

**Summary Comparison of U.S. Bankruptcy Code Chapters 11, 12, & 13**  
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(Updated Dec. 26, 2023)

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<b>Eligibility Requirements</b>	<p><i>Ch. 11:</i></p> <p>Anyone or any entity that can file for ch. 7 relief, except a stockbroker, commodity broker, or an insured depository institution, may be a debtor. § 109(d).<sup>1</sup></p> <p>No debt limit or income requirement.</p> <p><i>Small Business Debtors:</i></p> <p>Person engaged in commercial or business activities (excludes person whose primary activity is business of owning or operating single asset real estate). § 101(51D).</p> <p>Aggregate noncontingent, liquidated, secured and unsecured debts of \$3,024,725 or less.</p> <p>No member of a group of affiliated debtors has aggregate noncontingent, liquidated secured and unsecured debts over \$3,024,725.</p>	<p>At least 50% of small business debtor’s debt is from commercial or business activities.</p> <p>Aggregate noncontingent, liquidated, secured and unsecured debts of not more than \$7,500,000. § 1182; § 101(51D); § 104. On June 21, 2024, the Bankruptcy Threshold Adjustment and Technical Corrections Act (“Corrections Act”) will sunset and the debt limit for subchapter V debtors will revert to the small business debtor limit of \$3,024,725, effective through March 31, 2025.</p> <p>Before the Corrections Act, § 1182(B)(ii) excluded “any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934,” and § 1182(B)(iii) excluded “any debtor that is an affiliate of an issuer, as defined in</p>	<p><i>For individuals:</i></p> <p>1) family farmer with regular income and aggregate debts up to \$11,097,350 and 50% of the aggregate noncontingent, liquidated debt arises from a farming operation, § 101(18); or 2) family fisherman with regular income and aggregate debts below \$2,268,550 of which 80% constitutes debt from commercial fishing activities, § 101(19A)(i). § 109(f).</p> <p><i>For corporations or partnerships:</i></p> <p>50% of stock or equity is held by one family and/relatives who conduct the farming operation, more than 80% of asset value relates to farming operations, and aggregate noncontingent, liquidated debts are below \$11,097,350 with at least 50% of the debt arises from farming activities. § 101(18)(B). Family farmer must be</p>	<p>Individual (or individual and spouse) with regular income that owes noncontingent, liquidated debts of less than \$2,750,000 determined as of the petition date. Excludes stockbrokers and commodity brokers. A corporation or partnership may not be a debtor under ch. 13. § 109(e).</p> <p>Before the enactment of the Corrections Act, § 109(e) distinguished between unsecured and secured debt for eligibility purposes. Debtors were eligible if their noncontingent, liquidated, unsecured debts were less than \$465,275 and their noncontingent, liquidated, secured debts totaled less than \$1,395,875. The Corrections Act is set to sunset on June 21, 2024, after which § 109(e) will revert to its prior form and the debt limit will decrease.</p>

<sup>1</sup> Unless otherwise indicated, all chapter, section and rule references are to the Federal Bankruptcy Code, 11 U.S.C. §§ 101- 1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p><b>Eligibility (cont'd)</b></p>	<p>No unsecured creditors committee (or committee is sufficiently inactive). Status as a “small business debtor” hinges, at least in part, upon whether a creditor’s committee is appointed, and on how much that creditor’s committee participates in the bankruptcy. A party in interest under § 1102(a)(2) may compel the appointment of a creditor’s committee thereby extinguishing debtor’s small business status. The UST appoints any such committee. <i>Id.</i></p> <p>Debtor must indicate it is a small business debtor by checking appropriate box in Item 13 of voluntary petition. FRBP 1020.</p> <p>In a voluntary case, the debtor must state in the petition whether it is a small business debtor. In an involuntary case, debtor must do so within 14 days of entry of the order for relief. BR 1020(a). Debtor’s statement of eligibility is presumed correct unless a party or the UST timely objects. BR 1020(a), BR 1020(b).</p>	<p>section 3 of the Securities Exchange Act of 1934.” The Corrections Act narrowed the exclusion (thereby broadening eligibility) for affiliates of a debtor in § 1182(B)(iii), to “any debtor that is an affiliate of a corporation described in clause (ii).” This provision will sunset and revert to its original language on June 21, 2024, defining debtor as “a small business debtor.” § 1182(1).</p> <p>Small business debtors must opt in to subchapter V by checking appropriate box in Item 13 of voluntary petition. § 103(i); BR 1020(a).</p> <p>No committee of creditors unless the court orders for cause. § 1102(a)(3).</p>	<p>engaged in a farming operation, including “farming, tillage of the soil, dairy farming, ranching, production of raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.” § 101(21).</p>	

