Bankruptcy Basics

- Process
- Discharge in Bankruptcy
- Chapter 7
- Chapter 13
- Chapter 11
- Chapter 12
- Chapter 9
- Chapter 15
- SCRA
- SIPA
- Glossary

- Return to Bankruptcy Basics
- Return to Library

Chapter 11

Reorganization Under the Bankruptcy Code

The chapter of the Bankruptcy Code providing (generally) for reorganizat involving a corporation or partnership. (A chapter 11 debtor usually prop of reorganization to keep its business alive and pay creditors over time. I business or individuals can also seek relief in chapter 11.)

Background

A case filed under chapter 11 of the United States Bankruptcy Code is fre referred to as a "reorganization" bankruptcy.

An individual cannot file under chapter 11 or any other chapter if, during

preceding 180 days, a prior bankruptcy petition was dismissed due to th willful failure to appear before the court or comply with orders of the cou voluntarily dismissed after creditors sought relief from the bankruptcy cc recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d addition, no individual may be a debtor under chapter 11 or any chapter Bankruptcy Code unless he or she has, within 180 days before filing, rec counseling from an approved credit counseling agency either in an indivi briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situ where the U.S. trustee (or bankruptcy administrator) has determined tha insufficient approved agencies to provide the required counseling. If a de management plan is developed during required credit counseling, it mus the court.

How Chapter 11 Works

A chapter 11 case begins with the filing of a petition with the bankruptcy serving the area where the debtor has a domicile or residence. A petitior voluntary petition, which is filed by the debtor, or it may be an involunta which is filed by creditors that meet certain requirements. 11 U.S.C. §§ voluntary petition must adhere to the format of Form 1 of the Official Fo prescribed by the Judicial Conference of the United States. Unless the co otherwise, the debtor also must file with the court: (1) schedules of asse liabilities; (2) a schedule of current income and expenditures; (3) a sche executory contracts and unexpired leases; and (4) a statement of financ Fed. R. Bankr. P. 1007(b). If the debtor is an individual (or husband and are additional document filing requirements. Such debtors must file: a ce credit counseling and a copy of any debt repayment plan developed thro counseling; evidence of payment from employers, if any, received 60 da filing; a statement of monthly net income and any anticipated increase ir expenses after filing; and a record of any interest the debtor has in fede qualified education or tuition accounts.11 U.S.C. § 521. A husband and v joint petition or individual petitions. 11 U.S.C. § 302(a). (The Official For available from the court, but may be purchased at legal stationery store downloaded from the Internet at www.uscourts.gov/bkforms/index.html.

The courts are required to charge an $1,000 case filing fee and a $39 mi administrative fee. The fees must be paid to the clerk of the court upon f with the court's permission, be paid by individual debtors in installments 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Item 8. Fed. R. Bankr. P. 1006(b) limits to four the number of installmer filing fee. The final installment must be paid not later than 120 days afte petition. For cause shown, the court may extend the time of any installm that the last installment is paid not later than 180 days after the filing of Fed. R. Bankr. P. 1006(b). The $39 administrative fee may be paid in ins the same manner as the filing fee. If a joint petition is filed, only one filir one administrative fee are charged. Debtors should be aware that failure

fees may result in dismissal of the case. 11 U.S.C. § 1112(b)(10).

The voluntary petition will include standard information concerning the d (s), social security number or tax identification number, residence, locati principal assets (if a business), the debtor's plan or intention to file a pla request for relief under the appropriate chapter of the Bankruptcy Code. voluntary petition for relief under chapter 11 or, in an involuntary case, t an order for relief, the debtor automatically assumes an additional identi "debtor in possession." 11 U.S.C. § 1101. The term refers to a debtor th possession and control of its assets while undergoing a reorganization ur 11, without the appointment of a case trustee. A debtor will remain a de possession until the debtor's plan of reorganization is confirmed, the deb dismissed or converted to chapter 7, or a chapter 11 trustee is appointec appointment or election of a trustee occurs only in a small number of cas Generally, the debtor, as "debtor in possession," operates the business a many of the functions that a trustee performs in cases under other chapt U.S.C. § 1107(a).

