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NEW BANKRUPTCY LAW COULD KEEP YOU ON THE FARM

Bankruptcy is not a pretty word, yet it is a federal procedure meant to "relieve the honest debtor from the weight of oppresive indebtedness and permit him to start afresh." Until 1979, federal bankruptcy procedures were provided by the Bankruptcy Act of 1898 and amendments. The old law has been replaced by the Bankruptcy Reform Act of 1978 which became effective Oct. 1, 1979.

Under the new law, for the first time certain farmers are eligible for a special program of debt reduction. This program is the "wage earner's plan," formerly available only to those who earned their principal income from wages, salaries, and commissions. Those who qualify under the plan may apply to the bankruptcy court for approval of a plan proposed by the debtor for paying off a percentage of his debts over a period of years. With court approval, if the debtor completes the payments provided by the plan, the balance still owed is discharged or forgiven by

-more-court order. So now farmers as well as "wage earners" can use this federal program of debtor rehabilitation.

Why New Treatment for Farmer Bankruptcy?

According to USDA data, indebtedness per farm has increased from an average of $2,200 in 1950 to $68,200 in early 1980. The value of farm assets has increased at about the same rate to an average farm investment of about $400,000 in 1980.

It's necessary now for most farmers to use credit for capital investments and operating expenses. Both farm debt and asset value have climbed dramatically in recent years. But more revealing is the increase in the average farm's non-real estate debt-to-asset ratio. It's gone from about 18% in 1960 to nearly 30% in 1980.

This increasing reliance on borrowing as a source of farm funds raises the spector of bankruptcy for some farmers...particularly in years when wildly fluctuating farm prices result in abnormally low farm income.

The new debtor rehabilitation chapter of the 1978 Bankruptcy Code (Chapter 13), was designed to modernize the law to fit the "consumer credit society." It extended coverage to farmers as members of the group.

There was some doubt as to whether farmers would be included under Chapter 13. But in a 1980 farm case Judge Ecker of the South Dakota Division of the Federal Bankruptcy Court concluded:

> Certainly, Congress knew that farming is a speculative business...(a) farmer cannot readily ascertain...what his future income...will be.
>
> This Bankruptcy Court holds that a farmer qualifies as an individual with regular income where the farmer has annual income from the farming business even though future annual income is not readily ascertainable with any degree of certainty.

Judge Ecker wrote that the basic philosophy of the code is that a debtor should have one chance for rehabilitation. In approving the plan proposed by the farmer in the case he was deciding, Judge Ecker noted specifically that "Debtor seems confident that with good weather, fair prices and a market for his products, he can make the payments."

Limitations on Chapter 13 Coverage

To gain access to the new debtor rehabilitation provision, a farmer must be an individual or husband and wife (but not corporations or partnerships) with regular income and fall within a specified debt limit.

"Farmer" is defined by the code to mean a person who receives more than 80 percent of his gross income from farming his own farm.

"Farm operation" 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.

If a person who farmed also had income from other sources amounting to more than 20 percent of his gross income in the last year, he could still file for relief. But it's as an "individual with regular income," sufficiently stable and regular to enable him to make payments under a Chapter 13 plan--not as a "farmer." Nonfarmers have a heavier burden of proof as to the regularity of periodic income with which to pay creditors under a Chapter 13 plan.

The new bankruptcy code also restricts the amount owing on the date of filing to less than $100,000 in unsecured debts and to less than $350,000 in secured debts. If a husband and wife wish to file a joint petition for relief, the dollar figures remain the same, as if only one of was them was filing. The purpose of setting ceilings on debt amounts was to permit a small sole proprietor, such as a farmer, or a farm couple, to avoid the more cumbersome procedures required under a Chapter 11 reorganization plan. It's safe to say most farmer-debtors fall below those debt ceiling figures.

If a bankruptcy court finds a particular farmer not eligible for Chapter 13 plan approval, that farmer-debtor could still get relief under Chapter 11, business reorganization. But the procedures are cumbersome and more expensive.

How Does It Work?