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<b>Asserting Eligibility &amp; Election of Subchapter V Application</b>		Small business debtor wishing to proceed under subchapter V must elect subchapter V application in the petition, or, in an involuntary case, within 14 days after entry of order for relief. BR 1020(a).		
<b>Filing Fees</b>  <b>UST Quarterly Fees</b>	\$1,738 paid when petition is filed, including \$1,167 filing fee and \$571 administrative fee. 28 U.S.C. § 1930.  UST quarterly fees are based on a sliding scale formula in 28 U.S.C. § 1930(a)(6). Minimum amount is \$325 for disbursements up to \$15,000. Code does not define “disbursements.” Failure to pay UST quarterly fees is “cause” for dismissal. § 1112(b)(4)(K).	Ch. 11 filing fee is paid when petition is filed. No separate fee is due for electing for subchapter V.  None. Subchapter V debtors are exempt from paying UST quarterly fees. 28 U.S.C. § 1930(a)(6)(A).	\$278, including \$200 filing fee and \$78 administrative fee. 28 U.S.C. § 1930(a)(5). Individual filers may pay the fee in installments. Fee must be paid in full no later than 120 days after the petition is filed.  UST Fees for ch. 12 debtors shall not exceed 10% of the first \$450,000 paid under the plan, and 3% of any payments in excess of \$450,000. 28 U.S.C. § 586(e)(1)(B). 28 U.S.C. § 586(e)(2) further curtails the standing trustee’s salary and estimated expenses. Excess funds are to be deposited in the U.S. Trustee System Fund.	\$313, including a \$235 filing fee and \$78 in administrative fees. Fee may be paid in installments within 120 days after the petition is filed.  No UST fees.
<b>Reports</b>	Must file monthly/quarterly operating reports. Must file all reports and summaries required of a trustee under § 704(a)(8). Duty ends when duty to pay fees ends, usually when final decree is entered. BR 2015(a).	No separate rule.	Must file monthly/quarterly operating reports. Duty ends only when case is completed. BR 2015(b).	No monthly operating reports required by ch. 13 debtors not engaged in business.

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	<p><i>Small Business Debtors:</i></p> <p>Must file reports dealing with profitability, projections, receipts, disbursements, etc. § 308, BR 2015(a)(6). Duty ends on effective date of confirmed plan. Additional reporting requirement under § 1116.</p>	<p>BR 2015(b) requires subchapter V DIP (or Trustee, if appointed) to perform the duties prescribed in BR 2015(a)(2)-(4). Debtor must perform requirements of BR 2015(a)(6).</p> <p>subchapter V debtors do not have to file a statement of current monthly income. BR 1007(b)(5).</p>		
<p><b>Automatic Stay &amp; Co-Debtors</b></p>	<p>Unlike chs. 12 and 13, ch. 11 does not provide an explicit co-debtor stay and guarantors are only protected if the court grants § 105 relief.</p>	<p>No separate rule.</p>	<p>Same co-debtor stay as in ch. 13. Upon filing, the automatic stay extends only to co-debtors on consumer debts and not to debts incurred in the ordinary course of business. § 1201. Section 1201 is identical to the co-debtor provision applicable to ch. 13. <i>See</i> § 1301. Cases from either chapter are thus instructive. Courts have held that certain debts from farming operations are not consumer debt. <i>See In re SFW, Inc.</i> 83 B.R. 27 (Bankr. S.D. Cal. 1988) (guarantees given by ch. 12 debtor's shareholders for commercial loans for family farm were not related to consumer debt so co-debtor stay did not apply).</p>	<p>Upon filing, the automatic stay extends only to co-debtors on consumer debts and not to debts incurred in the ordinary course of business. § 1301. The term "consumer debt" is defined in § 101(8).</p>

