost invariably entails a plain conflict of interest. See *In re TMA Assoc., Ltd.*, 129 B.R. 643, 647 (Bankr. D. Colo. 1991) ("An attorney is at peril when simultaneously representing a partnership and its general partners") *In re Bonneville Pac. Corp.*, 196 B.R. 868, 886 (Bankr. D. Utah 1996) ("When

counsel for a debtor in possession undertakes representation of a principal of the debtor, [he] 'abandons his fiduciary obligations as counsel for the Debtor corporation.'") Nevertheless, both before and after the defendants became chapter 11 counsel to R&R, they undertook to represent Gaudette and Choate in their efforts to shield their personal assets from potential creditors, all the while knowing that the chapter 11 estate of R&R was one of the largest potential creditors of Gaudette and Choate. The defendants undertook such dual representation at a time when they either knew or reasonably should have known that the assets of the chapter 11 estate were diminishing in value at an alarming rate, and that in all probability no successful chapter 11 reorganization could be arranged absent further contributions to the general partnership from the personal assets of Gaudette and Choate. Consequently, regardless what specific measures defendants might have taken to protect R&R's interests (*e.g.*, a recovery action against Gaudette and Choate), the fact plainly remains that these defendants affirmatively undertook actions (*viz.*, establishing the FLPs, and providing inadequate disclosure to the bankruptcy court and/or Trustee Bezanson) which further undermined the interests of R&R. This, standing alone, constituted a breach of their legal duties of care, candor and undivided loyalty.

In re R & R Assocs., 402 F.3d at 270. The appellate court vacated the bankruptcy court's judgment for the Thomas Law firm attorneys and remanded the case for the entry of judgment against the attorneys in the amount of \$412,000.00 on the legal malpractice claim.

In *In re Keevers*, Bk. No. 20-10963-BAH, Bk. No. 22-10088-BAH, Adv. No. 21-01032-BAH, 2023 Bankr. LEXIS 1908 (Bankr. D.N.H. Aug. 1, 2023), the adversary proceeding brought by the creditor insurance company was against the debtors to deny discharge in their Chapter 7 bankruptcy cases. While the adversary proceeding is not a legal malpractice case, the proceeding highlights the conflicts which can easily arise between a Subchapter V entity and its principals.

The creditor's adversary complaint in *In re Keevers* arose from the individual debtors' use of their separate business entity, Jonathon Keevers, Inc. (the "Corporation"), described by the debtors as both an S corporation and a sole proprietorship, and the Corporation's bank account to hide personal income and expenses from their individual creditors. Based on the debtors' schedules, the initial Chapter 11 bankruptcy filed by the debtors was considered a Subchapter V bankruptcy, and the U.S. trustee required that all funds received by the debtors post-petition be deposited into the debtor-in-possession account ("DIP account"). At the § 341 Meeting of Creditors, debtor Jonathon Keevers was questioned about his use of the Corporation. The debtor gave conflicting answers and falsely stated that his post-petition income was being deposited into the DIP account. To the contrary, these funds were being deposited into a separate corporate bank account for Keevers's personal use.

Further, throughout the Subchapter V proceedings, Keevers filed monthly operating reports as directed, but he did not reveal that his real estate commissions from his employer, Century 21, were deposited into the Corporation account and not in the DIP account as ordered by the court. It was not until June 14, 2021, after the U.S. trustee moved for a Bankruptcy Rule 2004 examination of Century 21, that the debtor prepared corporate monthly operating reports, which showed the Century 21 deposits going into the corporate account, as well as significant personal expenses in and out of the corporate account. On October 15, 2021, the debtors filed their third amended Subchapter V Reorganization Plan, which they were ultimately unable to confirm because the net income listed in the Plan was not consistent with the Plan's contemplated monthly payments.

The debtors then moved to convert the Subchapter V bankruptcy case to a Chapter 7, which the court granted. In the Chapter 7 case, a creditor filed an adversary proceeding against the debtors alleging misrepresentations and fraud in the Subchapter V proceeding. The debtors acknowledged that they failed to properly disclose income and expenses from the small business debtor's corporate account. Specifically, the debtors falsely stated during the § 341 meeting while in Subchapter V that all funds they received post-petition were deposited into the DIP account when, in fact, the debtor's real estate commissions were deposited into the corporate account. The record showed that the debtors, while initially filing a Subchapter V bankruptcy, never properly disclosed the assets and expenditures in the corporate account and used the corporate account rather than the DIP account to pay for personal expenses. Further, the court concluded that the individual debtors made false statements in the Subchapter V Reorganization Plan confirmation hearings and essentially used the Subchapter V proceeding to hide personal income and expenses.

