



## How to Handle Bankruptcy Amid Record Levels of Debt in the Farm Industry

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The farming and agricultural industry has been dealing with financial challenges even before the pandemic. Those who were in financial jeopardy before the shutdown are forced to rely on taking on even more debt now just to survive. Currently, the sum of debt across the farming sector amounts to a staggering \$496 billion according to the USDA. Farm debt has not been seen on this magnitude in decades and now surpasses previous records held from the farm financial crisis in the early 1980s. The high-interest rates that followed caused farm debt to contract by 31% by the end of 1989—almost a full decade after the farm financial crisis began.

As of right now, there are no immediate signs of slowing down as the gross dollars of debt are not expected to contract from 2021 to 2022. This kind of farm debt is often tracked closely because it is a key indicator of impending bankruptcy filings which on this scale would certainly have a massive impact on the industry. While debt may remain unchanged this year, history has shown that it can take time to manifest a significant reduction of debt.

The risk of receiving a bankruptcy notice is abundantly present in the Agricultural Industry now more than ever. It is hard to imagine that this could come as a surprise for anyone struggling financially for this long, but being prepared is one of the best ways to protect your interests during a bankruptcy case. Given the unparalleled financial crushing the last few years, it is good practice to at least be familiar with the basics involved in filing for bankruptcy and how to handle any correspondence related to your case.

### **The Different Types of Bankruptcy**

Bankruptcy can eliminate the debt that a debtor owes including everything from installment loans, mortgages, credit card balances, accounts receivable, personal loans, and more. Understanding what bankruptcy is and what is affected by the process will help lenders better protect their interests.

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#### **PRACTICE AREAS**

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- **Voluntary Bankruptcy**—When an individual or institution files bankruptcy to obtain financial relief, it is considered a voluntary bankruptcy and the filer is known as a “debtor.”
- **Liquidation**—One of the two main types of bankruptcy filings is referred to as liquidation and includes Chapter 7 which eliminates the debtor’s debt.
- **Reorganization**—The second type of bankruptcy is a reorganization of debt that only provides partial debt relief and is either filed as a Chapter 13 for individuals or Chapter 11 for companies.

### **What’s at Stake?**

Your status as a secured or unsecured creditor will determine the amount of debt impacted by the bankruptcy. Bankruptcies can also pose a risk to other assets like property—in fact, every interest legal or equitable that is related to the debtor is potentially at risk.

This is even more important as the balance of debt has shifted toward real-estate assets which now accounts for 69% of all debt in 2022. Real estate and non-real estate debt used to be equal—each comprising 50% of total debt—but starting in 2000, real estate debt began to accumulate faster.

There is no one factor causing this dynamic market shift, but it echoes the emphasis on real estate in the current housing crisis and a general increase in access to non-traditional lending. Some attribute the shift over the last two decades to the access that banks have to long-term debt through Farmer Mac and the overall preference for more long-term debt structures. If these factors remain, they will continue to impact the real estate market and how debt is managed.

### **Where to Start**

The first step is to pay special attention to the mail and avoid the temptation to procrastinate opening mail that might have bad news. At least give yourself the chance to control the situation and avoid the even worse consequences of simply delaying the inevitable.

### **Common Types of Bankruptcy Court Documents**

This emphasis on awareness is not just for those directly affected by bankruptcy, but for their adjacent financial partners with interest in their assets as well. Again, the only way to know when this will begin to affect you is by mail or word of mouth. Courts may send documents in the mail that will outline how the debtor plans to dispose of a debt that is owed or for an item in which you claim an interest.

#### **1. Notice of Bankruptcy Filing**

If the debtor has you or your institution listed as a creditor to whom they owe money, then the Court is obligated to send you a notice of bankruptcy.

#### **2. Notice of Dividends**



When all of a debtor's property is protected and the bankruptcy trustee is unable to take that asset to give to creditors to pay their debt, it is considered a no-asset case. In this situation, creditors can receive an alternative notice of dividends that lists other assets available for distribution.

### **3. Proof of Claim**

If a creditor desires a portion of this distribution of assets in a notice of dividends, they must file a Proof of Claim. Failure to file a Proof of Claim will preclude the creditor from collecting any of that money.

### **4. Motion for Relief from Stay**

A motion for relief from automation stay is something a creditor requests from the bankruptcy court in order to continue to pursue collection attempts from their debtor. The automatic stay is an injunction that—as its name would imply—automatically stops lawsuits, foreclosures, garnishments, and all other collection activity once the bankruptcy petition is filed. Some stays are limited to 30 days, but the debtor can also request to extend a stay.

### **5. Debtor's Plan**

This is a general plan that the debtor has outlined to pay their creditors such as how the payments will take place including details like the interest rate and payment timeline.

Receiving any one of these notices requires careful inspection and should be handled by a professional bankruptcy attorney.

### **Ensuring Notification When You're Not Listed as a Creditor**

When you are not listed as a creditor, however, you will not receive a notice even if you are owed money. This is why it is still important to maintain communications with business partners and follow news updates for companies you do business with, in any capacity.

Thankfully, there are attorneys who specialize in providing investigative services to monitor and review the bankruptcy court docket. This guarantees your assets remain protected from filings you might otherwise not get notified about.

### **What To Do If You Receive a Bankruptcy Notice**

If you ever receive a notice of bankruptcy, the first course of action should be to contact an attorney to guide you through the extremely time-sensitive process. Failing to act at all or in a timely manner can have a host of undesirable effects—namely, you may lose any interest you have in a property in the debtor's possession. A debtor may also propose to pay less than what they owe and creditors can lose the right to object if they do not respond in time.



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When it comes to protecting your interests, you should not leave things to chance even if the terms in a debtor's plan seem agreeable. It is better to still use an attorney to guarantee the terms are in your best interest rather than end up regretting going without one.

Once you have received a notice that a bankruptcy case has been filed, you must cease all collection efforts against the debtor. To proceed in the bankruptcy case, collecting any debt you are owed should be facilitated by an attorney to ensure that you are compliant with current bankruptcy laws.

Every bankruptcy case comes with its own unique challenges, but Foster Swift's team of bankruptcy lawyers have years of experience providing clients with the nuance that each case requires. For further guidance through the bankruptcy process and what to do in the event of receiving a bankruptcy notice, contact Scott Chernich or another member of Foster Swift's Bankruptcy Team.