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<p><b>Trustees</b></p>	<p>Generally, a trustee is only appointed under § 1104(a) for cause or if the appointment is in the best interest of creditors; this is done if the Debtor in Possession (DIP) falters.</p> <p>Creditors may seek to elect a trustee by requesting an election be convened within 30 days after the court orders the appointment of a trustee. § 1104(b)(1).</p> <p>Unless a court appoints a trustee, there is no disbursement agent for a ch. 11 case.</p> <p>DIP: under § 1107, the DIP retains many of the powers of the trustee; under § 1108, the DIP retains the power to operate the business.</p>	<p>A disinterested trustee is appointed in every subchapter V case. § 1183(a). The trustee has a role similar to a ch. 13 trustee. The trustee is also authorized to operate the debtor’s business if the debtor is removed as a DIP. § 1183(b)(5). Effective Dec. 1, 2022, the subchapter V trustee will be appointed automatically upon removal of the DIP; no separate motion is necessary. BR 2012.</p> <p>The trustee makes all payments to creditors under the confirmed plan. Trustee may make adequate protection payments to secured creditors prior to confirmation. § 1194.</p> <p>The trustee must appear at mandatory status conference; facilitate development of a consensual plan; and perform duties generally consistent with § 1302. § 1183(b).</p> <p>If confirmation is consensual, the trustee's role is terminated upon “substantial consummation” of the confirmed plan. § 1183(c). If confirmation is contested, the trustee serves until completion of payments</p>	<p>A disinterested trustee is appointed in every ch. 12 case. § 1202. Ch. 12 cases are more supervised than ch. 11 cases. This provides additional oversight of the debtor but it comes at a cost of usually 10% in most jurisdictions.</p> <p>A ch. 12 trustee has all the reporting and supervisory duties of a ch. 7 trustee set out by § 704(a). The trustee also shall appear and be heard on confirmation of the plan, matters affecting estate property, and sales. If the court directs for cause, the trustee shall also exercise some ch. 11 trustee powers, like investigating the acts and assets of the debtor. § 1202(b)(1)-(3).</p> <p>The trustee conducts any asset sales of farmland and farm equipment. § 1206.</p> <p>If the debtor is removed as DIP, the trustee assumes operation of the business and succeeds to other ch. 11 trustee powers. § 1202(b)(5).</p> <p>Post-confirmation, the trustee must ensure plan payments are made timely. § 1202(b)(4).</p>	<p>A disinterested trustee is appointed in every ch. 13 case. § 1302.</p> <p>A ch. 13 trustee has all the reporting and supervisory duties of a ch. 7 trustee set out by § 704(a). The trustee shall appear and be heard on plan confirmation and modification, and property values. The trustee must ensure plan payments are made timely. § 1302(b).</p> <p>If the debtor is engaged in business, the trustee also shall perform the ch. 11 trustee duties in § 1106(a)(3) and (4). § 1302(c).</p> <p>The ch. 13 trustee may seek dismissal under § 1307(c) for “cause.”</p>

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<p><b>Trustees (cont'd)</b></p> <p><b>Trustee Fees</b></p>	<p>No rule.</p>	<p>under the plan confirmed under § 1191(b), unless plan or confirmation order provide otherwise.</p> <p>Standing trustee is paid like current ch. 12/13 trustees under 28 U.S.C. § 586(e)(1); if no standing trustee, then the trustee is paid under 11 U.S.C. § 330.</p>	<p>Debtor must submit all future income to the supervision and control of the trustee, § 1222(a)(1), guaranteeing the trustee is in the game until the plan is completed.</p> <p>The ch. 12 trustee may seek dismissal under § 1208(c) for “cause.”</p> <p>Plan payments bear a trustee’s fee; nominally 10% in most jurisdictions. § 1226(a)(2), 28 U.S.C. § 586(e)(1). This may be a large fee load in farm cases.</p>	<p>Plan payments bear a trustee’s fee. Fee cannot exceed 10% of all payments under the plan. 28 U.S.C. § 586(e)(1).</p>
<p><b>Estate Property</b></p> <p><b>Estate Property Post-confirmation</b></p>	<p>Section 541 defines estate property except as to individuals.</p> <p>For individuals, § 1115 augments § 541 to add all property held by debtor on the filing date, all property acquired after commencement and before closing of the case, and all earnings for services performed post-petition and prior to closing. Section 1115 parallels property of estate defined in ch. 13 cases, § 1306.</p> <p>Post-confirmation, except as provided in the plan or confirmation order, all the estate’s property reverts in the debtor free and clear of all liens. § 1141(b) &amp; (c).</p>	<p>Section 541 defines estate property. Section 1115 is inapplicable in subchapter V. § 1181. So, property of the estate is the same for individuals and entities.</p> <p>Two possible outcomes: 1) if plan is confirmed under § 1191(a) (consensual plan), then same as ch.11--§ 1141(b) &amp; (c) Control. 2) is plan is confirmed under § 1191(b),</p>	<p>Section 1207 augments § 541 and parallels § 1115 in ch. 11.</p> <p>Post-confirmation, except as provided in the plan or confirmation order, all the estate’s property reverts in the debtor free and clear of all liens. § 1227 (b) &amp; (c).</p>	<p>Section 1306 augments § 541, and parallels § 1115 in ch. 11.</p> <p>Post-confirmation, except as provided in the plan or confirmation order, all the estate’s property reverts in the debtor free and clear of all liens. § 1327(b) &amp; (c).</p>