Generally, a written disclosure statement and a plan of reorganization m with the court. 11 U.S.C. §§ 1121, 1125. The disclosure statement is a d must contain information concerning the assets, liabilities, and business debtor sufficient to enable a creditor to make an informed judgment abo debtor's plan of reorganization. 11 U.S.C. § 1125. The information requi governed by judicial discretion and the circumstances of the case. In a "s business case" (discussed below) the debtor may not need to file a sepa disclosure statement if the court determines that adequate information is the plan. 11 U.S.C. § 1125(f). The contents of the plan must include a cl claims and must specify how each class of claims will be treated under th U.S.C. § 1123. Creditors whose claims are "impaired," *i.e.*, those whose rights are to be modified or who will be paid less than the full value of th under the plan, vote on the plan by ballot. 11 U.S.C. § 1126. After the di statement is approved by the court and the ballots are collected and talli will conduct a confirmation hearing to determine whether to confirm the U.S.C. § 1128.

In the case of individuals, chapter 11 bears some similarities to chapter example, property of the estate for an individual debtor includes the deb and property acquired by the debtor after filing until the case is closed, c converted; funding of the plan may be from the debtor's future earnings plan cannot be confirmed over a creditor's objection without committing debtor's disposable income over five years unless the plan pays the clain interest, over a shorter period of time. 11 U.S.C. §§ 1115, 1123(a)(8), 1

The Chapter 11 Debtor in Possession

Chapter 11 is typically used to reorganize a business, which may be a co

sole proprietorship, or partnership. A corporation exists separate and apa owners, the stockholders. The chapter 11 bankruptcy case of a corporati (corporation as debtor) does not put the personal assets of the stockholc other than the value of their investment in the company's stock. A sole p (owner as debtor), on the other hand, does not have an identity separat from its owner(s). Accordingly, a bankruptcy case involving a sole propri includes both the business and personal assets of the owners-debtors. Li corporation, a partnership exists separate and apart from its partners. Ir partnership bankruptcy case (partnership as debtor), however, the partn assets may, in some cases, be used to pay creditors in the bankruptcy ca partners, themselves, may be forced to file for bankruptcy protection.

Section 1107 of the Bankruptcy Code places the debtor in possession in t of a fiduciary, with the rights and powers of a chapter 11 trustee, and it debtor to perform of all but the investigative functions and duties of a tru duties, set forth in the Bankruptcy Code and Federal Rules of Bankruptcy include accounting for property, examining and objecting to claims, and informational reports as required by the court and the U.S. trustee or ba administrator (discussed below), such as monthly operating reports. 11 U 1106, 1107; Fed. R. Bankr. P. 2015(a). The debtor in possession also ha the other powers and duties of a trustee, including the right, with the cou approval, to employ attorneys, accountants, appraisers, auctioneers, or o professional persons to assist the debtor during its bankruptcy case. Oth responsibilities include filing tax returns and reports which are either nec ordered by the court after confirmation, such as a final accounting. The U responsible for monitoring the compliance of the debtor in possession wit reporting requirements.

Railroad reorganizations have specific requirements under subsection IV 11, which will not be addressed here. In addition, stock and commodity b prohibited from filing under chapter 11 and are restricted to chapter 7. 1 109(d).

The U.S. trustee or bankruptcy administrator

The U.S. trustee plays a major role in monitoring the progress of a chapt and supervising its administration. The U.S. trustee is responsible for mc debtor in possession's operation of the business and the submission of op reports and fees. Additionally, the U.S. trustee monitors applications for compensation and reimbursement by professionals, plans and disclosure filed with the court, and creditors' committees. The U.S. trustee conducts of the creditors, often referred to as the "section 341 meeting," in a chap 11 U.S.C. § 341. The U.S. trustee and creditors may question the debtor at the section 341 meeting concerning the debtor's acts, conduct, proper administration of the case.

The U.S. trustee also imposes certain requirements on the debtor in pos concerning matters such as reporting its monthly income and operating establishing new bank accounts, and paying current employee withholdir taxes. By law, the debtor in possession must pay a quarterly fee to the U for each quarter of a year until the case is converted or dismissed. 28 U. (a)(6). The amount of the fee, which may range from $250 to $10,000, the amount of the debtor's disbursements during each quarter. Should a possession fail to comply with the reporting requirements of the U.S. tru of the bankruptcy court, or fail to take the appropriate steps to bring the confirmation, the U.S. trustee may file a motion with the court to have tl chapter 11 case converted to another chapter of the Bankruptcy Code or case dismissed.