Similarly, in *In re Hall*, 651 B.R. 62 (Bankr. M.D. Fla. 2023), creditors of the Subchapter V debtors filed an adversary complaint alleging exceptions to discharge under 11 U.S.C. § 523(a). In *In re Hall*, however, the individual debtors did not convert the case to a Chapter 7 proceeding. The court, therefore, addressed whether the exceptions to discharge under § 523(a) apply to non-individual debtors receiving a discharge under Subchapter V and specifically 11 U.S.C. § 1191. The court held that the exceptions to discharge *do not* apply to small business debtors who are discharged in Subchapter V.

The court analyzed whether the numerous discharge exceptions under § 523(a) apply to a corporate debtor that receives a nonconsensual discharge under § 1192.

The court recognized the inherent conflict between § 1192 which states that "any debt . . . of the kind specified in section 523(a)" is excepted from discharge when a plan is confirmed via cramdown under § 1191(b), and § 523(a) which states that "a discharge under section . . . 1192 [and numerous other bankruptcy sections] does not discharge an *individual debtor* from any debt" outlined in any of its subsections. Section 523 specifically refers to individual debtors and § 1192 does not. The court distinguished *In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022), and held that § 523(a) does not apply to corporate debtors receiving a discharge under § 1192. *See also In re Premier Glass Servs., LLC*, 661 B.R. 939 (Bankr. N.D. Ill. 2024) (holding that § 523(a) "limiting language" means that in a Subchapter V proceeding, the listed non-dischargeability exceptions apply only to an individual debtor).

II. THE PROS AND CONS OF FILING UNDER CHAPTER 13 AND UNDER SUBCHAPTER V

A. Bankruptcy Options for Sole Proprietors

1. Introduction

As of April 1, 2025, because "[o]nly an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$526,700 and noncontingent, liquidated, secured debts of less than \$1,580,125" can be a debtor under Chapter 13 of the Bankruptcy Code, the determination of whether to file under Chapter 13 or Subchapter V of Chapter 11 is only material to a narrow group

of sole proprietorships. *See* 11 U.S.C. § 109(e). Again, a "small business debtor" eligible to file under Subchapter V of Chapter 11 are debtors engaged in active commercial or business activities with aggregate noncontingent liquidated secured and unsecured debts in an amount that is less than \$3,424,000.00. *See* 11 U.S.C. § 101(51D).

2. A Sole Proprietorship Filing Under Chapter 13

> Eligibility Requirements

Public Law 119-114, approved May 23, 2025, now provides that 11 U.S.C. § 109(e) restricts filing under Chapter 13 to individuals with regular income who owe less than \$526,700.00 in noncontingent, liquidated, unsecured debts, and noncontingent, liquidated, secured debts of less than \$1,580,125.00. Where an individual with regular income and his or her spouse file as codebtors, the amount owed by the codebtors on the date of the filing of the Chapter 13 petition is also less than \$526,700.00 in unsecured noncontingent, liquidated debt, or less than \$1,580,125.00 in secured noncontingent, liquidated debt. This is a significant reduction in eligibility for filings by spousal codebtors who were previously allowed to file where they had not more than \$3,024,725.00 in secured debt.

> Stay of Action Against Codebtors

Under 11 U.S.C. § 1301, after the Chapter 13 petition is filed, a creditor may not act or commence any actions against codebtors, protecting debtors from pressure by creditors who might pursue friends or relatives who are co-obligors. *In re Schaffrath*, 214 B.R. 153 (B.A.P. 6th Cir. 1997).

> **Powers of the Debtor**

A Chapter 13 Debtor has the powers of a trustee, as provided under § 363(c) and as detailed under § 704(a), over the use, sale, and lease of estate property. Under § 1304, a Chapter 13 Debtor engaged in business may operate the business. This section only applies if the debtor is both self-employed and incurs trade credit in the production of income from the employment. *See 8 Collier on Bankruptcy* ch. 1304 (2025); *Fatsis v. Braunstein*, 405 B.R. 1 (B.A.P. 1st Cir. 2009); *In re Whitcomb*, 310 B.R. 428 (Bankr. W.D. Ark. 2004).