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<b>Estate Property Post-confirmation (cont'd)</b>		then confirmation order triggers § 1186(a), and estate is augmented to include the debtor's: (1) post-petition § 541 property and (2) post-petition earnings.		
<b>Adequate Protection</b>	<p>Section 361 applies.</p> <p>Adequate protection may be provided by 1) cash or periodic cash payments for diminution in the value of the entity's interest in the property; 2) replacement liens; or 3) "such other relief" as will result in the realization of the indubitable equivalent of the entity's interest in the property. § 361.</p>	<p>Section 361 applies.</p> <p>After notice and a hearing, the court may authorize the trustee to make preconfirmation adequate payments to the holder of a secured claim. § 1s194(c).</p>	<p>Section 361's general definition of adequate protection does NOT apply to a ch. 12 case. § 1205(a).</p> <p>Adequate protection may be provided by 1) cash or periodic cash payments for diminution of the value of the collateral; 2) replacement liens; 3) reasonable rental value for the use of farmland; 4) "such other relief" to adequately protect the value of property securing the claim (like the indubitable equivalent test). § 1205(b).</p>	<p>Section 361 applies.</p> <p>The debtor is required to make preconfirmation adequate protection payments to holders of claims secured by a purchase money security interest in personal property. § 1326(a)(1)(C). The amount of periodic payments on a secured claim under a plan must also provide adequate protection payments to the holder of a claim secured by personal property. § 1325(a)(5)(B)(iii)(II).</p>
<b>Avoidance Powers</b>	<p>Pursuant to § 1107, the ch. 11 DIP is the proper party to assert ch. 5 avoidance actions unless removed as DIP, and a trustee is appointed pursuant to § 1104. There is some disagreement as to whether examiners appointed under § 1104 also have the authority to pursue avoidance actions under § 1106. Many courts have also ruled that bankruptcy courts have the power to authorize a creditors committee to bring an avoidance action on behalf of the estate.</p> <p>A ch. 11 plan may also provide for the</p>	<p>Subject to certain limitations, the debtor has all rights of a trustee under § 1184, and therefore presumably has standing to bring ch. 5 avoidance actions unless removed as a DIP pursuant to § 1185.</p>	<p>The ch. 12 DIP has exclusive standing to bring ch. 5 avoidance actions unless removed as a DIP pursuant to § 1204. § 1203.</p>	<p>The ch. 13 standing trustee is authorized to pursue avoidance actions. § 554(a). Courts are divided over whether a ch. 13 debtor also has standing to assert the estate's avoiding powers. Unlike chs. 11 and 12, there is no provision in ch. 13 expressly conferring on debtors the powers of a trustee.</p>

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	transfer of avoidance powers to a representative of the estate appointed in the confirmation order. § 1123(b)(3)(B).			
<p><b>Plan Exclusivity</b></p> <p><b>Plan Deadlines</b></p>	<p>Regular ch. 11 debtors and Small Business Debtors have a 120-day exclusivity period to file a plan.</p> <p><i>Ch. 11:</i></p> <p>No deadline for filing the plan per se, but ch. 11 debtors have 120 days to exclusively file a plan. This period may be extended up to 18 months from the date the order for relief is entered. § 1121(b) &amp; (d).</p> <p><i>Small Business Debtors:</i></p> <p>Debtors have 180 days to exclusively file a plan. This period may be extended up to 20 months from the date the order for relief is entered. § 1121(d)(2)(B) &amp; (e). The plan must be confirmed 45 days after filed unless the time period has been extended. §§ 1121(e)(3), 1129(e).</p>	<p>Only the debtor can file a plan. § 1189(a).</p> <p>Similar to ch. 12, the plan must be filed within 90 days of the order for relief, but this period may be extended if it is shown that the need for the extension is due to circumstances for which the debtor should not justly be held accountable. § 1189(b).</p>	<p>Only the debtor can file a plan. § 1221.</p> <p>The debtor must file a plan within 90 days of the order for relief. To extend the 90-day period, debtor must clearly demonstrate that the inability to file a plan was due to circumstances beyond the debtor's control. § 1221.</p>	<p>Only the debtor can file a plan. § 1321.</p> <p>The debtor must file a plan within 14 days after the petition is filed, and such time can only extend for cause shown and on notice as the court may direct. BR 3015(b).</p>
<b>Disclosure Statement</b>	<p><i>Ch. 11:</i></p> <p>The debtor must file a disclosure statement that provides adequate information to creditors. § 1125. The court must approve the disclosure statement prior to the debtor's ability to solicit votes.</p>	<p>None required unless otherwise ordered by the court. § 1181(b).</p> <p>Same as in case of small business debtor where court orders that § 1125 applies.</p>	None required.	None required.

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<b>Disclosure Statement (cont'd)</b>	<p><i>Small Business Debtors:</i></p> <p>A Small Business Debtor does not need to file a separate disclosure statement if the court deems the plan to contain adequate information. § 1125(f). Acceptances/rejections of a plan may be solicited based on conditionally approved disclosure statements. § 1125(f).</p> <p>Where court orders that § 1125 applies, court may conditionally approve disclosure statement and fix dates and times for acceptance/rejection, filing objections, and hearings on objections and confirmation.</p>			
<b>Status Conference</b>	None required.	Adds a new requirement, requiring the court to hold a status conference no later than 60 days after the order for relief. § 1188(a). This period may be extended for circumstances for which the debtor should not justly be held accountable. § 1188(b). No later than 14 days prior to such conference the debtor is to file a report detailing its efforts to attain a consensual plan. § 1188(c).	None required.	None required.

