

REORGANIZING A FARM BUSINESS WITH CHAPTER 12 OF THE BANKRUPTCY CODE: A BRIEF GUIDE

INTRODUCTION

Farm reorganization through chapter 12 of the Bankruptcy Code provides a powerful tool for farmers seeking to restructure burdensome debt, change production models, or even transition a farm to the next generation. While the most common form of bankruptcy, chapter 7 liquidation, generally requires financial insolvency, or the inability to pay debts, chapter 12 does not. Chapter 12 is specifically designed for family farmers and fisherman with regular annual income. The farming industry, on a national scale, is facing a souring economic future, from increasing debt burdens due to increasing interest rates, to a marked decrease in farm income over the past decade.¹ Farming has, and always will be, a volatile business based on factors outside of the farmer's control. This reality is reflected in the structure and tools within chapter 12 of the Bankruptcy Code. Put simply, chapter 12 helps farming and fishing operations avoid financial distress by allowing them to change the type of their operation or transfer it to the next generation without requiring liquidation or financial insolvency.

This guide provides a brief overview of chapter 12, focusing on the questions a farmer might have on the reorganization process. Why a farmer may wish to enter this process is an important question that is beyond the scope of this primer but has been explored by other resources linked below.²

First, this guide aims to provide context through a discussion of the history of chapter 12 and why it exists.

Second, the guide highlights the different parties involved in a chapter 12 reorganization.

Third, the guide details chapter 12's eligibility requirements for individuals and corporations.

Fourth, the guide considers the special benefits chapter 12 bankruptcy offers farmers.

Fifth, the guide provides a timeline of the chapter 12 process. The guide concludes with an outline of the required contents of a chapter 12 plan as well as suggested additional resources for more information.

Because this resource is focused on family farming operations, it does not address the provisions relating to the reorganization of a family fishing operation.

1. WHY IS THERE A SPECIFIC BANKRUPTCY CHAPTER FOR FARMERS?

Bankruptcy, as defined by the US Courts, is a “legal procedure for dealing with debt” of individuals and businesses.³ Bankruptcy law is a federal law, located in Title 11 of the United States Code. Each chapter of the Bankruptcy Code contains tools, procedures, and outcomes designed for certain sets or classes of debtor. Most bankruptcy cases are filed under chapter 7 of the Bankruptcy Code, which provides for the liquidation, or complete sale, of a debtor’s assets due to the debtor’s financial insolvency, or inability to pay debts.⁴ However, there are alternatives to chapter 7 bankruptcy with relief ranging from liquidation to restructuring, which can allow a business to continue operating free from significant debt burdens. Chapter 12 of the Bankruptcy Code is one such alternative that functions as a reorganization tool, intended to keep a farm in operation.⁵

Congress originally enacted chapter 12 during the 1980s farm crisis, when a combination of high debt and interest rates, low commodity prices, drought, and land development pressure threatened the loss of a significant number of farms.⁶ Congress intended chapter 12 to serve as a tool to increase flexibility for farmers to repay debts and continue farming.⁷ Initially, chapter 12 was not a permanent addition to the Bankruptcy Code; Congress extended the temporary version of chapter 12 several times before making it permanent in 2005 and expanding eligibility to include fishing operations.⁸ In 2019, recognizing that farmers were in the midst of a new farm crisis,⁹ Congress expanded the chapter’s debt ceiling for farmers to \$10,000,000.¹⁰ Yet, in spite of these legislative actions to extend and strengthen chapter 12, it remains underutilized as a tool to assist farmers struggling with debt, with fewer than 450 cases filed nationally per year since 2000.¹¹

2. WHO IS INVOLVED IN THE CHAPTER 12 PROCESS?

There are four primary parties involved in a chapter 12 case:

- The **debtor** initiates the process. In a chapter 12 proceeding, the debtor is the farmer or fisher.¹² The debtor generally hires a **debtor’s attorney** to help guide them through the process and the attorney’s fees are generally included in the chapter 12 repayment plan.¹³

- The **creditors** are the individuals or entities to whom the debtor owes.¹⁴ **Secured creditors** are creditors who have secured their debt with an interest in the property of the debtor (for example, land or equipment that can be repossessed), and they are often represented by creditor attorneys. **Unsecured creditors** are creditors that have not secured their debt and generally do not hire an attorney, but simply file claims themselves because of their smaller claims.