In North Carolina and Alabama, bankruptcy administrators perform simil that U.S. trustees perform in the remaining forty-eight states. The bankr administrator program is administered by the Administrative Office of th States Courts, while the U.S. trustee program is administered by the De Justice. For purposes of this publication, references to U.S. trustees are applicable to bankruptcy administrators.

Creditors' Committees

Creditors' committees can play a major role in chapter 11 cases. The cor appointed by the U.S. trustee and ordinarily consists of unsecured credit the seven largest unsecured claims against the debtor. 11 U.S.C. § 1102 other things, the committee: consults with the debtor in possession on a of the case; investigates the debtor's conduct and operation of the busin participates in formulating a plan. 11 U.S.C. § 1103. A creditors' commit the court's approval, hire an attorney or other professionals to assist in t performance of the committee's duties. A creditors' committee can be ar safeguard to the proper management of the business by the debtor in pc

The Small Business Case and the Small Business Debtor

In some smaller cases the U.S. trustee may be unable to find creditors w serve on a creditors' committee, or the committee may not be actively ir case. The Bankruptcy Code addresses this issue by treating a "small bus somewhat differently than a regular bankruptcy case. A small business c as a case with a "small business debtor." 11 U.S.C. § 101(51C). Determi whether a debtor is a "small business debtor" requires application of a tw First, the debtor must be engaged in commercial or business activities (c primarily owning or operating real property) with total non-contingent lic secured and unsecured debts of $2,000,000 or less. Second, the debtor's be one in which the U.S. trustee has not appointed a creditors' committe court has determined the creditors' committee is insufficiently active and representative to provide oversight of the debtor. 11 U.S.C. § 101(51D).

In a small business case, the debtor in possession must, among other th the most recently prepared balance sheet, statement of operations, cash statement and most recently filed tax return to the petition or provide a under oath explaining the absence of such documents and must attend c U.S. trustee meeting through senior management personnel and counsel business debtor must make ongoing filings with the court concerning its and projected cash receipts and disbursements, and must report whethe compliance with the Bankruptcy Code and the Federal Rules of Bankrupt and whether it has paid its taxes and filed its tax returns. 11 U.S.C. §§ 3

In contrast to other chapter 11 debtors, the small business debtor is sub additional oversight by the U.S. trustee. Early in the case, the small busi must attend an "initial interview" with the U.S. trustee at which time the will evaluate the debtor's viability, inquire about the debtor's business pl explain certain debtor obligations including the debtor's responsibility to reports. 28 U.S.C. § 586(a)(7). The U.S. trustee will also monitor the act small business debtor during the case to identify as promptly as possible debtor will be unable to confirm a plan.

Because certain filing deadlines are different and extensions are more dif obtain, a case designated as a small business case normally proceeds m than other chapter 11 cases. For example, only the debtor may file a pla first 180 days of a small business case. 11 U.S.C. § 1121(e). This "exclu may be extended by the court, but only to 300 days, and only if the debt demonstrates by a preponderance of the evidence that the court will con within a reasonable period of time. When the case is not a small busines however, the court may extend the exclusivity period "for cause" up to 1

The Single Asset Real Estate Debtor

Single asset real estate debtors are subject to special provisions of the B Code. The term "single asset real estate" is defined as "a single property other than residential real property with fewer than four residential units generates substantially all of the gross income of a debtor who is not a f and on which no substantial business is being conducted by a debtor oth business of operating the real property and activities incidental." 11 U.S. (51B). The Bankruptcy Code provides circumstances under which credito asset real estate debtor may obtain relief from the automatic stay which available to creditors in ordinary bankruptcy cases. 11 U.S.C. § 362(d). (a creditor with a claim secured by the single asset real estate and after r hearing, the court will grant relief from the automatic stay to the creditor debtor files a feasible plan of reorganization or begins making interest pa the creditor within 90 days from the date of the filing of the case, or with the court's determination that the case is a single asset real estate case. payments must be equal to the non-default contract interest rate on the creditor's interest in the real estate. 11 U.S.C. § 362(d)(3).