You don't have to be insolvent to qualify for voluntary bankruptcy action, including Chapter 13. A debtor may file a petition under Chapter 13 even though solvent. The filing fee for Chapter 13 cases is $60 and cannot be waived.

Filing a petition in bankruptcy court automatically restrains creditors from taking further action to collect their claims or enforce their liens. This bars virtually all debt collection efforts, including the use of dunning letters, collection actions and judgment enforcement. For those persons who have had to deal with debt collectors, this protection from further harrassment may well be one of the greatest benefits to their peace of mind that the Code provides.

The filing of a bankruptcy petition creates an "estate" consisting of virtually all the debtor's property, tangible and intangible. This estate becomes the property of the bankruptcy court and is placed under the control of a bankruptcy trustee (a private citizen with very important rights and duties, but who is not charged with operating the Chapter 13 debtor's business). Certain property will not be used to satisfy creditor's claims but will be available to the debtor to assist him in his "fresh start."

If it becomes impossible for the debtor to make payments under his Chapter 13 plan, a Chapter 7 liquidation is a viable alternative. The court cannot order a farmer-debtor to convert his Chapter 13 plan to a liquidation or reorganization. But the court may dismiss the case entirely, removing the protection from creditors.

The debtor's plan under Chapter 13 must provide for submission of all or part of the debtor's future income for no longer than 3 to 5 years. It goes to the trustee to pay the debtor's obligations. The holders of some secured claims, including real estate mortgage on the debtor's residence, are entitled to full payment up to the value of the mortgaged property.

The plan must allow for those payments unless the holders of the claims otherwise agree. A plan may provide for less than full payment to unsecured creditors, but all similar unsecured creditors must be treated alike. Secured creditors who are not entitled to full payment have their claims adjusted downward by the plan.

The court-appointed trustee is charged with the duty to advise and assist the Chapter 13 debtor in the preparation and performance of his plan. As long as the plan is filed with the court in a timely manner, the debtor's case will not be dismissed. The complexities of plan preparation should not deter the debtor or his attorney from filing the initial petition.

The standards for judicial confirmation of a Chapter 13 plan require that the plan be proposed in good faith and be entirely legal.

If a farmer-debtor is able to meet the requirements and willing to submit to the economic realities of his good faith plan, he may realize both the financial and emotional benefits from a Chapter 13 filing.

Benefits to Chapter 13 Debt Readjustment

Nearly all bankruptcy proceedings are routine and not stressful. With the aid of a creative and knowledgeable lawyer, most financially burdened lower to middle income individuals or couples should be able to keep most or all of their property, have their debts wiped out, and put an end to creditor pressure. If a farmer or farm couple is convinced that they wish to remain on the farm, as farmers, a Chapter 13 plan is designed to allow them to do so. Give serious thought to the term of the plan. It's ordinarily 3 years or less but may extend up to five years.

Under Chapter 13, the debtor may be able to pay off debts in a relatively inexpensive and simple manner without creditor acceptance of the rehabilitation plan.

Bankruptcy May Be Only Choice

Bankruptcy will never be a highly desirable option. But overextended farmers in our "consumer credit society" may be faced with little choice.

Congress recognized this economic fact of life. Recent congressional action continues to protect farmers from involuntary bankruptcy and broadens the availability of debt-adjustment programs to cover self-employed individuals as well as wage earners.

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The Bankruptcy Reform Act of 1978 added to the options of liquidation and business reorganization, the third option of debt readjustment for individual farmers and farm couples who meet definitional and debt-limit requirements.

Formulating and completing a Chapter 13 debt-payment plan involves serious limitations on the farmer's economic activity, especially in the distribution of earned income, for up to five years. Yet the benefits of the process may well outweigh the disadvantages, especially when you realize that creditor pressure will be eliminated and most remaining debts will be fully discharged after the completion of a good faith payback program.

As distasteful as bankruptcy may seem, it presents a viable opportunity in modern society. For those farmers who wish to remain on the farm, Chapter 13 deserves thoughtful consideration.

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Agents/Director:

You may want to file the enclosed story on the new bankruptcy law. You can make photocopies if needed. There are no fact sheets or other publications available on the topic.