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<p><b>Commencement of Plan Payments</b></p> <p><b>Plan Content</b></p>	<p>Ch. 11 debtor commences making plan payments on the date the first payment is due under the confirmed plan.</p> <p>Plans <i>must</i>: 1) designate classes of claims/interests; 2) specify impaired/unimpaired claims; 3) specify treatment for each unimpaired claim; 4) provide the same treatment for each claim/interest; 5) provide sufficient means of implementing the plan; 6) if applicable, include provision barring the issuance of nonvoting equity securities; 7) contain provisions consistent with the public interest; and 8) in an individual case, provide for debtor’s future income to fund plan payments. § 1123.</p> <p>Plans <i>may</i>: 1) impair or leave unimpaired secured/unsecured claims; 2) assume/reject leases &amp; executory contracts; 3) settle/adjust any claim/interest of debtor or the estate; 4) designate a convenience class of claims; 5) sell estate property; 6) modify secured claims except secured interests in a principal residence; and 7) “include any other provision consistent with § 1123.”</p> <p>Cannot modify consensual liens on a principal residence.</p>	<p>Plans <i>must</i>: 1) provide a brief history of the business operations of the debtor; 2) provide a liquidation analysis; 3) provide projections with respect to the ability of the debtor to make payments under the proposed plan; and 4) provide for the submission of all or such portion of the future earnings of other future income of the debtor as is necessary for the execution of the plan. § 1190(1) &amp; (2).</p> <p>Plans <i>may</i>: 1) modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with granting the security was i) not used primarily to acquire real property; and (ii) used primarily in connection with the small business of the debtor. § 1190(3).</p>	<p>Ch. 12 debtor has no obligation to make payments to the trustee before confirmation. § 1226; 8 Collier on Bankruptcy P 1226.01 (16th 2019).</p> <p>Mirrors those of ch. 13. ch. 12 plans <i>must</i>: 1) provide future earnings or future income to the trustee; 2) provide all priority claims under § 507 are paid in full; 3) provide the same treatment of all claims if the plan classifies claims and interests; and, 4) if all the debtor’s projected disposable income for a 5-year period is committed to the plan, then the plan may provide for less than full payment of amounts owed under § 507(a)(1)(B). § 1222.</p> <p>Under § 1222(b)(1)-(12), the plan <i>may</i> designate classes, modify rights of secured claims, cure defaults, pay unsecured creditors, assume leases and executory contracts, and provide for the sale or distribution of property.</p>	<p>Ch. 13 debtor must commence making payments no later than 30 days after the date of filing the plan or order for relief, whichever is earlier. § 1326(a)(1).</p> <p>Plans <i>must</i>: 1) provide future earnings or future income to the trustee; 2) provide all priority claims under § 507 are paid in full; 3) provide the same treatment for each claim within a particular class; and 4) if all the debtor’s projected disposable income for a 5-year period is committed to the plan, then the plan may provide for less than full payment of amounts owed under § 507(a)(1)(B). § 1322.</p> <p>Under § 1322(b)(1)-(11), the plan <i>may</i> designate classes, modify rights of secured claims, cure defaults, pay unsecured creditors, and assume leases and executory contracts.</p> <p>Unlike ch. 12, § 1322 does not contain a provision</p>

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<b>Plan Content (cont'd)</b>			Ch. 12 allows modification of home mortgages, § 1222(b)(2), and discharge of taxes arising from sale of farming assets. § 1232.	authorizing the sale of property in the plan.  Cannot modify consensual liens on a principal residence.
<b>Sales Free and Clear of Liens</b>	Ch. 11 <i>debtors in possession</i> may sell assets, other than in the ordinary course of business, free and clear of liens under § 363(f) after notice and a hearing. § 1107(a). Sales free and clear of liens require satisfying one of the following grounds: 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; 2) the interest holder consents; 3) the property's sale price is greater than the aggregate value of all liens on the property; 4) the interest is in bona fide dispute; <i>or</i> 5) the interest holder could be compelled in a legal or equitable proceeding to accept a money satisfaction for the claim. § 363(f)(1)-(5).		Ch. 12 debtors in possession <i>and</i> trustees retain the right to sell property free and clear of liens under § 363(f). §§ 1203, 1206.  In addition, § 1206, which applies only in ch. 12, allows <i>trustees</i> under § 363(b) and (c) after notice and hearing to sell farmland, farm equipment, or any property used to carry out a commercial fishing operation (including a commercial fishing vessel) free and clear of third-party interests even if none of the grounds in § 363(f) are satisfied. Section 1206 “modifies [§] 363(f) to allow family farmers or fishermen to sell assets not needed for the reorganization prior to confirmation without the consent of the secured creditors, subject to approval of the court.” 8 Collier on Bankruptcy P 1206.01 (16th 2019). But proceeds of such sales are still subject to those third-party interests. § 1206.	Ch. 13 <i>debtors</i> may sell assets, other than in the ordinary course of business, free and clear of liens under § 363(f) after notice and hearing. § 1303. Sales free and clear of liens require satisfying one of the following grounds: 1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; 2) the interest holder consents; 3) the property's sale price is greater than the aggregate value of all liens on the property; 4) the interest is in bona fide dispute; <i>or</i> 5) the interest holder could be compelled in a legal or equitable proceeding to accept a money satisfaction for the claim. § 363(f)(1)-(5).