- The **bankruptcy court judge** is a neutral party who presides over the case, reviews all relevant materials, hears from the parties, and decides whether the proposed chapter 12 repayment plan is reasonable and feasible. All bankruptcy courts are considered federal courts, with at least one bankruptcy court district located in each state.¹⁵

- The **chapter 12 trustee** is an individual appointed by the Regional United States Trustee to oversee the debtor’s plan, preside over meetings of the creditors, act as an intermediary between the debtor and the creditors, and perform other duties listed in the Code.¹⁶



3. WHICH FARMERS ARE ELIGIBLE FOR CHAPTER 12 REORGANIZATION?

A family farmer can qualify for chapter 12 as either an individual or a corporation if they meet the following criteria.¹⁷

TO QUALIFY AS A FAMILY FARMER UNDER CHAPTER 12¹⁸

AN INDIVIDUAL OR AN INDIVIDUAL DEBTOR AND SPOUSE MUST:

1. Own and be engaged in a farming operation, which includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state;
2. Have aggregate debts of less than \$10,000,000;
3. Have at least half of his or her debts arising out of the farming operation, excluding debt on a principal residence; and
4. Receive more than 50% of his or her gross income from the farming operation in the preceding taxable year or both the second and third preceding taxable years.

A CORPORATION OR PARTNERSHIP MUST:

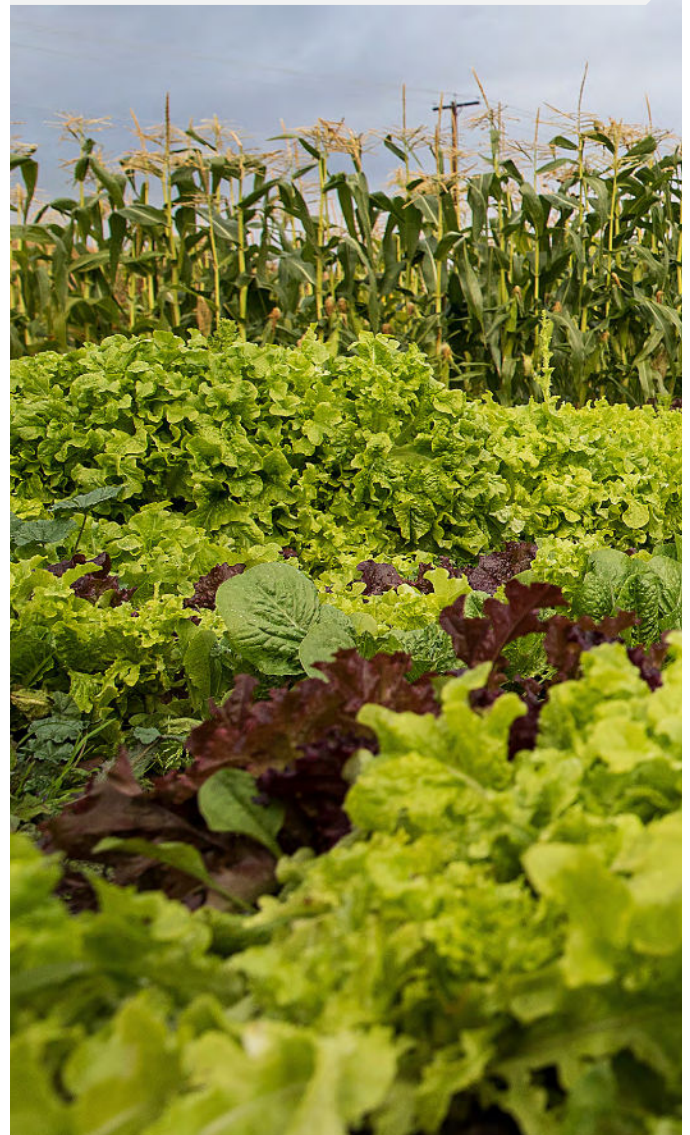
1. Be at least 50% owned by one family and its relatives;
2. Have farming operations that are conducted by the family or its relatives;
3. Have at least 80% of its value derived from assets related to the farming operation;
4. Have aggregate debts of less than \$10,000,000;
5. Have at least half of its debts arising out of the farming operation; and
6. Not have publicly traded stock.

Hannah Scott & Peggy Kirk Hall, An Overview of Bankruptcy Law for Farmers, in Nat'l Agric. L. Ctr., Fact Sheet Series 4 (Sept. 16, 2021), <https://28xeuf2otxvai8q7lx1uemec-wpengine.netdna-ssl.com/wp-content/uploads/assets/articles/bankruptcy/Overview-of-Bankruptcy-Law.pdf>.

