

The COVID-19 pandemic has caused not only an unprecedented impact on individuals across the world, but the small business world has also taken a major hit from the effects of this pandemic. Because of the decrease of in-person shopping and dining, as well as state-mandated shut downs, small business owners are forced to make the determination to “weather the storm” during these uncertain times or to close their doors and liquidate. There is fortunately another option available for small businesses.

The Small Business Reorganization Act (“SBRA”) became effective February 19, 2020, enacting new Subchapter V of Chapter 11 of the Bankruptcy Code. The purpose of the SBRA is to streamline the process of small business reorganization by making it faster and more cost-effective to reorganize a small business. Chapter 11 reorganization is traditionally expensive and many small businesses cannot afford the expense of endeavoring to reorganize through Chapter 11. The SBRA now provides a cheaper and quicker option for these small businesses. More importantly, the SBRA provides a better chance at a successful reorganization and survival for the business.

The Subchapter V process modifies key deadlines and aspects of Chapter 11. For instance, Subchapter V shortens deadlines in the case, such as the deadline for filing a plan of reorganization and having such plan confirmed. A non-Subchapter V debtor has 300 days to file a plan, whereas a Subchapter V debtor only has 90 days from the filing date to file a plan. These shortened deadlines result in fewer attorneys’ fees and administrative fees, ultimately costing much less than a traditional Chapter 11 case. Another substantial benefit of the SBRA is that small business owners have the ability to retain their equity interests. In a traditional, non-Subchapter V case, equity owners cannot retain their equity interests unless unsecured creditors receive 100% repayment of their debt. In contrast, in a Subchapter V case, equity interest holders retain their interests even if unsecured creditors are not repaid in full. This allows small business owners to remain in control of their businesses and attempt reorganization without the worry of losing their interests. Among other things, Subchapter V cases also remove the requirement to have creditor committees, reducing expense, and allow debtors to modify the rights of secured creditors in certain circumstances.

So which businesses are eligible to file under Subchapter V? The SBRA provides that businesses which engage in commercial or business activities and have below the prescribed debt limit are eligible to file under Subchapter V. Single asset real estate debtors, however, do not qualify. The debt limit is typically \$2,725,625; however, the debt limit has increased temporarily to \$7.5 million due to the pandemic. So small businesses with no more than \$7.5 million in debt are eligible to file under Subchapter V until March 28, 2021, when the debt limit will revert to \$2,725,625.

Small businesses struggling due to the pandemic have the ability to benefit from the SBRA and Subchapter V. Rather than closing up shop, small businesses should consider this faster and cheaper reorganization option, which may result in a successful reorganization and a way to “weather the storm” and survive through the pandemic.

If you have further questions regarding bankruptcy or the SBRA, the eligibility of filing a Subchapter V case for your small business, or how filing under Subchapter V could save your

business, please contact Krystal R. Mikkilineni of Bradshaw, Fowler, Proctor & Fairgrave, P.C. at mikkilineni.krystal@bradshawlaw.com or call 515-246-5880.