Appointment or Election of a Case Trustee

Although the appointment of a case trustee is a rarity in a chapter 11 ca interest or the U.S. trustee can request the appointment of a case truste examiner at any time prior to confirmation in a chapter 11 case. The cou by a party in interest or the U.S. trustee and after notice and hearing, sh appointment of a case trustee for cause, including fraud, dishonesty, inc or gross mismanagement, or if such an appointment is in the interest of any equity security holders, and other interests of the estate. 11 U.S.C. Moreover, the U.S. trustee is required to move for appointment of a trus are reasonable grounds to believe that any of the parties in control of th "participated in actual fraud, dishonesty or criminal conduct in the mana debtor or the debtor's financial reporting." 11 U.S.C. § 1104(e). The trus appointed by the U.S. trustee, after consultation with parties in interest to the court's approval. Fed. R. Bankr. P. 2007.1. Alternatively, a trustee may be elected if a party in interest requests the election of a trustee wi after the court orders the appointment of a trustee. In that instance, the convenes a meeting of creditors for the purpose of electing a person to s trustee in the case. 11 U.S.C. § 1104(b).

The case trustee is responsible for management of the property of the es operation of the debtor's business, and, if appropriate, the filing of a pla reorganization. Section 1106 of the Bankruptcy Code requires the truste plan "as soon as practicable" or, alternatively, to file a report explaining will not be filed or to recommend that the case be converted to another dismissed. 11 U.S.C. § 1106(a)(5).

Upon the request of a party in interest or the U.S. trustee, the court ma the trustee's appointment and restore the debtor in possession to manag bankruptcy estate at any time before confirmation.11 U.S.C. § 1105.

The Role of an Examiner

The appointment of an examiner in a chapter 11 case is rare. The role of is generally more limited than that of a trustee. The examiner is authoriz perform the investigatory functions of the trustee and is required to file of any investigation conducted. If ordered to do so by the court, howeve examiner may carry out any other duties of a trustee that the court orde in possession not to perform. 11 U.S.C. § 1106. Each court has the auth determine the duties of an examiner in each particular case. In some cas examiner may file a plan of reorganization, negotiate or help the parties review the debtor's schedules to determine whether some of the claims improperly categorized. Sometimes, the examiner may be directed to de objections to any proofs of claim should be filed or whether causes of act sufficient merit so that further legal action should be taken. The examine subsequently serve as a trustee in the case. 11 U.S.C. § 321.

The Automatic Stay

The automatic stay provides a period of time in which all judgments, coll activities, foreclosures, and repossessions of property are suspended anc pursued by the creditors on any debt or claim that arose before the filing bankruptcy petition. As with cases under other chapters of the Bankrupt stay of creditor actions against the chapter 11 debtor automatically goes when the bankruptcy petition is filed. 11 U.S.C. § 362(a). The filing of a however, does not operate as a stay for certain types of actions listed ur U.S.C. § 362(b). The stay provides a breathing spell for the debtor, durir negotiations can take place to try to resolve the difficulties in the debtor' situation.

Under specific circumstances, the secured creditor can obtain an order fr granting relief from the automatic stay. For example, when the debtor h in the property and the property is not necessary for an effective reorgar secured creditor can seek an order of the court lifting the stay to permit to foreclose on the property, sell it, and apply the proceeds to the debt. 362(d).

The Bankruptcy Code permits applications for fees to be made by certain professionals during the case. Thus, a trustee, a debtor's attorney, or an professional person appointed by the court may apply to the court at int days for interim compensation and reimbursement payments. In very lar extensive legal work, the court may permit more frequent applications. A professional fees may be paid if authorized by the court, the debtor cann payments to professional creditors on prepetition obligations, *i.e.*, obliga arose before the filing of the bankruptcy petition. The ordinary expenses ongoing business, however, continue to be paid.

Who Can File a Plan

The debtor (unless a "small business debtor") has a 120-day period duri has an exclusive right to file a plan. 11 U.S.C. § 1121(b). This exclusivity be extended or reduced by the court. But, in no event, may the exclusivi including all extensions, be longer than 18 months. 11 U.S.C. § 1121(d). exclusivity period has expired, a creditor or the case trustee may file a c plan. The U.S. trustee may not file a plan. 11 U.S.C. § 307.

A chapter 11 case may continue for many years unless the court, the U.S the committee, or another party in interest acts to ensure the case's tim resolution. The creditors' right to file a competing plan provides incentive debtor to file a plan within the exclusivity period and acts as a check on delay in the case.