> **Property of the Chapter 13 Estate**

The Chapter 13 Debtor remains in possession of all estate property, unless provided otherwise in the order confirming the Chapter 13 Plan. 11 U.S.C. § 1306(b). Property of the Chapter 13 Estate includes *in addition to the property described in section 541*, (1) property acquired by the debtor after the commencement of the case but before the Chapter 13 case is dismissed, closed, or converted, whichever occurs first; and (2) earnings from services performed by the debtor after the commencement of the case but before the case is dismissed, closed, or converted.

Post-confirmation earnings which are not devoted to payments under the Chapter 13 Plan, are not considered property of the estate, unless the Plan states otherwise. *Telfair v. First Union Mortg. Corp.*, 216 F.3d 1333 (11th Cir. 2000).

> **The Chapter 13 Plan**

Under § 1321, the debtor files the Chapter 13 Plan. The Chapter 13 Plan is a repayment plan, not a reorganization plan, and sets a minimum of mandatory plan for payments to creditors. *Bullard v. Blue Hills Bank*, 575 U.S. 496, 135 S. Ct. 1686, 191 L.

Ed. 2d 621 (2015); *In re Puffer*, 453 B.R. 14 (D. Mass. 2011), *reversed on other grounds*, 674 F.3d 78 (1st Cir. 2012) (holding that the purpose of a Chapter 13 Plan is to enable individuals to reorganize their financial affairs by extending due dates on debts so that debts can be serviced out of future income pursuant to a payment plan).

Pursuant to § 1322, the Chapter 13 Plan shall, *inter alia*, give the trustee control over all or some portion of future earnings or other income as is necessary for the execution of the plan. *See* 11 U.S.C. § 1322(a). Further, the plan must provide for the full payment of all claims entitled to priority under 11 U.S.C. § 507; shall provide the same treatment for each claim within particular class; and may provide for less than full payment of claims entitled to priority under § 507(a)(1)(B) provided the plan requires that the debtor's projected income for a five-year period will be applied to make payments under the plan.

Further, under § 1322(b), the Chapter 13 Plan may modify the rights of all holders of claims with some exceptions. Specifically, the plan may designate classes of unsecured claims to be treated fairly, but the plan may designate consumer debt claims differently. The plan may modify rights of holders of secured claims, except for secured claims secured by the debtor's principal residence. *See In re Ennis*, 558 F.3d 343 (4th Cir. 2009) (holding that § 1322(b)(2)'s prohibition of modifications regarding debts secured by the debtor's principal residence did not apply to a debt secured by a mobile home that was personal property).

> **Confirmation of the Chapter 13 Plan**

Section 1325 sets the provisions for confirming a Chapter 13 Plan including nine standards which always apply and other standards under § 1325(b) which only apply if there is an objection to the confirmation of the Chapter 13 Plan.

A good faith Chapter 13 Plan may be confirmed without acceptance of the plan by the unsecured creditors. Where there is objection by unsecured creditors, the court will apply the "best interest of creditors" test. Under § 1325(b)(1), where there is an objection to the plan, the court may not approve the plan unless the value of the property to be distributed is not less than the amount of the unsecured claim; and the plan provides that all of the debtor's "projected disposable income" be received beginning on the date the first payment is due under the plan.

The "cramdown" provision of § 1325(a)(5) provides that where a secured creditor does not accept the plan due to how a secured claim is treated, the plan may provide that (1) the secured creditor retain its lien and that the value of the property to be distributed is not less than the allowed amount of the claim; or (2) the debtor will surrender the property securing the claim. *See In re Nieves*, 647 B.R. 809 (B.A.P. 1st Cir. 2023) (denying a creditor's motion for dismissal because the debtor's plan properly treated the creditor's secured claim by maintaining contractual payments and did not impermissibly modify the monthly payment or other contract terms); *In re Woods*, 257 B.R. 876 (Bankr. W.D. Tenn. 2000).

