

Subchapter V: Benefits and Restrictions for the Small (and Not So Small) Business Debtor

by:

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Advantages of a Subchapter V Election vs. Other Chapter 11 Options

1. Elimination of the absolute priority rule;
2. No mandatory appointment of a creditors' committee;
3. No mandatory requirement to file a disclosure statement;
4. Appointment of a Subchapter V trustee to assist in developing a consensual plan;
5. Debtor has the exclusive right to file a plan (which cannot be terminated);

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Further Advantages of Subchapter V Election

6. The ability to confirm a plan even if all classes reject the plan;
7. The ability to pay administrative expenses over time under a plan;
8. Modification of the disinterestedness requirements of § 327(a) for a professional that holds a pre-petition claim of less than \$10,000;
9. Elimination of the requirement to pay quarterly U.S. Trustee fees; and
10. Serial filer no-automatic-stay provision of § 362(n) does not apply.

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Drawbacks to Electing Subchapter V

1. Appointment of a Subchapter V Trustee (constant oversight);
2. Tight Deadlines;
3. Confirmation over an objection triggers other provisions; and
4. New/unsettled area of law.

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Subchapter V: Some New Surprises from around the Country



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