

## **The Chapter 11 Subchapter V Small Business Act**

An Analysis published by the American Bankruptcy Institute<sup>1</sup> indicates that, although total Florida bankruptcies have not risen year over year in 2020, business bankruptcies are up. This analysis found that Florida led the country in small business reorganization filings during the first four months after the February 19, 2020 effective date of the new Small Business Reorganization Act (SBRA) enacted last year.

### **What to Know about Chapter 11 Subchapter V Small Business Reorganizations**

Chapter 11 Subchapter V is a streamlined small business reorganization adopting concepts from Chapter 13 individual reorganizations and Chapter 12 family farmer/fisherman reorganizations and applying them to small business debtors. The highlights are:

- The Small Business Reorganization Act found at 11 U.S.C. § 1181- § 1195 creates the new Small Business Reorganization, which is available to both individual and business entity debtors who are engaged in commercial activity, excluding a person whose primary activity is the business of owning single asset real estate.
- To file, the debtor's combined secured and unsecured debts excluding unliquidated and contingent debt cannot exceed a \$2,725,625.00 debt limit, which has been temporarily increased by the CARES Act to \$7,500,000.00 through March 27, 2021.
- The Subchapter V reorganization moves fast-the Plan must be filed in 90 days (unless extended by the court), there is no disclosure statement as with a standard Chapter 11, and creditors cannot propose a Plan.
- No creditors' committee is appointed unless the court orders otherwise.
- Unlike a standard Chapter 11, a trustee is automatically appointed but the debtor remains debtor-in-possession. The trustee's role is to investigate the financial affairs of the debtor, facilitate the development of the plan of reorganization, and unless the court orders otherwise, furnish information to parties together with additional roles to facilitate the reorganization.
- The Plan may modify the rights of mortgage holders on the principal residence of the debtor if the proceeds of the loan were not used to acquire the property and were used primarily in connection with the business (this appears to be applicable to a person who takes out a home equity loan to invest in a business).
- The Plan can be approved without consent of impaired classes if there is no unfair discrimination and is fair and equitable.
- The Plan can be confirmed over creditor objections if 3-5 years of the debtor's projected disposable income is dedicated to plan payments.
- The Act eliminates the requirement to pay all administrative expense claims on the effective date of the Plan and allows the Debtor to pay administrative expenses over the term of the Plan.

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<sup>1</sup> [https://abi-org.s3.amazonaws.com/Covid19/stats/Weekly\\_Update\\_June\\_15-21-2020.pdf](https://abi-org.s3.amazonaws.com/Covid19/stats/Weekly_Update_June_15-21-2020.pdf)

- There have already been a flurry of court opinions on conversion of pending Chapter 11 cases to Subchapter V cases, and cases have held that the new Act can be applied retroactively by amending the petition, see *In re Progressive Solutions, Inc.*, 2020 Bankr. LEXIS 467 (Bankr. C.D. Calif. 2020) (denying on the facts), *In re Moore Props. Of Person Cty., LLC*, 2020 Bankr. LEXIS 550, 2020 WL 995544 (Bankr. M.D.N.C. 2020) (allowing) and *In re Bello*, 613 B.R. 894 (Bankr. E.D. Mich. 2020) (allowing).