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<p><b>Special Tax Provisions for Chapter 12</b></p>			<p>Because ch. 12 plans typically sell property to reorganize, to avoid hard tax consequences, § 1232(a) “reclassifies” these government claims as unsecured claims arising before the petition date that shall not be entitled to § 507 priority status and discharged under § 1228.</p> <p>Section 1232 was signed into law on October 26, 2017. Public Law 115-72 provides that the amendments apply to any bankruptcy case pending, but not confirmed, on the effective date of the act.</p> <p>Ch. 12 debtors must include § 1232(a) unsecured claims in their plans. If there is a post-confirmation sale, transfer, exchange, or other disposition on farm property, and a subsequent government unit claim arises, then it will be necessary for the trustee to adjust payments accordingly.</p> <p>Possible plan language: The ch. 12 plan should include language to the effect that any potential claim within the scope of § 1232(a) arising post-petition, but before discharge, shall be included</p>	

SUBSTANTIVE Categories	Ch. 11	Subchapter V of Ch. 11	Ch. 12	Ch. 13
<p><b>Special Tax Provisions for Chapter 12 (cont'd)</b></p>			<p>in the class of general unsecured claims. 8 Collier 1232.03. The plan language should account for the trustee's need to include tax claims in the unsecured creditor pool and should time any disbursements to the unsecured creditors only after the tax claims have been filed to avoid a potentially unequal (i.e., not <i>pro rata</i>) distribution amongst unsecured claimants.</p>	
<p><b>Plan Confirmation Requirements</b></p>	<p><i>Ch. 11:</i></p> <p>After notice, the court shall hold a hearing on confirmation. 28-days' notice required. BR 2002(b).</p> <p>To be confirmed, plans must satisfy 16 requirements of § 1129(a). Chief among the requirements are feasibility and the best interest of the creditors tests. If all other requirements under § 1129(a) are met but for (a)(8), the debtor may seek to "cram down" the plan over the objections of its creditors. § 1129(b).</p> <p>Absolute priority rule applies. As a component of a § 1129(b) cram down, plans must satisfy the absolute priority rule. At least one court has found the absolute priority rule applies in individual ch. 11s. <i>In re Rogers</i>, 2016 WL</p>	<p>To be confirmed, plan must satisfy the requirements of § 1129(a). § 1191.</p> <p>No consenting impaired class needed for confirmation if 1) plan satisfies § 1129(a) [other than (a)(8), (a)(10), and (a)(15)]; 2) plan does not discriminate unfairly; and 3) plan is fair and equitable, as to each impaired, nonconsenting class. §§ 1181(a), 1191(b).</p> <p>A plan is "fair and equitable" if 1) § 1129(b)(2)(A) is satisfied; 2) it provides for application of all debtor's projected disposable income for 3 years beginning on date first payment is due (or up to 5 years, as ordered) to plan payments; and 3) debtor will</p>	<p>Except for cause, confirmation hearing shall be concluded not later than 45 days after the filing of the plan. 21-days' notice required. BR 2002(a)(8).</p> <p>Plans must satisfy all Code requirements, be proposed in good faith, and pay all admin fees. In addition, the court must find that the debtor's plan is feasible and in the best interest of creditors.</p> <p>With respect to secured claims, § 1225(a)(5) provides three avenues of treatment: 1) the creditor has accepted the plan; 2) the secured creditor retains its lien and receives property having a value, as of the effective date, not less than the allowed</p>	<p>Confirmation hearing must be scheduled not earlier than 21 days but not later than 45 days after the 341 meeting of creditors. 28-days' notice required. BR 2002(b).</p> <p>Plans must satisfy all Code requirements, be proposed in good faith, and pay all admin fees. In addition, the court must find that the debtor's plan is feasible and in the best interest of creditors.</p> <p>With respect to secured claims, § 1325(a)(5) provides three avenues of treatment: 1) the creditor has accepted the plan; 2) the secured creditor retains its lien and receives property having a value, as of the effective date, not less than the allowed</p>