Importantly, financial insolvency is **not** required to qualify for chapter 12, but some amount of credit counseling is needed, if it is available.¹⁹

Legal definition of farming operation

The law defines a farming operation as one that “includes tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.”²⁰ Courts have interpreted this definition liberally, though some limits have been identified.²¹ For example, courts have found that a horse breeding operation is “farming” whereas a horse boarding operation is not.²²



4. WHAT ARE THE SPECIAL BENEFITS FOR FARMERS IN CHAPTER 12?

What sets chapter 12 apart from other bankruptcy chapters is the recognition that farming businesses are inherently different from other businesses.²³ As mentioned above, Congress enacted chapter 12 to keep farms operating while allowing the farmer to restructure their business and its debts. Therefore, during the entire process, the debtor stays in possession of all property that is ultimately placed into the bankruptcy estate.²⁴ Additionally, chapter 12 cases generally enjoy a higher degree of collaboration between creditors and debtors. Because of the nature of the farming business, many debtors have relationships and annual meetings with creditors who may hold a deep understanding of, and appreciation for, the farming business.²⁵ Chapter 12 also differs from other chapters of the Bankruptcy Code in the degree of control and protection provided to the farmer, its reasonableness standard allowing for flexible payment plans, and the stronger reorganizational tools it offers.

Farmer Control and Protection

The process of chapter 12 reorganization is voluntary and farmer-led. As mentioned above, there is no insolvency requirement for chapter 12 relief, and chapter 12 must be initiated by the farmer, who has significant control over the plan's details.²⁶ The bankruptcy court must approve plans found to be reasonable and feasible. Chapter 12 does not allow creditors to vote on the plan, require certain provisions in the plan, or participate in drafting the plan. Creditors can object to the confirmation of the plan, but they are limited to very narrow arguments listed in the Code.²⁷ Specifically, creditors can object to the plan's feasibility, the farmer's eligibility to use chapter 12, the dischargeability of specific debts, and the issue of whether the creditors would receive more money through a chapter 7 liquidation. However, these objections and litigation tools are used to make the farmer aware of the creditor's positions rather than to try to stop the process, because most parties understand that farmers have little access to capital.²⁸ Relatedly, chapter 12 reorganization does not include the "absolute priority rule" found in other chapters. Consequently, even when a farmer pays all creditors under the plan less than 100 percent of what is owed, the farmer will still retain ownership of the farm, which represents a significant and unique benefit included in this chapter.²⁹

Reasonableness Standard and Repayment Flexibility

Farming is an inherently risky business due to factors outside the farmer's control, such as weather and crop prices. In recognition of these risks, the standard used to confirm a chapter 12 plan is more flexible than other chapters.³⁰ For example, a chapter 12 plan must ensure that the creditors are paid the same amount as they would receive in a liquidation bankruptcy.³¹ This means that the farmer does not need to maximize the revenues or income of the farming business to pay creditors quickly. Rather, the farmer can develop a business plan that will generate enough money to pay creditors at least as much as they would be paid in a liquidation of the farmer's assets. Additionally, farmers are able to pay that amount over a term of three to five years,



though some payments can extend well beyond the timeframe included in the plan.³² Another benefit of chapter 12 is the flexibility of the payment schedule, which can also reflect the realities of a farming business that may only see income during the harvest season. As a result, plans can allow for payments to be made monthly, quarterly, or annually depending on the farm's revenue streams.³³

Stronger Reorganizational Tools

The reorganizational tools available to a farmer and their attorney working through chapter 12 are numerous and provide great benefits. For example, farmers can renegotiate secured debts; discharge any unpaid unsecured debt left over at the end of the plan; and even convert certain generally non-dischargeable tax debts, like taxes on sales of farm property, to dischargeable debts.

The flexibility to restructure secured debts is a unique feature of chapter 12.³⁴ Although the debt must be paid in full through the plan, it can be modified in multiple ways, including changing the repayment term, the interest rate, and even the amount owed.³⁵

These secured debts can be renegotiated down to the actual value of the collateral rather than the purchase price, reflecting significant potential savings for the farm operation. The payments on secured debts can also continue well beyond the life of the plan.³⁶

The debt limits of chapter 12 are more substantial than those in other bankruptcy chapters.³⁷ A special provision in chapter 12 also allows for the discharge of any government claim that results from a sale of property, both real and personal, used in the farming operation.³⁸ This provision allows the farmer to discharge any tax liability from selling farm assets, which can be significant if it involves selling a portion of the farm property or its development rights. When viewed together, and considering the flexibility provided regarding the sale of farm property, these tools provide significant flexibility for a farming business to restructure their operation while continuing to operate.