"Disposable income" is defined under § 1325(b)(2) as "current monthly income received by the debtor . . . less amounts reasonably necessary to be expended": (1) for the

maintenance and support of the debtor or dependent of the debtor; (2) for charitable contributions in an amount not to exceed 15% of the debtor's gross income; and (3) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of the business.

In determining the feasibility of a Chapter 13 Plan at the confirmation hearing, the court will consider (1) the debtor's equity in property; (2) the debtor's future earning capacity; (3) the debtor's future disposable income; (4) whether the plan provides for payment of interest to secured creditors over the life of the plan; (5) whether the plan provides for the payment of recurring charges against the property at issue, including insurance costs and property taxes; and (6) whether the plan provides for substantial payments to secured creditors which will increase the possibility for refinancing at the end of the plan period. *In re St. Cloud & Jeudi*, 209 B.R. 801 (Bankr. D. Mass. 1997).

Pursuant to § 1325(c), after a plan is confirmed, the court may order any entity from whom the Chapter 13 Debtor receives income to pay all or any part of such income to the Chapter 13 Trustee. Payments under the Chapter 13 Plan commence within 30 days after the order for relief under § 1326.

If confirmed, the provisions of the Chapter 13 Plan are binding on the debtor and every creditor. All property of the Chapter 13 bankruptcy estate is vested in the debtor and should be free and clear of any creditor claim provided for by the plan, except as otherwise provided for in the plan. 11 U.S.C. § 1327.

Under 11 U.S.C. § 1329, the debtor, trustee, or unsecured creditor may modify a Chapter 13 Plan at any time post-confirmation but before the completion of the plan.

A holder of a secured claim may *not* move to modify the plan post-confirmation. Further, a court is not authorized to modify a Chapter 13 Plan post-confirmation and any attempt to do so exceeds the court's authority. *In re Muessel*, 292 B.R. 712 (B.A.P. 1st Cir. 2003).

> **Discharge**

After completion of the payments under the Chapter 13 Plan, under § 1328(a), with the exception of any long term secured claim payments and a few other exceptions, the debtor is entitled to discharge. Under § 1328(b), a "hardship discharge" may be granted to a debtor who does not complete the plan payments if the failure to make the payments is due to circumstances outside of the debtor's control.

3. Filing Under Chapter 11, Subchapter V

> **Eligibility**

Pursuant to Public Law 119-14, approved May 23, 2025, Subchapter V eligibility under § 101(51D), limits eligibility to small business debtors with debt limit of \$3,424,000, and who are engaged in commercial or business activities and where at least 50% of the debt arises from commercial or business activities. *In re Ikalowych*, 629 B.R. 261 (Bankr. D. Colo. 2021). Debts of affiliates of the small business debtor in bankruptcy are included in the debt limit, but debts owed to affiliates are not included in the debt limit.

> **Stay of Action Against Codebtors**

There is no such authority under Subchapter V.

> **Trustees and Powers of the Debtor in Possession**

Pursuant to 11 U.S.C. § 1183, a trustee serves in every Subchapter V case, either a standing trustee if one is appointed by the U.S. trustee under 28 U.S.C. § 586(b) or a

disinterested trustee appointed by the U.S. trustee. The trustee's duties are more limited than in an ordinary Chapter 11 case but include being accountable for property received and to appear at the status conference required under § 1188 and assure that the debtor is performing his or her duties.

Under 11 U.S.C. § 1184, the debtor remains in control of the bankruptcy estate and of the business. As the debtor in possession, the debtor has all the rights and powers of a trustee, except for the right of compensation and the duty to investigate. The debtor may be removed as the debtor in possession upon request of a party in interest due to fraud, incompetence, or gross mismanagement under § 1185.

In addition, under § 1187, the debtor is responsible for filing the documents required under § 1116(1)(A) and (B) which includes the small company's recent balance sheet, statement of operations, and other financial disclosure statements.

> **Property of the Estate**

At the time a Subchapter V Plan is confirmed, the property of the estate includes, in addition to the property described in 11 U.S.C. § 541, all property acquired by the debtor after the petition is filed but before the case is closed, dismissed, or converted, as well as the individual debtor's earnings from services performed by the debtor after the petition is filed but before the case is closed, dismissed, or converted. A debtor remains in possession of the estate property.