Avoidable Transfers

The debtor in possession or the trustee, as the case may be, has what ai "avoiding" powers. These powers may be used to undo a transfer of mor property made during a certain period of time before the filing of the bar petition. By avoiding a particular transfer of property, the debtor in possi cancel the transaction and force the return or "disgorgement" of the pay property, which then are available to pay all creditors. Generally, and su various defenses, the power to avoid transfers is effective against transf the debtor within 90 days before filing the petition. But transfers to "insi relatives, general partners, and directors or officers of the debtor) made before filing may be avoided. 11 U.S.C. §§ 101(31), 101(54), 547, 548. under 11 U.S.C. § 544, the trustee is authorized to avoid transfers under state law, which often provides for longer time periods. Avoiding powers unfair prepetition payments to one creditor at the expense of all other cr

Cash Collateral, Adequate Protection, and Operating Capital

Although the preparation, confirmation, and implementation of a plan of reorganization is at the heart of a chapter 11 case, other issues may aris be addressed by the debtor in possession. The debtor in possession may lease property of the estate in the ordinary course of its business, witho approval, unless the court orders otherwise. 11 U.S.C. § 363(c). If the ir or use is outside the ordinary course of its business, the debtor must obt permission from the court.

A debtor in possession may not use "cash collateral" without the consent secured party or authorization by the court, which must first examine wh interest of the secured party is adequately protected. 11 U.S.C. § 363. S defines "cash collateral" as cash, negotiable instruments, documents of t securities, deposit accounts, or other cash equivalents, whenever acquire the estate and an entity other than the estate have an interest. It includ proceeds, products, offspring, rents, or profits of property and the fees, accounts or payments for the use or occupancy of rooms and other publi hotels, motels, or other lodging properties subject to a creditor's security

When "cash collateral" is used (spent), the secured creditors are entitled additional protection under section 363 of the Bankruptcy Code. The deb possession must file a motion requesting an order from the court authori of the cash collateral. Pending consent of the secured creditor or court a for the debtor in possession's use of cash collateral, the debtor in posses segregate and account for all cash collateral in its possession. 11 U.S.C. A party with an interest in property being used by the debtor may reque court prohibit or condition this use to the extent necessary to provide "a protection" to the creditor.

Adequate protection may be required to protect the value of the creditor the property being used by the debtor in possession. This is especially in

when there is a decrease in value of the property. The debtor may make lump sum cash payments, or provide an additional or replacement lien th in the creditor's property interest being adequately protected. 11 U.S.C.

When a chapter 11 debtor needs operating capital, it may be able to obt lender by giving the lender a court-approved "superpriority" over other u creditors or a lien on property of the estate. 11 U.S.C. § 364.

Motions

Before confirmation of a plan, several activities may take place in a chap Continued operation of the debtor's business may lead to the filing of a r contested motions. The most common are those seeking relief from the a stay, the use of cash collateral, or to obtain credit. There may also be liti executory (*i.e.*, unfulfilled) contracts and unexpired leases and the assur rejection of those executory contracts and unexpired leases by the debtc possession. 11 U.S.C. § 365. Delays in formulating, filing, and obtaining of a plan often prompt creditors to file motions for relief from stay, to co case to chapter 7, or to dismiss the case altogether.

Adversary Proceedings

Frequently, the debtor in possession will institute a lawsuit, known as an proceeding, to recover money or property for the estate. Adversary proc take the form of lien avoidance actions, actions to avoid preferences, act fraudulent transfers, or actions to avoid post-petition transfers. These pr are governed by Part VII of the Federal Rules of Bankruptcy Procedure. A creditors' committee may be authorized by the bankruptcy court to pursu actions against insiders of the debtor if the plan provides for the committ or if the debtor has refused a demand to do so. Creditors may also initiat proceedings by filing complaints to determine the validity or priority of a an order confirming a plan, determine the dischargeability of a debt, obt injunction, or subordinate a claim of another creditor.

