



# Chapter 12

## How Filing for Bankruptcy Can Give Family Farmers a Fresh Start

By Amanda A. Page



### At a Glance

Chapter 12 is a form of bankruptcy that allows family farmers to restructure their farms so they have a chance to breathe and turn their financial fortunes around. This can be a hard sell to farmers, given their optimistic nature.

## *Farming is a profession of hope.*

—Brian Brett (2009)

**F**armers are eternal optimists. To survive, they must have faith that the weather will hold, the storm will pass, or their hired help will show. To thrive, they foster deep connections with the land, their crops and livestock, and their communities. Farmers pay homage to their heritage and future each fall when faithfully planting crops or each spring when baby livestock are birthed. Farmers' dependence on nature is unmeasurable.

However, as many farmers will tell you, the amount of work they put into their crops or livestock does not always equal the returns. A family friend recently said that he has never worked so hard and accomplished so little than this past season. For generations, farmers have learned how to manage erratic weather, diseased livestock, or volatile markets. They have not learned to how to maneuver through a global pandemic. The coronavirus crisis presents not only economic uncertainty but health uncertainty for farmers, their families, and their workers.

Farmers were hoping for a good spring to recoup from last season's unyielding weather. Instead, they were presented with an unprecedented calamity. "You're dealing with, you know, three, four or five years of terrible prices, then we get a huge pandemic like this," says Patty Edelburg, vice president of the National Farmers Union. "We're going to see a lot more family-size farms go out of business."<sup>1</sup>

Farmers will need tremendous help to ensure that their family farms remain viable. Chapter 12 is a form of bankruptcy that allows family farmers to restructure their farms so they have a chance to rebound from this catastrophic pandemic.<sup>2</sup> This can be a hard sell to farmers given their optimistic nature: *Next year will be better. This fall will be a great harvest. This spring the lambs will all survive.*

Chapter 12 offers customized protection to family farmers that Chapters 7,<sup>3</sup> 11,<sup>4</sup> and 13<sup>5</sup> do not. Modern Chapter 12 was enacted in the mid-1980s; the federal government saw a value in family farms and wanted to ensure their survival during that decade's financial crisis.<sup>6</sup>

Here are some basics to use to educate your clients about the benefits of a Chapter 12 bankruptcy. Chapter 12 is available to family farmers or family fisherman with regular annual income.<sup>7</sup> The petitioners can be individuals, an individual/spouse, corporations, or partnerships.

There is a four-part requirement test for individuals: they are engaged in a farming operation; their debts do not exceed \$10,000,000; not less than 50 percent of their debts arise from farming; and more than 50 percent of their income comes from farming for the taxable year preceding filing or in each of the second and third taxable years preceding filing.<sup>8</sup>

There is also a four-part test for corporations or partnerships: more than 50 percent of stock or equity is held by one

family or one family and its relatives, and those family members conduct the farming operation; not less than 80 percent of the family's assets relate to the farming operation; the family's debts do not exceed \$10,000,000; and not less than 50 percent of the family's debts arise from the farming operation.<sup>9</sup>

A Chapter 12 bankruptcy offers several benefits. The payments in the plan are tailored to the type of income that each farm operation generates.<sup>10</sup> Secured loans can be modified in several ways. The loan terms can be extended,<sup>11</sup> the interest rate can be reduced, and the loan balance can be reduced to the fair market value of the collateral.<sup>12</sup>

This simple briefing of Chapter 12 is intended as a jumping-off point for conversations with your farming clients to explain their options and help ensure they can move forward and continue farming. In an upcoming issue of the *Michigan Bar Journal*, I will take a deeper look at Chapter 12 from the viewpoint of farmers, creditors, accountants, and trustees. We must all remember our connection to the land and our dependence on farmers. ■

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### ENDNOTES

1. Worland, *American Farmers Were Already Hurting. Now the Coronavirus Slowdown Might Do Them In*, TIME.com (April 21, 2020) <<https://time.com/5823489/coronavirus-covid-farmers/>> [<https://perma.cc/6557-ECFR>] (accessed April 27, 2020).
2. 11 USC 1201 through 1231.
3. 11 USC 701 through 784.
4. 11 USC 1101 through 1174.
5. 11 USC 1301 through 1330.
6. 132 Cong Rec 28593 (1986) (statement of Sen. Grassley) and *Norwest Bank Worthington v Ahlers*, 485 US 197, 210; 108 S Ct 963; 99 L Ed2d 169 (1988).
7. 11 USC 109(f).
8. 11 USC 101(18).
9. 11 USC 101(18)(B).
10. 11 USC 1222(a)(2), (4).
11. 11 USC 1222 (b)(9).
12. 11 USC 1222 (b)(12).

