



# CURRENT ISSUES IN CREDITORS' RIGHTS & BANKRUPTCY

**PREPARED BY SHUTTS & BOWEN'S  
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# SUBCHAPTER V AND CURRENT TRENDS IN THE BANKRUPTCY WORLD

## A. SUBCHAPTER V – THE NEW AND IMPROVED CHAPTER 11

### Enactment

- The Small Business Reorganization Act (SBRA) – commonly known as Subchapter V – was signed into law in August 2019 and came into effect in February 2020, shortly before the onset of the global pandemic.
- As of February 19, 2020, small businesses have been afforded the ability to reorganize under the Bankruptcy Code in a much easier, more efficient, and less expensive manner.
- In its original form, only small businesses with debt less than \$2,725,625 were able to elect Subchapter V treatment.
- In March 2020, however, President Trump amended Subchapter V, as part of the CARES Act, by temporarily increasing the debt cap to \$7,500,000 for one full year.
- This increase permits larger small businesses that might otherwise reorganize under a traditional chapter 11 to qualify as a “small business debtor” and utilize the more relaxed standards of Subchapter V.
- According to an article by the *Daily Business Review*, more than 130 Subchapter V cases have been filed in Florida as of the end of July 2020 and the majority have been successful.
- Chief Judge Delano announced at a recent meeting of the Tampa Bay Bankruptcy Bar Association that about 70 Subchapter V cases have been filed just in the Middle District.

### Timeline

- Within 60 days after the entry of the order for relief under Subchapter V, the court must hold a status conference to further the expeditious and economical resolution of the case.
- Within 14 days prior to the status conference, the debtor must file a report that details what the debtor has done and plans to do to attain a consensual plan of reorganization.
- Within 90 days after the order for relief, the debtor must file its plan of reorganization.

### Why file under Subchapter V?

- **Less expensive** – no disclosure statement required, debtors are excused from paying quarterly fees to the U.S. Trustee System Fund, normally no creditors’ committee, and administrative expenses may be paid over the life of the plan

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- **Quicker and more efficient** – 60 days to prepare for status conference, 90 days to file a plan, and a Subchapter V trustee is appointed to help mediate the case
- **Lower bar for confirmation** – only the debtor may file a plan which must merely satisfy the Best Interest Test, no vote required, court can confirm the case over objections so long as there is fair and equitable treatment
- **Continued ownership and management** – even if all creditors vote against the plan and object to confirmation, so long as unsecured creditors are to be paid the debtor's disposable income for 3 – 5 years, equity holders will continue to own and manage their business

Due to Subchapter V, it is now easier than ever for small business debtors to reorganize in hopes of continuing their businesses for the benefit of all, while still holding to a variety of protections for both secured and unsecured creditors.

## B. TRENDS IN BANKRUPTCY

### **What is currently preventing businesses from filing?**

Coronavirus relief aid has been helping struggling businesses stay afloat, but once the influx of money stops flowing in and the state's moratorium on evictions end, businesses will be hit harder than ever before.

- Federal and state governments have enacted programs to provide relief to individuals and businesses during the pandemic and put a pause on certain actions creditors can take.
  - Increased unemployment assistance
  - Paycheck Protection Program (PPP) loans authorized under the CARES Act
  - A moratorium on evictions expiring or set to expire soon
  - Relaxed and ambiguous executive orders relating to foreclosures and evictions
- With government relief soon ending, foreclosures and bankruptcy filings may well increase significantly.

### **Predictions**

- Toward the end of 2020, we expect to see an increase in foreclosure cases, which will likely lead to additional bankruptcy filings.

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- In the first and second quarters of 2021, once the coronavirus aid has dried up, it is expected that there will be a massive increase in business filings, specifically in the service industry.
  - Per a U.S. Chamber of Commerce survey, 43% of small businesses expect to close permanently by the end of 2020.
- The federal government agrees with this prediction—Orlando is expected to receive a new bankruptcy judge sometime later this year to alleviate the perceived need for more judges in the near future.

### In the Courts – District Wide (through August)

- The rate of chapter 7 consumer filings is currently lower than a typical non-COVID year, with a total of **11,453** filings, compared to **12,808** at the same point last year.
- There is a similar trend for chapter 11 cases with **198** filings, down from **228** in 2019. In 2018, there were only **186** chapter 11 filings through the month of August.
- Accordingly, total filings have also decreased from **17,860** in 2019 to **14,528** today.