Claims

The Bankruptcy Code defines a claim as: (1) a right to payment; (2) or a equitable remedy for a failure of performance if the breach gives rise to a payment. 11 U.S.C. § 101(5). Generally, any creditor whose claim is not (*i.e.*, listed by the debtor on the debtor's schedules) or is scheduled as d contingent, or unliquidated must file a proof of claim (and attach evidenc documenting the claim) in order to be treated as a creditor for purposes the plan and distribution under it. Fed. R. Bankr. P. 3003(c)(2). But filing claim is not necessary if the creditor's claim is scheduled (but is not liste disputed, contingent, or unliquidated by the debtor) because the debtor's are deemed to constitute evidence of the validity and amount of those cl

U.S.C. § 1111. If a scheduled creditor chooses to file a claim, a properly claim supersedes any scheduling of that claim. Fed. R. Bankr. P. 3003(c) responsibility of the creditor to determine whether the claim is accurately debtor's schedules. The debtor must provide notification to those credito names are added and whose claims are listed as a result of an amendme schedules. The notification also should advise such creditors of their righ proofs of claim and that their failure to do so may prevent them from vo debtor's plan of reorganization or participating in any distribution under t When a debtor amends the schedule of liabilities to add a creditor or cha status of any claims to disputed, contingent, or unliquidated, the debtor notice of the amendment to any entity affected. Fed. R. Bankr. P. 1009(a

Equity Security Holders

An equity security holder is a holder of an equity security of the debtor. I an equity security are a share in a corporation, an interest of a limited pa limited partnership, or a right to purchase, sell, or subscribe to a share, s interest of a share in a corporation or an interest in a limited partnership 101(16), (17). An equity security holder may vote on the plan of reorgar may file a proof of interest, rather than a proof of claim. A proof of intere filed for any interest that appears in the debtor's schedules, unless it is s disputed, contingent, or unliquidated. 11 U.S.C. § 1111. An equity securi whose interest is not scheduled or scheduled as disputed, contingent, or must file a proof of interest in order to be treated as a creditor for purpo on the plan and distribution under it. Fed. R. Bankr. P. 3003(c)(2). A pro proof of interest supersedes any scheduling of that interest. Fed. R. Bank (4). Generally, most of the provisions that apply to proofs of claim, as di above, are also applicable to proofs of interest.

Conversion or Dismissal

A debtor in a case under chapter 11 has a one-time absolute right to con chapter 11 case to a case under chapter 7 unless: (1) the debtor is not a possession; (2) the case originally was commenced as an involuntary ca chapter 11; or (3) the case was converted to a case under chapter 11 ot the debtor's request. 11 U.S.C. § 1112(a). A debtor in a chapter 11 case have an absolute right to have the case dismissed upon request.

A party in interest may file a motion to dismiss or convert a chapter 11 c chapter 7 case "for cause." Generally, if cause is established after notice the court must convert or dismiss the case (whichever is in the best inte creditors and the estate) unless it specifically finds that the requested co dismissal is not in the best interest of creditors and the estate. 11 U.S.C. Alternatively, the court may decide that appointment of a chapter 11 tru examiner is in the best interests of creditors and the estate. 11 U.S.C. § Section 1112(b)(4) of the Bankruptcy Code sets forth numerous example

that would support dismissal or conversion. For example, the moving pai establish cause by showing that there is substantial or continuing loss to and the absence of a reasonable likelihood of rehabilitation; gross misma the estate; failure to maintain insurance that poses a risk to the estate o or unauthorized use of cash collateral that is substantially harmful to a c

Cause for dismissal or conversion also includes an unexcused failure to t with reporting and filing requirements; failure to attend the meeting of c attend a Fed. R. Bankr. P. 2004 examination without good cause; failure provide information to the U.S. trustee; and failure to timely pay post-pe or timely file post-petition returns. Additionally, failure to file a disclosur or to file and confirm a plan within the time fixed by the Bankruptcy Cod the court; inability to effectuate a plan; denial or revocation of confirmat to consummate a confirmed plan represent "cause" for dismissal under t an individual case, failure of the debtor to pay post-petition domestic su obligations constitutes "cause" for dismissal or conversion.

Section 1112(c) of the Bankruptcy Code provides an important exceptior conversion process in a chapter 11 case. Under this provision, the court from converting a case involving a farmer or charitable institution to a lic under chapter 7 unless the debtor requests the conversion.

The Disclosure Statement

Generally, the debtor (or any plan proponent) must file and get court ap written disclosure statement before there can be a vote on the plan of re The disclosure statement must provide "adequate information" concernir of the debtor to enable the holder of a claim or interest to make an infor judgment about the plan. 11 U.S.C. § 1125. In a small business case, hc court may determine that the plan itself contains adequate information a separate disclosure statement is unnecessary. 11 U.S.C. § 1125(f). After disclosure statement is filed, the court must hold a hearing to determine disclosure statement should be approved. Acceptance or rejection of a pl cannot be solicited until the court has first approved the written disclosu 11 U.S.C. § 1125(b). An exception to this rule exists if the initial solicitat party occurred before the bankruptcy filing, as would be the case in so-c "prepackaged" bankruptcy plans (*i.e.*, where the debtor negotiates a pla significant creditor constituencies before filing for bankruptcy). Continue solicitation of such parties is not prohibited. After the court approves the statement, the debtor or proponent of a plan can begin to solicit accepta plan, and creditors may also solicit rejections of the plan.