> **Status Conference to Expedite Resolution of the Case and Filing the Plan**

Pursuant to 11 U.S.C. § 1188(a), no later than 60 days after filing the Subchapter V petition, unless an extension is granted under § 1188(b), the bankruptcy court will hold

a status conference for the purpose of resolving the bankruptcy. No later than 14 days before that status conference, the debtor must file a report which details efforts taken to secure a consensual plan of reorganization.

Section 1189 states that only the debtor may file a reorganization plan and the plan must be filed no later than 90 days after the petition is filed, unless an extension is granted by the court.

> **The Plan for Reorganization**

The Subchapter V Reorganization Plan submitted by the debtor pursuant to 11 U.S.C. § 1190 must include both a history of the business operations of the debtor and a liquidation analysis. It must also include the debtor's ability to make payments under the proposed plan of reorganization.

The plan shall provide for the submission of all or any portion of future earnings or debtor income to the supervision and control of the trustee as is necessary for the execution of the plan. *See* 11 U.S.C. § 1190(2)

Under § 1190(3), the plan may modify the rights of holders of secured claims secured only by a security interest in the debtor's primary residence if the new value received in connection with the granting of the security interest was not used to acquire real property and used in connection with the debtor's small business. *See, e.g., In re Ventura*, 615 B.R. 1 (Bankr. E.D.N.Y. 2020) (holding that a mortgage given to secure the purchase of a bed and breakfast inn, where the debtor also resided, was eligible for adjustment because the debt was incurred as part of the debtor's business).

> **Confirmation of the Subchapter V Plan for Reorganization**

In a Subchapter V case, there is no requirement that any creditor accept the reorganization plan. Section 1191(a) provides that the bankruptcy court must confirm a Subchapter V Reorganization Plan where all of the requirements of 11 U.S.C. § 1129(a), other than subsection (15), are met.¹ This is referred to as a consensual reorganization plan. *In re McBride*, Case No. 23-20168, 2023 Bankr. LEXIS 2881 (Bankr. D. Me. Dec. 5, 2023).

Under § 1191(b), where the reorganization plan is nonconsensual, that is, certain creditors do not approve of the reorganization plan because of certain cramdown applications, the court shall nevertheless confirm the plan if it is fair and equitable. Under § 1191(c)(2), to be fair and equitable as of the effective date of the plan, among other things, the debtor will pay projected disposal income for three to five years, as determined by the bankruptcy court.

As to secured creditors, a fair and equitable Subchapter V Reorganization Plan must satisfy one of three alternatives, which are similar to other Chapter 11 Reorganization Plans: (1) the plan must ensure that the secured creditors retain their liens and receive deferred cash payments totaling at least the allowed amount of their claim; (2) if the plan contemplates the sale of property securing the claim, the plan must provide that the claimants' lien attaches to the proceeds of the sale; or (3) if the plan does not contemplate either (1) or (2), the secured creditors must receive the "indubitable equivalent" of their claims.

¹ 11 U.S.C. § 1129(a)(15) applies only to individuals filing under Chapter 11 and requires individuals to pay projected disposable income for the longer of five years or term of the reorganization plan.

Further, the debtor must show a reasonable likelihood that it will be able to make all payments under the plan.

Pursuant to 11 U.S.C. § 1193, only the debtor may modify the Subchapter V Plan after confirmation and before completion of the plan. Any modification, however, must continue to comply with § 1191(b) and be fair and equitable with respect to any impaired claim or interest.

> **Discharge**

11 U.S.C § 1192 provides for the discharge of claims after completion of all Subchapter V Reorganization Plan payments due within the first three years of the plan or up to five years, if the court fixes a longer period. The discharge covers all preconfirmation debts except where the last payment under the plan is due after the first three years (or five years, if the court allows) and, for individuals only, debts excepted from discharge under 11 U.S.C. § 523(a).²

B. Summary of Pros and Cons Between Chapter 13 and Subchapter V

> More small businesses qualify for the streamlined reorganization provisions of Subchapter V because the Subchapter V debt limit is \$3,424,000.00.