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<p><b>Plan Confirmation Requirements (cont'd)</b></p>	<p>3583299 (Bankr. S.D. Ga. June 24, 2016).</p> <p>Creditors must object to the plan or risk forfeiting their objection. BR 3015(f).</p> <p><i>Small Business Debtors:</i></p> <p>Section 1129(e) directs the court to confirm a plan not later than 45 days after the date it was filed. Small business plans follow the same confirmation requirements as their larger ch. 11 counterparts.</p>	<p>be able to make all plan payments or there is a reasonable likelihood debtor will be able to make all plan payments. § 1191(c).</p> <p>The absolute priority rule does not apply. § 1181(a).</p>	<p>amount of the secured claim, i.e., “cramdown;” and 3) debtor surrenders the property.</p> <p>Cramdown for ch. 12 purposes depend on the amount of the claim. § 506(a) and (b).</p> <p>Permissible plan duration is up to 5 years. No “means test” for disposable income.</p> <p>Creditors do not have an opportunity to vote on ch. 12 plans but may object to the plan or risk forfeiting their objection. BR 3015(f).</p>	<p>amount of the secured claim, i.e., “cramdown;” and 3) debtor surrenders the property.</p> <p>Creditors do not have an opportunity to vote on ch. 13 plans but may object to the plan or risk forfeiting their objection. BR 3015(f).</p>
<p><b>Plan Modifications</b></p>	<p>The plan proponent may modify a plan any time before confirmation. § 1127(a), (c).</p> <p>After confirmation, the plan proponent or reorganized debtor may modify the plan prior to substantial consummation of the plan. Plan modifications must comply with § 1125. § 1127(b), (c).</p>	<p>The debtor may modify the plan at any time prior to confirmation. §1193(a).</p> <p>After confirmation and before substantial consummation, the debtor may modify the plan if it complies with §§ 1122 and 1123, confirms the modified plan, <i>and</i> finds that circumstances warrant the modification. § 1193(b).</p> <p>After confirmation and substantial consummation, the debtor may modify the plan at any time within 3 years, or up to 5 years as fixed by the court, but the modified plan must comply</p>	<p>Debtor may modify the plan at any time before confirmation. § 1223.</p> <p>Plans may be modified after confirmation but only before debtor has completed payments under such plan. Plans may be modified by the debtor, trustee, or holder of an allowed unsecured claim. § 1229.</p> <p>Plans may be modified only to: 1) increase/decrease payments; 2) extend/reduce the time for payments; 3) alter the amount of distribution; or 4) provide payment on a</p>	<p>Debtor may modify the plan at any time before confirmation. § 1323.</p> <p>Plans may be modified after confirmation but only before debtor has completed payments under such plan. Plans may be modified by the debtor, trustee, or holder of an allowed unsecured claim. § 1329.</p> <p>Plans may be modified only to: 1) increase/decrease payments; 2) extend/reduce the time for payments; 3) alter the amount of distribution; or 4) reduce amounts paid under plan by</p>

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<b>Plan Modifications (cont'd)</b>		<p>with § 1121(b), <i>and</i> the court must find that circumstances warrant the modification. § 1193(c).</p> <p>A consensually confirmed plan may only be modified by consent. § 1193(b).</p>	<p>§ 1232(a) claim. § 1229.</p> <p>Plan may NOT be modified by anyone except the debtor in the last year of the plan to require payments leaving the debtor with insufficient funds to operate the farm. § 1229(d)(3).</p>	<p>the actual amount expended by debtor to purchase healthcare. § 1329.</p>
<b>Conversion</b>	<p>A ch. 7 debtor may convert to ch. 11 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 11 debtor may convert a case to ch. 7 unless: 1) the debtor is not a DIP; 2) the case was commenced as an involuntary case; or 3) the case was converted to a ch. 11 case other than on the debtor's request. § 1112(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, and for cause. The court will convert or dismiss, whichever is in the best interest of creditors. § 1112(b).</p> <p>The court may not convert to ch. 7 if the debtor is a farmer or a corporation that is not a moneyed, business or commercial operation unless the debtor requests the conversion. § 1112(c).</p> <p>A ch. 11 case may be converted to ch. 12 or ch. 13 only if: 1) the debtor</p>	<p>No separate rule.</p>	<p>A ch. 7 debtor may convert to ch. 12 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 12 debtor may convert a case to ch. 7 any time. § 1208(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, upon a showing the debtor committed fraud. § 1208(d).</p> <p>The applicable law and debtor's eligibility for ch. 12 on the petition date, not the conversion date, governs conversion to ch. 12. <i>See In re Campbell</i>, 313 B.R. 871 (B.A.P. 10th Cir. 2004), <i>and see In Re Ridgely</i>, 93 B.R. 683 (Bankr. E.D. Mo. 1988); <i>but cf. In re Feely</i>, 93 B.R. 744 (Bankr. S.D. Ala. 1988) (determining eligibility for</p>	<p>A ch. 7 debtor may convert to ch. 13 if the case has not been converted under §§ 1112, 1208, or 1307. § 706(a). A party cannot waive the right to convert. <i>Id.</i></p> <p>A ch. 13 debtor may convert a case to ch. 7 at any time. § 1307(a).</p> <p>The court may only convert to ch. 7 on the request of a party in interest, after notice and a hearing, and for cause. The court will convert or dismiss, whichever is in the best interest of creditors. § 1307(c).</p> <p>At any time before confirmation, the court may convert a case to ch. 11 or ch. 12, on the request of a party in interest or the U.S. Trustee. § 1307(d).</p> <p>The court may not convert a ch. 13 case to ch. 7, 11 or 12</p>

