

# RIGHT RISK™

## RIGHT RISK NEWS

### Considering Filing for Chapter 12 Bankruptcy?

#### DATES TO REMEMBER

**Spring-planted crops sales deadline:**  
- March 15, 2018

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- March 15, 2018

**Noninsured Crop Disaster Assistance Program (NAP)**  
Deadline for springseeded forage and all other crops  
- April 1, 2018

For more information see:  
<http://www.rma.usda.gov>  
<http://www.fsa.usda.gov>

Farmers, ranchers, and commercial fishermen face tremendous risks in their businesses. The possibilities seem endless, but include factors such as bad weather, market prices that don't cover costs, and human and animal illness that cause the owner to take on additional debt just to stay in business. It is easy to imagine that situations like these could cause a person to become overwhelmed by debt. When liabilities are greater than the value of assets, the person or business may consider filing bankruptcy as a means to regain control of the situation.

Bankruptcy laws enable debtors in financial distress to settle their obligations by petitioning a federal court and developing a plan to either reorganize the debt or divide available assets among creditors. The United States Constitution delegates authority to Congress to enact uniform bankruptcy laws, thus barring the states from having individual forms of bankruptcy. However, state laws defining and regulating the debtor-creditor relationship affect bankruptcy proceedings, since some sections of the Bankruptcy Code incorporate these state laws.



There are five different types of proceedings under the two broad categories of liquidation or reorganization: Chapter 7 involves liquidation, while Chapters 9, 11, 12, and 13 involve reorganization. Chapter 12 applies specifically to eligible farmers, farms, and farm businesses.

#### Who is eligible for Chapter 12?

For a farmer or a farm business to be eligible for Chapter 12 relief, the farmer or the farm business must be engaged in a farming operation and must meet other specific eligibility requirements. The 2005 Bankruptcy Act expanded Chapter 12 to also allow family fisherman engaged in a commercial fishing operation to be eligible for relief. In addition, a corporation or partnership that engages in a farming operation may also be eligible for Chapter 12 relief if it meets specific eligibility requirements.

Regardless of whether the debtor is an individual, a corporation, a partnership, a family farmer, or a family fisherman, the debtor must have "regular annual income." This means that there must be income that is "sufficiently stable and regular" to allow the debtor to make payments under a plan. Non-farm income can be used to satisfy this requirement.



#### How does Chapter 12 work?

A Chapter 12 bankruptcy begins when the debtor files a Chapter 12 petition with the clerk of the Bankruptcy Court. Additional filing and disclosure requirements for debtors and for credit counseling by an approved credit counseling service may be required prior to the filing. All creditors must receive notice of the bankruptcy and all of the debtor's assets and obligations must be included in the case.

How Much Risk is Right for You?

## RISK MANAGEMENT PROFILE

Brent and Jenny are in their mid-60s and have a farm in Alaska. They grow vegetables for sale at two local markets, sell eggs and harvested chickens, and sell wool, lambs, and meat from their flock of 50 ewes. Over their almost 40 years of marriage, Brent and Jenny have been able to live comfortably on profits from the farm. During a recent visit by their two sons Brent and Jenny shared copies of their balance sheet, both sons and their wives were surprised. They asked if Brent and Jenny knew they had a negative net worth—their debts exceeded the fair market value of their assets. They did not, but wondered if that was why their banker would not give them an operating loan for the coming year.



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### CONSIDERING CHAPTER 12 BANKRUPTCY? CONTINUED FROM PG. 1

Within 90 days of bankruptcy filing, the Chapter 12 debtor is required to submit a reorganization plan to the bankruptcy court. The debtor will then need to obtain court approval or “confirmation” of the plan. In practical terms, Chapter 12 allows the debtor to alter the secured debt by reducing the amount owed to the fair market value of the property, reducing the interest rate to the current market interest rate and/or extending the payment period on the debt.

The bankruptcy court’s initial involvement in a Chapter 12 case may last several months, or until the court confirms the plan. The terms of the plan and the involvement of the trustee will last from three to five years. After that time, the trustee will be dismissed, the debtor will be discharged, and the debtor will make the long term scheduled payments to the secured creditors directly.

If the debtor is not able to propose a plan that the court will confirm, the case may be dismissed. The debtor has an absolute right to request the dismissal of the case, unless fraud is shown. The debtor also has the right to convert the case to a case under Chapter 7.

Farmers and commercial fishermen experiencing financial distress should seek professional assistance and consult with their creditors prior to meeting with a bankruptcy attorney. Good legal advice and careful planning are critical aspects to a successful bankruptcy reorganization.

#### Specific Chapter 12 Eligibility Requirements for Individuals and Married Couples

- **Total** debt (secured and unsecured) cannot be greater than \$4,031,575 for farming operations or \$1,868,200 for a commercial fishing operation in 2017;
- **At least** fifty percent (50%) of the debt (exclusive of debt for the debtor’s home) must come from the farming operation or eighty percent (80%) from the commercial fishing operation; and
- **More** than fifty percent (50%) of the gross income for the taxable year before the year that the bankruptcy is filed must be from the operation. Or, more than fifty percent (50%) of the gross income in each of the second and third taxable years before the bankruptcy filing must come from the farming or commercial fishing operation.



*RightRisk helps decision-makers discover innovative and effective risk management solutions.*

- *Education*
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RightRisk News is brought to you by the RightRisk Team

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*How much risk is right for you and your operation?*

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