² See discussion above. There is disagreement among the Circuits on the application of the § 523(a) exceptions to discharge in a Subchapter V bankruptcy case. In *In re GFS Industries, LLC*, 99 F.4th 223 (5th Cir. 2024); *In re ETG Fire, LLC*, No. 24-13446 TBM, No. 24-13447 TBM, Pro. No. 24-1225 TBM, 2025 Bankr. LEXIS 671 (Bankr. D. Colo. Mar. 20, 2025); and *In re Cleary Packaging LLC*, 36 F.4th 509 (4th Cir. 2022), the courts held that the § 523(a) exceptions to discharge apply to a corporate Subchapter V debtor who confirms a nonconsensual plan under § 1191(b). The court in *In re Hall*, 651 B.R. 62 (Bankr. M.D. Fla. 2023), and *In re Off-Spec Solutions, LLC*, 651 B.R. 862 (B.A.P. 9th Cir. 2023), rejected those decisions and held that the exceptions to discharge do not apply to Subchapter V debtors based on the language of § 523(a), which specifically states that the exceptions to discharge only apply to individuals.

Under § 109(e), the Chapter 13 individual debtor's secured debt limit is 1,580,125.00 to be eligible. This statute now also the limits eligibility for spousal codebtors to \$1,580,125.00. This is a change in the law which previously allowed an individual and that individual's spouse, who together owed less than \$3,424,000.00 in secured debt and \$526,700.00 in unsecured debt, to file under Chapter 13.

> Under Chapter 13, the codebtor stay applies. Subchapter V does not have a codebtor stay provision.

> Under Chapter 13, specifically Fed. R. Bankr. P. 3015, the repayment plan must be filed within 14 days after commencement of the case, unless the court extends the time for cause. Under Subchapter V, the debtor has more administrative obligations and disclosures, but the debtor has a longer period of time to file the Subchapter V Reorganization Plan. The plan is not due until 90 days after commencement of the case. *See* 11 U.S.C. § 1189(b).

> Subchapter V imposes more specific reporting requirements on debtors than in Chapter 13, as required under other Chapter 11 cases.

> Debtors cannot modify residential mortgages in Chapter 13; Subchapter V debtors can modify residential mortgages in some circumstances.

> Confirmation requirements for a Chapter 13 repayment plan provide for two alternative methods for secured creditors who do not accept the plan. It also requires that unsecured creditors receive more than they would receive under Chapter 7.

The confirmation requirements for a nonconsensual Subchapter V Plan are similar and require the debtor to offer alternative methods of repayment for secured creditors in a cramdown situation.

> In Chapter 13, debtors may pay administrative and priority claims through the plan payments.

In Subchapter V cases, administrative and priority claims must be paid in full on the effective date of the plan, except for taxes, which may be paid, with interest, over a five-year period beginning on the date of the petition filing. *See* 11 U.S.C. § 1129(a)(9)(C). The court may, however, confirm a nonconsensual plan that provides for payment of administrative claims over time instead of immediately upon the effective date of the plan.

> Under 11 U.S.C. § 1329(a), a Chapter 13 debtor, trustee, or unsecured creditor may modify a plan post-confirmation but before completion of the plan. Under Subchapter V, only the debtor may modify a reorganization plan, *see* 11 U.S.C. § 1193, and only if the modification maintains the elements of § 1191(b) with respect to impaired claims and interests of creditors. Neither Chapter 13 nor Subchapter V allows secured creditors or the court to modify a plan post-confirmation.

> Chapter 13 discharge occurs as soon as practicable after the completion of the payments under the plan with the exception of debts excepted under § 523(a). Section 1328(b) also allows for a "hardship discharge" where a debtor has not completed all payments under the plan, but even if a hardship discharge is obtained, it does not discharge debts which fall under § 523(a) or long-term debts being cured by the plan.

While there is disagreement in the courts, the majority opinion is that a Subchapter V discharge is not subject to the exceptions under § 523(a) which only apply to individuals.

In Subchapter V, discharge occurs upon confirmation of the consensual plan. For nonconsensual plans, discharge is deferred until completion of the reorganization payments. There is no hardship discharge.

C. How "Disposable Income" Is Measured in Chapter 13 and in Subchapter V Cases

1. The Chapter 13 Means Test

In order for both Chapter 13 Plans and Subchapter V Reorganization nonconsensual plans to be confirmed, debtors are required to pay nonconsensual unsecured creditors their projected "disposable income" in three to five years under certain circumstances. Courts applying Chapter 13 provisions and Subchapter V provisions apply different tests for determining the debtor's projected disposable income, as discussed below. Essentially, however, the outcome of the two methodologies arrive at similar results under both chapters. *See In re Premier Glass Servs., LLC*, 664 B.R. 465 (Bankr. N.D. Ill. 2024).

