

**SUBCHAPTER V A WELCOME TOOL IN THE CONSUMER LAWYER’S TOOLBOX
U.T. CONSUMER CONFERENCE JULY 11, 2024**

WHAT TO EXPECT

1. Available resources
2. A brief introduction to Subchapter V
3. A power-point comparison of Chapter 13 and Subchapter V
4. If we have time, Subchapter V Confirmation process

RESOURCES

5. My recently updated paper on “A Primer on Subchapter V”
6. My Court webpage contains a complete set of Documents that you can use in conjunction with confirmation of a Plan in subchapter V whether Consensual or Non-Consensual, **at least in my Court.**
7. My PowerPoint presentation
8. My side-by-side comparison of Subchapter V and Chapter 13 will be uploaded with the UT conference materials.
9. ABI report on proposed changes to subchapter V

INTRODUCTION TO SUBCHAPTER V

10. **Subchapter V is not Chapter 13’s Younger Sibling!**
11. If you have never filed and successfully prosecuted a chapter 11 case for a debtor, venturing into a subchapter V unprepared is ill advised.
12. Hopefully with the Tools I am providing to you today will motivate you to venture into this ever expanding area of the law.

I would be happy to meet with you after my presentation to further discuss how can accomplish this.

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13. **Subchapter V benefits:**
 - elimination of the absolute priority rule.
 - no mandatory appointment of a creditors' committee;
 - no mandatory requirement to file a disclosure statement;

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- appointment of a subchapter V trustee to assist in developing a consensual plan with limited but potentially expanded powers if so ordered by the Court.
- the exclusive right to file a plan (which cannot be terminated);
- ability to confirm a plan even if all classes reject the plan;
- gives individuals and small businesses an opportunity to reorganize that they would not otherwise have in standard Chapter 11
- ability to pay administrative expenses over time under a plan;
- modification of the disinterestedness requirements of § 327(a) for a professional that holds a pre-petition claim of less than \$10,000;
- elimination of the requirement to pay quarterly U.S. Trustee fees

14. In addition, many creditor protections that would apply in a standard Chapter 11 apply equally in Subchapter V.

- The best interest of creditors test
- Chapter 11’s feasibility test, and
- Although Subchapter V eliminates the absolute priority rule, it includes a projected disposable income test that sets the minimum requirements for confirmation of a nonconsensual plan.

15. SO: You are interviewing a potential client who is just barely under the Chapter 13 Debt limits, but has contingent, unliquidated personal guaranteed liability in the thousands, and has incurred most of his debt in connection with a small business he is operating, i.e. Ed’s Automotive. Debtor has several zealous creditors chasing your client into bankruptcy. What do you do?

| ELIGIBILITY | |
|--|---|
| CHAPTER 13 | SUBCHAPTER V |
| <p>§109(e): <u>Only Individuals</u> with regular income. \$465,275 for unsecured and \$1,395,875 for secured debt (total of \$1,861,150). Down from \$2.5 Mil</p> <p>§109(h): Must take a pre-petition credit counseling class.</p> | <p>§101(51(D): <u>Person:</u> includes individual, partnership, and corporation</p> <p>Person engaged in commercial or business activities</p> <p>OK TO: be engaged in the real estate business but cannot be a Single Asset Real Estate Case.</p> |

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| | <p>\$3,024,725 noncontingent, liquidated, secured and unsecured debt of not more than including debts of affiliates who are also debtors in a bankruptcy case.</p> <p>At least 50% of which arose from commercial or business activities of the Debtor.</p> <p>§109(h): pre-petition credit counseling class applies to individuals.</p> |
| MEANS TEST AND APPLICABLE COMMITMENT PERIOD | |
| CHAPTER 13 | SUBCHAPTER V |
| § 1322(d): Means Test and Applicable Commitment Period applies. | No such requirement. |
| JOINT DEBTOR | |
| CHAPTER 13 | SUBCHAPTER V |
| § 109(e) The spouse of a debtor is eligible to be a debtor in a jointly filed Chapter 13 even if the spouse does not have regular income. | Subchapter V does not have a provision that permits a noneligible spouse to file jointly with an eligible debtor. § 101(51(D)) Spouse has to separately qualify. |
| CO-DEBTOR STAY | |
| CHAPTER 13 | SUBCHAPTER V |
| §1301 after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless— (1) such individual became liable on or secured such debt in the ordinary course of such individual’s business; or | There is no co-debtor stay; however, a stay of actions against third parties may be imposed in very limited circumstances. <i>See Reliant Energy Servs., Inc. v. Enron Canada Corp.</i> , 349 F.3d 816, 825 (5th Cir. 2003). The debtor's reorganization efforts will be irreparably harmed |

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Title search: Subchapter V: A Welcome Tool In The Consumer Lawyer's Tool Box

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