Upon approval of a disclosure statement, the plan proponent must mail t to the U.S. trustee and all creditors and equity security holders: (1) the court approved summary of the plan; (2) the disclosure statement appro court; (3) notice of the time within which acceptances and rejections of t

be filed; and (4) such other information as the court may direct, includin of the court approving the disclosure statement or a court-approved sum opinion. Fed. R. Bankr. P. 3017(d). In addition, the debtor must mail to t and equity security holders entitled to vote on the plan or plans: (1) noti time fixed for filing objections; (2) notice of the date and time for the he confirmation of the plan; and (3) a ballot for accepting or rejecting the p appropriate, a designation for the creditors to identify their preference a competing plans. *Id.* But in a small business case, the court may conditic approve a disclosure statement subject to final approval after notice and disclosure statement/plan confirmation hearing. 11 U.S.C. § 1125(f).

Acceptance of the Plan of Reorganization

As noted earlier, only the debtor may file a plan of reorganization during day period after the petition is filed (or after entry of the order for relief, involuntary petition was filed). The court may grant extension of this exc up to 18 months after the petition date. In addition, the debtor has 180 petition date or entry of the order for relief to obtain acceptances of its p U.S.C. § 1121. The court may extend (up to 20 months) or reduce this a exclusive period for cause. 11 U.S.C. § 1121(d). In practice, debtors typ extensions of both the plan filing and plan acceptance deadlines at the s that any order sought from the court allows the debtor two months to se acceptances after filing a plan before any competing plan can be filed.

If the exclusive period expires before the debtor has filed and obtained a a plan, other parties in interest in a case, such as the creditors' committ creditor, may file a plan. Such a plan may compete with a plan filed by a in interest or by the debtor. If a trustee is appointed, the trustee must fi report explaining why the trustee will not file a plan, or a recommendatic conversion or dismissal of the case. 11 U.S.C. § 1106(a)(5). A proponen subject to the same requirements as the debtor with respect to disclosur solicitation.

In a chapter 11 case, a liquidating plan is permissible. Such a plan often debtor in possession to liquidate the business under more economically a circumstances than a chapter 7 liquidation. It also permits the creditors more active role in fashioning the liquidation of the assets and the distrit proceeds than in a chapter 7 case.

Section 1123(a) of the Bankruptcy Code lists the mandatory provisions c 11 plan, and section 1123(b) lists the discretionary provisions. Section 1 provides that a chapter 11 plan must designate classes of claims and int treatment under the reorganization. Generally, a plan will classify claim l secured creditors, unsecured creditors entitled to priority, general unsec creditors, and equity security holders.

Under section 1126(c) of the Bankruptcy Code, an entire class of claims accept a plan if the plan is accepted by creditors that hold at least two-th amount and more than one-half in number of the allowed claims in the c section 1129(a)(10), if there are impaired classes of claims, the court ca a plan unless it has been accepted by at least one class of non-insiders w impaired claims (*i.e.*, claims that are not going to be paid completely or i some legal, equitable, or contractual right is altered). Moreover, under s (f), holders of unimpaired claims are deemed to have accepted the plan.

Under section 1127(a) of the Bankruptcy Code, the plan proponent may plan at any time before confirmation, but the plan as modified must mee requirements of chapter 11. When there is a proposed modification after been conducted, and the court finds after a hearing that the proposed m does not adversely affect the treatment of any creditor who has not acce modification in writing, the modification is deemed to have been accepte creditors who previously accepted the plan. Fed. R. Bankr. P. 3019. If it that the proposed modification does have an adverse effect on the claim consenting creditors, then another balloting must take place.

Because more than one plan may be submitted to the creditors for apprc proposed plan and modification must be dated and identified with the na entity or entities submitting the plan or modification. Fed. R. Bankr. P. 3 competing plans are presented that meet the requirements for confirmat must consider the preferences of the creditors and equity security holder determining which plan to confirm.