5. WHAT ARE THE MAJOR STEPS TO REORGANIZE UNDER CHAPTER 12?

Each chapter 12 reorganization process will look different depending on the individual farm situation. However, a farmer can expect the process to follow these basic steps.

STEP 1 Find Attorney

A debtor's attorney will help assess the farmer's eligibility for chapter 12 relief, compile all necessary information for the plan, and develop the plan itself. Once the chapter 12 process has been started, it can move quickly, with the whole process often taking less than 100 days. An attorney can ensure the farmer has met all eligibility and plan requirements, saving time, frustration, and money.

STEP 2 File with Court

Farmers have 14 days after filing a chapter 12 petition to file all information regarding income, debts, and creditor identities. Often, this information is filed with the petition, especially when the farmer works with an attorney beforehand. Once a chapter 12 petition for relief has been filed, a bankruptcy estate is automatically created to hold all of the debtor's property, protecting that property from collection efforts.

STEP 3 Notice to Creditors

Once all information has been filed, the court will send notice to all parties. This notice will include the date, time, and location of the meeting of the creditors and other

STEP 4 Creditor's Meeting

This meeting (sometimes called a 341 meeting) will take place between 21 and 40 days after the petition was filed. The trustee presides over the meeting, asks the debtor to verify—under oath—the completeness and accuracy of their chapter 12 petition and schedules, reviews additional crucial documents the debtor must bring to the meeting, asks the debtor other questions related to the filing, and gives creditors the opportunity to ask questions.

STEP 5 File a Plan

The chapter 12 plan must be filed with the court within 90 days after filing the petition for chapter 12 relief. The court generally grants the farmer's request for extensions if the debtor shows the request was made in good faith.

STEP 6 Confirm Plan

The court confirms or rejects the plan within 45 days of filing. Once confirmed, the bankruptcy estate continues during the term of the plan and includes earnings from services performed between the filing of the case and closure, dismissal, or conversion of the case. The bankruptcy estate continues to exist during the term of the plan, keeping the automatic stay in effect, which protects the debtor's property.

STEP 7 Implement Plan (Make Payments)

Plans generally include a date when payments begin, but unlike chapter 13, there is no set 30-day requirement. Most plans last for 3–5 years and are overseen by the trustee for the entirety of that time. Payments are generally submitted to the trustee, who distributes payments to the creditors. In some districts, courts have also allowed payments directly to creditors and not through a trustee.

STEP 8 Discharge

Once the debtor has made all payments required by the plan, the court enters an order discharging all of the farmer's dischargeable debts. If the debtor can demonstrate they have paid at least as much as the creditors would have received in a chapter 7 liquidation and the reason the debtor cannot fulfill the payment obligation is due to factors out of the farmer's control, there may be a hardship discharge, or a discharge prior to completion of all required payments.



6. WHAT IS INCLUDED IN A CHAPTER 12 PLAN?

Chapter 12 plans outline the farmer's path to pay off the debts they owe. The only parties to a chapter 12 reorganization allowed to take part in drafting the plan are the farmer and their attorney. There are three primary "types" of chapter 12 reorganization plans: traditional, downsizing/conversion, and sale/transfer.³⁹ However, these plan types are not mutually exclusive and are often combined. The labels provide a means to easily identify key goals for each type of plan.

Traditional Plans:

Traditional plans aim to keep the same business in operation, but with restructured debts. These plans reflect a farm with a still-viable business, but in need of some amount of debt restructuring.

Downsizing or Conversion Plans:

These plans use chapter 12 to fundamentally change the business model, the type of farming operation, or to reduce the overall acreage of the farm. This is an attractive option for farms trying to continue operating on a smaller or different scale, mainly because of the tax benefits regarding the sale of land.

Sale or Transfer Plans:

This type of plan is very straightforward and involves the voluntary sale of the entire farm operation. Sometimes these plans involve selling specific rights related to land, like development rights. This may be an attractive option for older farmers attempting to retire due to the tax benefits relating to the sale of farming assets through chapter 12 reorganization.⁴⁰

Each of these plans must include certain mandatory provisions and may include additional optional provisions.⁴¹

The plan must include:

- the future earnings and income of the business;
- a description of how priority claims will be paid in full;
- a plan that treats all creditors within each class uniformly, absent consent from a creditor;
- modifications of any domestic support obligations owed to a government;
- and identification of tax fees through the sale of farm-related property.⁴²

These items provide creditors and the court with a full picture of the finances of the farming operation, and enable the parties to understand what it would take to reorganize to a viable business.

