

DEALING WITH DEBT AND BANKRUPTCY ISSUES FOR FARMERS/RANCHERS

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OVERVIEW

- × Liability management
 - + Business structures
- × Debt resolution
 - + Voluntary debt restructure
 - + Mediation
 - + Bankruptcy

MANAGING LIABILITY THROUGH BUSINESS ORGANIZATION

- × Sole Proprietorship
- × Partnership
- × Corporation
- × Limited Liability Company (LLC)

SOLE PROPRIETORSHIP

- | | |
|-------------------|------------------------------|
| × Pros | × Cons |
| + Easy to start | + Full liability exposure |
| + Single taxation | + Non-transferable ownership |
| + Full control | + Harder to obtain financing |

PARTNERSHIPS

× Pros

- + Pass through taxation
- + Many financing options
- + Easy set up
- + Ownership buy-out

× Cons

- + Full liability exposure
- + Shared control

CORPORATIONS

× Pros

- + Most liability protection
- + Structured management
- + Ownership transferability
- + Non-participating ownership
- + Greatest options for funding

× Cons

- + Double taxation
- + Least flexibility in structure

LIMITED LIABILITY COMPANY- LLC

- × Mix of partnership and corporation structure
- × Corporate liability protection
- × Relative ease of establishment
- × Optional pass-through taxation
- × Flexibility of structure
- × New- no law history

THE CORPORATE VEIL

- × Owners personal assets are shielded
- × Only equity invested could be lost
- × Liability protection loss
 - + Fraud
 - + Co-mingling of funds

PRESERVING THE CORPORATE VEIL

- × Maintain separate personal and business accounts
- × If the company needs money- make a documented loan from personal monies to the company
 - + Loan should be paid back in the future
 - + Same applies to personal loans from the company
 - × Should be a loan or a bonus paid out to the recipient, not a personal purchase made with the company account
 - × All company assets fall under this structure.
- × Attempt to eliminate intentional dishonest business dealings

OTHER STRUCTURAL PROTECTION METHODS

- × LLC- Multiple Business Model
 - + Liability is limited by breaking the total operation into different companies
- × Example
 - + Company 1 - Hay
 - + Company 2 - Trucking
 - + Company 3 - Livestock

DEBT RESOLUTION

- × Debt restructure with creditors - First
- × Mediation - Second
- × Bankruptcy - Last

DISCUSS INDIVIDUALLY WITH CREDITORS

- × Voluntary debt restructure
 - + Does not offer as much protection
 - + Must be in writing
 - + May still be forced into bankruptcy or other forced payments on original terms
 - + Least expensive and should be a first resort
 - + No courts involved

MEDIATION

- × Used to resolve liability claims outside of court with use of 3rd party
 - + Pre bankruptcy
 - + Work with creditors to restructure debt
 - + Often required
 - + Low cost option

BANKRUPTCY OPTIONS

- × Chapter 7
- × Chapter 11
- × Chapter 12

CHAPTER 7- LIQUIDATION

- × Property/assets are taken and given to a trustee for liquidation
- × Farmer loses control over assets and can no longer continue farming operation
- × Assets are distributed to creditors for repayment of debt (in order of priority as set by bankruptcy code)
- × Trustee can avoid transfer of ownership and certain debt obligations entered into within 90 days prior to filing for bankruptcy
- × Best for those who can no longer continue their operations

CHAPTER 11- RESTRUCTURING

- × Business allowed to continue through process
- × Restructuring plan is developed and adopted by debtor and approved by court- creditors allowed to object to plan, but final decision is up to the court
- × Allows for avoidance of certain debts and transactions within 90 days prior to filing
- × Stay of debt collection
- × Debtor remains in possession and control of assets, unless evidence of mismanagement or fraud
 - + In that case, creditors may request a trustee may be appointed who will manage the estate

CHAPTER 12- FAMILY FARMER BANKRUPTCY LAW

- × Similar to Chapter 11- used for restructuring
- × Designed specifically to meet the needs and circumstances of small family farms and family fishing operations
- × Offers additional flexibility and protection over Chapter 11

CHAPTER 12

- × Allows debtor to reduce debts to current value of secured property
- × Reduce unsecured obligations
- × Stay on debt collection
- × Protection from being forced into Chapter 7
- × Farmers can continue farming operation while going through bankruptcy proceedings and the subsequent repayment period- unlike Chapter 7

REQUIREMENTS TO QUALIFY FOR CHAPTER 12 INDIVIDUALS AND COUPLES

- × Must be engaged in a farming operation
- × Total debt cannot be greater than \$3,237,000
- × At least 50% of debt must come from the farming operation
- × More than 50% of gross taxable income from previous year (or more than 50% of gross income of each of the second and third years) prior to filing for bankruptcy must be from the farming operation

REQUIREMENTS- CORPORATIONS AND PARTNERSHIPS

- × More than 50% stock/equity of company must be held by one family (and their relatives)
- × The family must conduct the farming operation
- × More than 80% of the value of the company must be related to the farming operation
- × Debt must not exceed \$3,237,000
- × 50% or more of the debt must arise from the farming operation
- × Stock can not be publicly traded

EDUCATION

- × Credit Counseling
 - + Required by law 6 months prior to filing for bankruptcy
- × Debtor Education
 - + Required to have debts discharged

- × Both courses must be approved by the US department of Justice Trustee Program in order to be valid

LOCAL CONTACT FOR BANKRUPTCY EDUCATION AND ATTORNEYS

- × http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm

CONCLUSION

- × Liability protection through business structure
- × Voluntary debt restructure - First
- × Mediation - Second
- × Bankruptcy - Last
 - + Chapter 12
 - × Best for agricultural producers
 - + Chapter 11
 - × Good option if company too big to qualify for Chapter 12
 - + Chapter 7
 - × Best suited for those who are not going to continue their farming operations

THANK YOU
QUESTIONS?