Any party in interest may file an objection to confirmation of a plan. The Code requires the court, after notice, to hold a hearing on confirmation c no objection to confirmation has been timely filed, the Bankruptcy Code court to determine whether the plan has been proposed in good faith an law. Fed. R. Bankr. P. 3020(b)(2). Before confirmation can be granted, t be satisfied that there has been compliance with all the other requireme confirmation set forth in section 1129 of the Bankruptcy Code, even in th any objections. In order to confirm the plan, the court must find, among that: (1) the plan is feasible; (2) it is proposed in good faith; and (3) the proponent of the plan are in compliance with the Bankruptcy Code. In or the feasibility requirement, the court must find that confirmation of the p likely to be followed by liquidation (unless the plan is a liquidating plan) for further financial reorganization.

The Discharge

Section 1141(d)(1) generally provides that confirmation of a plan discha from any debt that arose before the date of confirmation. After the plan the debtor is required to make plan payments and is bound by the provis plan of reorganization. The confirmed plan creates new contractual right

or superseding pre-bankruptcy contracts.

There are, of course, exceptions to the general rule that an order confirn operates as a discharge. Confirmation of a plan of reorganization dischar of debtor – corporation, partnership, or individual – from most types of p debts. It does not, however, discharge an individual debtor from any det nondischargeable by section 523 of the Bankruptcy Code. (1) Moreover, limited circumstances, a discharge is not available to an individual debto until all payments have been made under the plan. 11 U.S.C. § 1141(d)(Confirmation does not discharge the debtor if the plan is a liquidation pla opposed to one of reorganization, unless the debtor is an individual. Whe is an individual, confirmation of a liquidation plan will result in a discharg payments are made) unless grounds would exist for denying the debtor a the case were proceeding under chapter 7 instead of chapter 11. 11 U.S. 1141(d).

Postconfirmation Modification of the Plan

At any time after confirmation and before "substantial consummation" of proponent of a plan may modify the plan if the modified plan would meet Bankruptcy Code requirements. 11 U.S.C. § 1127(b). This should be dist from preconfirmation modification of the plan. A modified postconfirmati not automatically become the plan. A modified postconfirmation plan in a case becomes the plan only "if circumstances warrant such modification" court, after notice and hearing, confirms the plan as modified. If the deb individual, the plan may be modified postconfirmation upon the request o the trustee, the U.S. trustee, or the holder of an allowed unsecured clain adjustments to payments due under the plan. 11 U.S.C. § 1127(e).

Postconfirmation Administration

Notwithstanding the entry of the confirmation order, the court has the au issue any other order necessary to administer the estate. Fed. R. Bankr. This authority would include the postconfirmation determination of objec claims or adversary proceedings, which must be resolved before a plan c consummated. Sections 1106(a)(7) and 1107(a) of the Bankruptcy Code debtor in possession or a trustee to report on the progress made in impl plan after confirmation. A chapter 11 trustee or debtor in possession has responsibilities to perform after confirmation, including consummating th reporting on the status of consummation, and applying for a final decree

Revocation of the Confirmation Order

Revocation of the confirmation order is an undoing or cancellation of the of a plan. A request for revocation of confirmation, if made at all, must b party in interest within 180 days of confirmation. The court, after notice

may revoke a confirmation order "if and only if the [confirmation] order
by fraud." 11 U.S.C. § 1144.

The Final Decree

A final decree closing the case must be entered after the estate has beer
administered." Fed. R. Bankr. P. 3022. Local bankruptcy court policies ge
determine when the final decree is entered and the case closed.

NOTES

1. Debts not discharged include debts for alimony and child suppor
taxes, debts for certain educational benefit overpayments or loans
guaranteed by a governmental unit, debts for willful and malicious
debtor to another entity or to the property of another entity, debts
personal injury caused by the debtor's operation of a motor vehicle
debtor was intoxicated from alcohol or other substances, and debts
criminal restitution orders.11 U.S.C. § 523(a). The debtor will cont
liable for these types of debts to the extent that they are not paid
11 case. Debts for money or property obtained by false pretenses,
fraud or defalcation while acting in a fiduciary capacity, and debts
malicious injury by the debtor to another entity or to the property
entity will be discharged unless a creditor timely files and prevails
to have such debts declared nondischargeable. 11 U.S.C. § 523(c),
Bankr. P. 4007(c). return to text