The optional provisions included in a chapter 12 reorganization plan are expansive.⁴³ These optional items increase the farmer's flexibility to repay their creditors, both secured and unsecured, and include many of the special provisions of chapter 12 discussed above. Some optional parts of the plan include modifications of secured and unsecured debts; curing or waving defaults; paying claims with property or through sale of property; and arrangements to pay secured claims for a time longer than the life of the plan.⁴⁴ There are many other optional provisions that increase the power farmers have under this chapter, which can be discussed with an attorney to take full advantage of the opportunities they provide.



CONCLUSION

Chapter 12 reorganization offers a powerful tool for farmers in the event of financial distress, and can help prevent it altogether. It can help keep a farm operating by restructuring debt, facilitating the transition of farm size or business model, or supporting the sale to a new or beginning farmer. One of the most significant hurdles to increasing the use of chapter 12 is the stigma that surrounds bankruptcy and the lack of knowledge about how chapter 12 can help a farmer retain their farm and make it a more viable, sustainable operation.

Additional Resources

- o [Introduction to Chapter 12 Farm Reorganizations](#), Video Presentation produced by Vermont Law School's Center for Agriculture and Food Systems and the Association of Chapter 12 Trustees (June 14, 2021)
- o [The Bankruptcy Code's Best-Kept Secret: How Chapter 12 Can Protect and Transform the Farm](#), Virtual Seminar hosted by the US Bankruptcy Court and Vermont Law School's Center for Agriculture and Food Systems (Nov. 6, 2020)
- o Hannah Scott and Peggy Kirk Hall, [An Overview of Bankruptcy Law for Farmers](#), The National Agricultural Law Center (2020)
- o [Chapter 12 – Bankruptcy Basics](#), US Courts
- o Jan M. Sensensich, [Family Farm Reorganizations Under the US Bankruptcy Code: A Basic Introduction to Chapter 12](#), Association of Chapter 12 Trustees (Jan. 28, 2019)
- o Susan Schneider, [Chapter 12 Bankruptcy: Family Farm Restructuring](#), University of Arkansas School of Law (May 15, 2015)

Many states have legal service organizations that can provide bankruptcy support.⁴⁵ However, for specialized chapter 12 assistance you may wish to contact your state's bar association and inquire about a referral to an attorney who has experience representing chapter 12 debtors.

Legal Disclaimer

This guide provides general legal information for educational purposes only. It is not meant to substitute, and should not be relied upon, for legal advice. Each farm operation is unique and state laws may vary. Accordingly, for specific legal advice, please consult an attorney licensed in your state. This information is current as of the date of publication.



ACKNOWLEDGMENTS

This report was produced by the **Center for Agriculture and Food Systems at Vermont Law School**. The lead authors of this report are **Gordon Merrick**, Legal Food Hub Fellow, and **Sophia Kruszewski**, Assistant Professor of Law and Clinic Director, with input, editing, and production support from Laurie Beyranevand, Claire Child, Lihlani Nelson, and Whitney Shields. This resource benefited greatly from the collaboration and expertise of the following individuals, whose work on this topic we hold in great esteem:

**The Honorable
Colleen A. Brown**
US Bankruptcy Judge for the
District of Vermont

Jan M. Sensenich
Chapter 12 & 13 Standing Trustee
for the District of Vermont and
President of the Association of
Chapter 12 Trustees

Rebecca Rice, Esq.
Cohen & Rice

Peter Fitzgerald
Director of Loan Resolution
at the Vermont Economic
Development Authority

About the Center for Agriculture and Food Systems

Vermont Law School's Center for Agriculture and Food Systems (CAFS) uses law and policy to build a more sustainable and just food system. In partnership with local, regional, national, and international partners, CAFS addresses food system challenges related to food justice, food security, farmland access, animal welfare, worker protections, the environment, and public health, among others. CAFS works closely with its partners to provide legal services that respond to their needs and develop resources that empower the communities they serve. Through CAFS' Food and Agriculture Clinic and Research Assistant program, students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system. Please visit <https://www.vermontlaw.edu/cafs> to learn more.



About the Legal Food Hub

Because of the lack of legal services accessible to small-scale farmers and food entrepreneurs who participate in local and regional food systems, Conservation Law Foundation (CLF) created the Legal Food Hub (Hub). The Hub brings together attorneys in participating states who want to provide pro bono legal assistance to farmers, food entrepreneurs, food and farm nonprofits, and food justice-oriented community organizations. The Hub not only serves to connect attorneys to clients but also, through this guide and other resources, seeks to supply resources for attorneys as they provide legal counsel to this potential new group of clients. For more information about the Legal Food Hub in other states, visit <https://www.legalfoodhub.org>.