Under § 1325(b)(1), if the trustee or the holder of an unsecured claim objects to the confirmation of the Chapter 13 Plan, the plan will only be approved if the value of the property to be distributed under the plan on the account of such claim is not less than the amount of the claim *or* the plan provides that all of the debtor's projected disposable income be received in plan period and be applied to make payments to unsecured creditors.

"Disposable income" is defined as the debtor's monthly income (absent child support and certain other payments), less amounts reasonably necessary to be expended

by the debtor or a dependent of the debtor for maintenance and support; for qualified charitable contributions; and, where the debtor is engaged in business, for the payment of expenditures necessary for the operations of the business. *See* 11 U.S.C. § 1325(b)(2).

For higher-income Chapter 13 debtors, amounts reasonably necessary under § 1325(b)(2)(A) are determined by the Chapter 7 means test under 11 U.S.C. § 707(b)(2)(A) and (B), which test is intended to supplant case-by-case reasonableness determinations. *See Bledsoe v. Cook*, 70 F.4th 746 (4th Cir. 2023).

The means test formula is based on a current monthly income standard, which is defined under 11 U.S.C. § 101(10A) as the average monthly income from all sources that the debtor received without regard to whether the income is taxable and includes any amount paid by any entity other than the debtor on a regular basis for the household expenses of the debtor or the debtor's dependents. *See* 11 U.S.C. § 101(10A)(A) and (B)(i). The formula specifically excludes Social Security benefits and certain disability benefits. *See Ranta v. Gorman*, 721 F.3d 241 (4th Cir. 2013).

2. Projected Disposable Income Under § 1191(d)

The means test standards do not directly apply to determine projected disposable income required for a nonconsensual Subchapter V Plan. Instead, "disposable income" is defined under § 1191(d) as income received by the debtor that is not "reasonably necessary to be expended . . . for . . . the maintenance or support," 11 U.S.C. § 1191(d)(1)(A), of the debtor or the debtor's dependent, or for domestic support obligations or "for the payment of expenditures necessary for the continuation, preservation, or operation" of the debtor's business, 11 U.S.C. § 1191(d)(2).

In *In re Packet Construction, LLC*, Case No. 23-10860, 2024 Bankr. LEXIS 1053 (Bankr. W.D. Tex. Apr. 30, 2024), the court reviewed § 1191(b)'s requirement in a Subchapter V proceeding that projected disposable income must be included in a Subchapter V Plan. In what many courts refer to as the "cram down" provision and "cram down" plans, § 1191(d) defines disposable income only as the debtor's income minus what is reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor or domestic support obligations. Importantly, to properly calculate disposable income, the debtor also subtracts from his income "expenditures necessary for the continuation, preservation, or operation of the business of the debtor." *In re Packet Constr., LLC*, 2024 Bankr. LEXIS 1053, at *6.

Significantly, to calculate projected disposable income, the court cited *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (2010), a Chapter 13 case where the Supreme Court endorsed the "forward-looking approach" required under 11 U.S.C.S. § 1325(b)(1)(B) when determining disposable income and emphasized that the definition of projected disposable income in Subchapter V was basically the same as in Chapter 13 and Chapter 12.

The *In re Packet Construction, LLC* court also explains that the alternative projected disposable income test is the "value" approach set forth in § 1191(c)(2)(B), also similar to alternative tests in Chapters 13 and 12. This test comes from the statutory language that a Subchapter V Plan "can be fair and equitable if 'the value of the property to be distributed under the plan' is at least as much as the projected disposable income." *In re Packet Constr., LLC*, 2024 Bankr. LEXIS 1053, at *10. The court goes further to

explain that "a plan can be approved as long as the proposed plan payment or payments, whenever they are made, are equal not in amount but in *value*—that is, *adjusted based on the time value of money*—to the projected disposable income over the relevant plan period."³

In *In re Ellingsworth Residential Community Ass'n, Inc.*, 125 F.4th 1365, 1380 ns. 12 and 13 (11th Cir. 2025), the court also implicitly explained the difference between the "forward-looking" approach and the "value" approach. It stated that "disposable income" under Subchapter V is defined under § 1191(d) as income not reasonably necessary for the debtor's maintenance or support or needed for the debtor's business (the forward approach). Alternatively, § 1191(c)(2)(B) provides that a debtor can distribute property under the plan that is of a value that equates to at least the projected disposable income of the debtor.