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<b>Conversion (cont'd)</b>	requests it; 2) the debtor has not been discharged under § 1141(d); and 3) conversion is equitable. § 1112(d).		conversion to ch. 12 based on the motion date, not the petition date).  There is no specific provision permitting or prohibiting the conversion of a ch. 12 case to ch. 11 or ch. 13.	if the debtor is a family farmer unless the debtor requests the conversion. § 1307(f).
<b>Debtor Discharge</b>	<p>A confirmed plan binds: 1) the debtor; 2) any entity acquiring property under the plan; and 3) any creditors, among others, whether or not the entities have accepted the plan. § 1141(a).</p> <p>For a non-individual ch. 11 debtor, discharge occurs at confirmation, except as otherwise provided in the plan or confirmation order. This discharges the debtor from any debt that arose prior to the date of confirmation and eliminates all equity interests in the debtor that are provided for in the plan. Debts set forth in § 1141(d)(6) are not discharged (certain debts owed to government units).</p> <p>For an individual ch. 11 debtor, unless ordered otherwise, confirmation does not discharge any debt provided for in the plan until the court grants a discharge upon completion of all payments under the plan. An individual debtor is not discharged from any debt excepted under § 523.</p>	<p>If a plan is consensually confirmed, then the general discharge provisions under §1141(d)(1) – (4) shall apply. Thus, in a non-liquidating subchapter V case, discharge will occur on confirmation.</p> <p>If a plan is non-consensually confirmed, then the timing provision for discharge under § 1141(d) shall not apply. Rather, discharge will be entered after completion of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix. § 1192.</p> <p>Because § 1141(d)(5) does not apply to a case under subchapter V, there is no provision for a hardship discharge in an individual case.</p>	<p>Two types of discharge available: 1) debtor completes all plan payments, other than payments to long-term secured creditors; and 2) debtor qualifies for a “hardship discharge” whether or not debtor has completed all payments. § 1228.</p> <p>To receive a hardship discharge, the debtor’s failure to complete plan payments must be due to circumstances beyond the debtor’s control, creditors must have received at least as much under the plan as they would in a ch. 7 liquidation, and modification of the plan under § 1229 is not practicable. § 1228(b).</p> <p>Ch. 12 allows discharge of taxes arising from the sale of farming assets. § 1232.</p>	<p>Two types of discharge available: 1) full compliance discharge; and 2) hardship discharge. § 1328.</p> <p>To receive a hardship discharge, the debtor’s failure to complete plan payments must be due to circumstances beyond the debtor’s control, creditors must have received at least as much under the plan as they would in a ch. 7 liquidation, and modification of the plan under § 1329 is not practicable. § 1328(b).</p> <p>With some exceptions, the “full compliance” discharge under § 1328(a) discharges a wider swath of debts than its sister chapters. For example: 1) some willful and malicious torts; 2) fines and penalties; 3) marital property settlement debts; 4) debts that were denied discharge in an earlier bankruptcy.</p>

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<b>Debtor Discharge (cont'd)</b>	<p>Section 1141(d)(3) applies to non-individual and individual debtors, barring a discharge if the plan liquidates all of debtor's assets, the debtor suspends business, and the debtor would be denied a discharge under § 727(a).</p> <p>A claim is discharged regardless of whether the creditor filed a proof of claim. § 1141(d)(1)(A). But the plan may supersede § 1141(d) and pay creditors that have not filed a proof of claim. § 1141(d)(1).</p> <p>An individual debtor who has not completed payments under the plan may receive a hardship discharge if the requirements of § 1141(5)(B) are met.</p>			<p>Debts excepted from discharge include: debts provided for under § 1322(b)(5); tax claims under § 507(a)(8)(C); tax claims under § 523(a)(1)(B); debts incurred under false pretenses or misrepresentation; unscheduled debts; debts for fraud or defalcation while in a fiduciary capacity, embezzlement or larceny; domestic support obligations; student loans unless undue hardship; or debts incurred by debtor's operation of a motor vehicle while under the influence. § 1328.</p>