In Vermont, the Legal Food Hub operates as a joint initiative between CLF and Vermont Law School's Center for Agriculture and Food Systems (CAFS). Unlike the Hubs in other states, CAFS serves as the primary administrator of the Vermont Hub and operates the Vermont Hub out of Vermont Law School, with CLF providing advisory support. Together, the organizations are building a network of participating attorneys, conducting outreach to potential food and farm clients, and developing and providing educational resources for participants and food system stakeholders on a variety of food and agriculture law topics.

This project is made possible with funding from the National Agricultural Library, Agricultural Research Service, US Department of Agriculture.



National Agricultural Library
U.S. DEPARTMENT OF AGRICULTURE



- 1 Farm income levels have fallen ~34% 2012-2016, debt levels of the early 80s are back, and real estate value of agricultural operations is skyrocketing. Rebecca R. Garcia & Jan M. Sensenich, *Chapter 12 and the Challenge of the New Farm Crisis*, Am. Bankr. Inst. J., February 2019, at 14
- 2 Hannah Scott & Peggy Hall, The Nat'l Agric. Law Center, *An Overview of Bankruptcy Law for Farmers* (2020)
- 3 BANKRUPTCY BASICS GLOSSARY | UNITED STATES COURTS, <https://www.uscourts.gov/educational-resources/educational-activities/bankruptcy-basics-glossary> (last visited June 1, 2021).
- 4 UNDERSTANDING BANKRUPTCY: HOW TO FILE & QUALIFICATIONS, <https://www.debt.org/bankruptcy/> (last visited June 1, 2021); U.S. BANKRUPTCY: FILINGS BY CHAPTER 2019 | STATISTA, <https://www.statista.com/statistics/1118140/bankruptcy-filings-us-chapter/> (last visited Jul. 30, 2021)
- 5 *In re Kerwin-White*, 129 B.R. 375, 384 (Bankr. D. Vt. 1991), subsequently aff'd sub nom. *In re Kerwin*, 996 F.2d 552 (2d Cir. 1993) ("The obvious Congressional purpose behind the enactment of a specific provision for family farmers is to overcome some of the major difficulties family farmers encountered in their attempt to reorganize under Chapter 11. . . . we cannot ignore such clear evidence of Congressional purpose and, where appropriate, we must construe specific provisions in Chapter 12 to accomplish the rehabilitative goals intended by Congress.").
- 6 See William W. Horlock, Jr., *Chapter 12: Relief for the Family Farmer*, 5 Bankr. Dev. J. 229, 229 (1987).
- 7 132 Cong.Rec. 28593 (statement of Sen. Grassley) ("the purpose is to give family farmers a fighting chance to reorganize their debts").
- 8 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified as amended at 11 U.S.C. §§ 1201 to 1232 (2005)); see also Susan Schneider, *Chapter 12 Bankruptcy: Family Farm Restructuring*, 2015 Ark. L. Notes 1686 (2015).
- 9 Farm income levels have fallen ~34% 2012-2016, debt levels of the early 80s are back, and real estate value of agricultural operations is skyrocketing. Rebecca R. Garcia & Jan M. Sensenich, *Chapter 12 and the Challenge of the New Farm Crisis*, Am. Bankr. Inst. J., February 2019, at 14; Bud Stephen Tayman, *Qualifying for Relief Under Chapter 12 of the United States Bankruptcy Code: How to Do It and Why Do It!*, 25 Drake J. Agric. L. 81, 82 (2020).
- 10 Family Farmer Relief Act of 2019, Pub. L. No. 116-51, 133 Stat. 1075, (codified as amended at 11 U.S.C. 101(18) (2019)); See also RECENT AMENDMENTS TO CHAPTER 12 BANKRUPTCY DEBT LIMITS UNDER THE FAMILY FARMER RELIEF ACT OF 2019, <http://www.qgtlaw.com/recent-amendment-to-chapter-12-bankruptcy-debt-limits-under-the-family-farmer-relief-act-of-2019/#:~:text=In%20order%20to%20make%20it,%244.2%20million%20to%20%2410%20million> (last visited June 1, 2021).
- 11 Ed Flynn, *Chapter 12: Outcomes for Family Farmers and Fishermen*, Am. Bankr. Inst. J., September 2015, at 36, 70.
- 12 11 U.S.C. §101 (13),(18); see also BANKRUPTCY BASICS GLOSSARY | UNITED STATES COURTS, <https://www.uscourts.gov/educational-resources/educational-activities/bankruptcy-basics-glossary> (last visited June 1, 2021).