In *In re McBride*, 2023 Bankr. LEXIS 2881, at *22-26, the court reviewed the different interpretations of a fair and reasonable plan under § 1191(c)(2)(A) and (B) when classes of creditors do not approve of the Subchapter V Plan and the debtor and a creditor had differing interpretations of how to meet the fair and reasonable threshold in the plan.

The court agreed with the Debtor's approach stating:

The more reasoned approach, therefore, is the one suggested by the Debtor. For a plan to be fair and equitable under § 1191(c), classes of secured claims that are impaired and do not accept the plan must be treated in accordance with § 1129(b)(2)(A) and, in addition, a debtor must either pay all of her disposable income into the plan, or distribute property equal in

³ The court analyzed the different approaches to projected disposable income in a Subchapter V matter in part to show that the statute does not require a debtor to "true up" if their actual income proves to be higher than the projected disposable income under § 1191(b).

value to that disposable income. Finally, the plan must also provide adequate remedies unless the debtor can meet the more stringent feasibility analysis.

It is possible under this interpretation of § 1191(c)(2)(B) that a debtor could pay little to general unsecured creditors, while accruing disposable income, by giving promissory notes or some other property of equal to, or greater, present value. A court does have both explicit and implicit authority to implement further measures to ensure fairness and equity, however. For instance, § 1191(c)(2) allows a court to increase the applicable commitment period from three years to as long as five years. Further, § 1191(c) states that the condition of fairness and equity includes the requirements set forth in subsections (1) through (3) which means, as noted earlier, a court may require something more to satisfy that condition. In light of these mitigating measures, the Court finds that the Debtor's interpretation of § 1191(c)(2)(B) leads to the most sensible result and, therefore, most likely reflects the legislative intent behind that provision.

In re McBride, 2023 Bankr. LEXIS 2881, *25-26.

CONCLUSION

In determining whether it is more advantageous to file under Chapter 13 or under Subchapter V where the sole proprietorship qualifies under both, the comparisons above demonstrate that a Chapter 13 filing will likely be easier and less expensive for the debtor. These advantages, however, must be measured in the context that fewer sole proprietorships qualify for protection under Chapter 13 than under Subchapter V. The filing fees for Chapter 13 filings are historically approximately 1/5 of the Subchapter V filing fee. Income-generating sole proprietors which are struggling to pay basic monthly bills can use Chapter 13 to ease both their business and personal debt load in one case, including saving a home from foreclosure. Further, under Chapter 13, the automatic stay will apply to codebtors, which is not the case in Subchapter V. Finally, a Chapter 13

debtor who is unable to complete a Chapter 13 Plan may be eligible for a “hardship discharge” under § 1328(b), which is not available to Subchapter V debtors.

The “ease” in filing under Chapter 13 is due, in part, to the fact that the two bankruptcy chapters have slightly different goals and approaches. The goal of Chapter 13 is to develop a fair repayment plan for the debtor and is used primarily by individuals in consumer debt situations. Chapter 13 repayment plans may be modified post-confirmation not only by the debtor but also by a trustee or an unsecured creditor.

Subchapter V was developed as a means to simplify and expedite the reorganization of small businesses. Although the Subchapter V process takes less time and is more streamlined than a Chapter 11 business reorganization, the Subchapter V process requires the debtor to do more, including preparing disclosures and attending a status conference during the course of preparing the Subchapter V Plan, which are not required under Chapter 13. Still, a Subchapter V Plan, once confirmed, can only be modified by the debtor, and not by a trustee or unsecured creditor, giving the debtor more certainty about the plan’s success.

The different goals and strategies of Chapter 13 and Subchapter V should be reviewed in the context of the particular business to determine how the bankruptcy will best serve the business in the long run. In doing so, it is also important to keep in mind that there are many similarities under both Chapter 13 and a nonconsensual Subchapter V Plan. In both, the debtor will be required to identify and commit all projected disposable income to debt repayment for three to five years, which can be challenging when unexpected business expenses arise along the way.

Faculty

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