- 13 § 47:96. Treatment of priority claims; payment of interest on claim [§ 1222(a)(2)]—Attorneys' fees, 5A Bankr. Service L. Ed. § 47:96. ("Attorney's fee, which are administrative expenses claims under 11 U.S.C.A. § 507, must be paid by trustee under Chapter 12 plan under 11 U.S.C.A. § 1222 and for purposes of 28 U.S.C.A. § 586.").
- 14 11 U.S.C. § 101 (10); BANKRUPTCY BASICS GLOSSARY | UNITED STATES COURTS, <https://www.uscourts.gov/educational-resources/educational-activities/bankruptcy-basics-glossary> (last visited June 1, 2021).
- 15 Court Website Links | United States Courts, <https://www.uscourts.gov/about-federal-courts/federal-courts-public-court-website-links> (last visited Aug. 16, 2021)
- 16 The Trustee shall account for the property within the bankruptcy estate; ensure the debtor is operating in good faith; examine proof of claims; if needed, oppose discharge; provide information to parties of interest unless ordered not to do so by the court; investigate the claims of the debtor; appear and offer testimony at hearings concerning value of property and creation/modification of the plan; make sure that the debtor is complying with the time frame of the plan; and produce a final report and account of the administration of the estate. 11 U.S.C. §§ 1202(b); see also BANKRUPTCY BASICS GLOSSARY | UNITED STATES COURTS, <https://www.uscourts.gov/educational-resources/educational-activities/bankruptcy-basics-glossary> (last visited June 1, 2021).
- 17 11 U.S.C. §§ 101 (18), (19A); See also Bud Stephen Tayman, *Qualifying for Relief Under Chapter 12 of the United States Bankruptcy Code: How to Do It and Why Do It!*, 25 Drake J. Agric. L. 81 (2020).
- 18 Hannah Scott & Peggy Hall, The Nat'l Agric. Law Center, *An Overview of Bankruptcy Law for Farmers*, p.4 (2020)
- 19 11 U.S.C. §§ 109(h), 111; See also CHAPTER 12 – BANKRUPTCY BASICS | UNITED STATES COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-12-bankruptcy-basics> (last visited June 9, 2021).
- 20 11 U.S.C. § 101(21).
- 21 The courts have listed a number of factors to consider in reaching a determination on what is, and what is not, a farm. See *In re Poe*, No. 08-906, 2009 WL 2357160, at *4-6 (Bankr. N.D. W. Va. 2009).
- 22 *Id.* at 6. ("The distinction is that, in raising horses for livestock, the "family farmer" bears all risks. If an animal is lost to disease or serious injury, the family farmer receives no profit on the animal, has lost all that he has invested in it, and bears the cost of replacing it. In contrast, a boarding/training business is only minimally affected.") See also Bud Stephen Tayman, *Qualifying for Relief Under Chapter 12 of the United States Bankruptcy Code: How to Do It and Why Do It!*, 25 Drake J. Agric. L. 81, 88-89 (2020). ("The following operations have been held to be farming operations: raising timber, dog breeding, operating a dairy farm, leasing farmland on a crop share basis, and horse breeding for resale. The following operations have been held not to be farming operations: excavation, crushing, and sale of rock as gravel; cleaning chicken houses and selling manure as a service business; aerial crop dusting as a service business; horse breeding, boarding, showing, and training where breeding was an incidental part of operation; and a stone crabbing operation prior to the addition of the family fisherman provisions to Chapter 12 by BAPCPA.").
- 23 *In re Watford*, 898 F.2d 1525, 1528-29 (11th Cir. 1990).
- 24 11 U.S.C. §1207; see also § 127:1. Introduction, 7 Norton Bankr. L. & Prac. 3d § 127:1.
- 25 Jan Sensenich, Chapter 12 Trustee, *The Bankruptcy Code's Best-Kept Secret: How Chapter 12 Can Protect and Transform the Farm* (Nov. 6, 2020), <https://www.vermontlaw.edu/news-and-events/event/the-bankruptcy-codes-best-kept-secret-how-chapter-12-can-protect-and>.
- 26 *In re Roesner*, 153 B.R. 328, 331 (Bankr. D. Kan. 1993) (citing 11 U.S.C. § 1221); see also CHAPTER 12 – BANKRUPTCY BASICS | UNITED STATES COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-12-bankruptcy-basics> (last visited June 9, 2021).
- 27 Bankruptcy Treatise, Part VI: Adjustment of Debts of a Family Farmer or Fisherman, Chapter 199: Overview of Chapter 12 of the Bankruptcy Code - Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income.



- 28 Jan Sensenich, Chapter 12 Trustee, *The Bankruptcy Code's Best-Kept Secret: How Chapter 12 Can Protect and Transform the Farm* (Nov. 6, 2020), <https://www.vermontlaw.edu/news-and-events/event/the-bankruptcy-codes-best-kept-secret-how-chapter-12-can-protect-and>.
- 29 § 47:34. Benefits—No absolute priority rule, 3 Advising Small Businesses § 47:34 (2020).
- 30 *In re Carter*, 570 B.R. 500, 510 (Bankr. M.D.N.C. 2017).
- 31 11 U.S.C. § 1225(a)(4); see also Susan Schneider, *Chapter 12 Bankruptcy: Family Farm Restructuring*, 2015 Ark. L. Notes 1686 (2015).
- 32 § 33:15. Discretionary provisions—Payment of long-term debt, 3 Bankruptcy Desk Guide § 33:15. (“11 U.S.C.A. § 1222(b)(9), together with 11 U.S.C.A. § 1222(b)(5), allows a Chapter 12 plan to extend the repayment terms for secured claims for such periods of time as the bankruptcy court finds to be reasonable, and 30 years for the payment of a creditor’s debt have been found to be a reasonable period of time.”).
- 33 11 U.S.C. § 101(19); see also § 2:11. Chapter 12 adjustment of debts of a family farmer and family fisherman, Bankruptcy and Domestic Relations Manual § 2:11. (“Allowance is made under Chapter 12, however, for situations in which family farmers may have income that is seasonal in nature.”).
- 34 § 33:15. Discretionary provisions—Payment of long-term debt, 3 Bankruptcy Desk Guide § 33:15. (“11 U.S.C.A. § 1222(b)(9), together with 11 U.S.C.A. § 1222(b)(5), allows a Chapter 12 plan to extend the repayment terms for secured claims for such periods of time as the bankruptcy court finds to be reasonable, and 30 years for the payment of a creditor’s debt have been found to be a reasonable period of time.”).
- 35 11 U.S.C. § 1222(b)(1-4)(9).
- 36 11 U.S.C. § 1222 (b)(2).
- 37 11 U.S.C. § 101(18).
- 38 11 U.S.C. § 1232.
- 39 Peter Fitzgerald, Director of Loan Resolution, Vermont Economic Development Authority, *The Bankruptcy Code's Best-Kept Secret: How Chapter 12 Can Protect and Transform the Farm* (Nov. 6, 2020), <https://www.vermontlaw.edu/news-and-events/event/the-bankruptcy-codes-best-kept-secret-how-chapter-12-can-protect-and>.
- 40 Peter Fitzgerald, Director of Loan Resolution, Vermont Economic Development Authority, *The Bankruptcy Code's Best-Kept Secret: How Chapter 12 Can Protect and Transform the Farm* (Nov. 6, 2020), <https://www.vermontlaw.edu/news-and-events/event/the-bankruptcy-codes-best-kept-secret-how-chapter-12-can-protect-and>.
- 41 11 U.S.C. § 1222(a),(b).
- 42 11 U.S.C. § 1222(a).
- 43 11 U.S.C. § 1222 (a),(b).
- 44 11 U.S.C. § 1222(b).
- 45 See BANKRUPTCY | VTLawHelp.org, <https://vtlawhelp.org/bankruptcy> (last visited Jul. 29, 2021); MAINE VOLUNTEER LAWYERS PROJECT, vlp.org (last visited Jul. 29, 2021); HOME | MASSACHUSETTS LEGAL RESOURCE FINDER, <https://masslrf.org/en/home> (last visited Jul. 29, 2021); BANKRUPTCY | NEW HAMPSHIRE LEGAL AID, <https://nhlegalaid.org/self-help-guides/bankruptcy> (last visited Jul. 29, 2021); DEBT & COLLECTIONS | CTLawHelp, <https://ctlawhelp.org/en/self-help/531> (last visited Jul. 29, 2021); PRO BONO VOLUNTEER LAW PROGRAM – RILS, <https://www.helpirlaw.org/node/80/pro-bono-volunteer-law-program> (last visited Jul. 29, 2021).

