

SUBCHAPTER V ESSENTIALS

WHO FILES, WHY, AND WHEN IS CHAPTER 13 NOT ENOUGH?

SUB V & CHAPTER 13 OVERVIEW COMPARISON

Feature/Factor	Chapter 13	Subchapter V (Chapter 11)
Eligible Debtors	Individuals only	Individuals, LLCs, Corporations, Partnerships
Absolute Priority Rule	Does not apply (Disposable Income/ Best Interests of Creditors Tests)	Eliminated (Disposable Income/ Best Interests Tests)
Plan Voting & Creditors	No creditor voting	Creditors vote; court can confirm over objection
Primary Residence Modification	Prohibited	Allowed if loan was for business
Procedural Timelines	Local rules vary	Strict statutory 90-day plan deadline
U.S. Trustee Fees	None	Waived under Sub V (but Sub V Trustee fees)

PURPOSE & POLICY

WHAT WAS EACH CHAPTER BUILT TO SOLVE?

- **Traditional Chapter 11 Overhead:**
 - Built for large corporate enterprises--U.S. Trustee quarterly fees, Disclosure Statements, and Creditor Committees routinely bankruptcy small businesses
- **Chapter 13:**
 - Predictable, formulaic assembly line for wage-earning individuals to cure consumer defaults over 3-5 years
- **Subchapter V:**
 - The Small Business Reorganization Act (SBRA) established Subchapter V in 2020 as a streamlined “middle-weight” restructuring vehicle.
- **Key Statutory Goal of Sub V:**
 - Preserve going-concern value, protect employment, and keep equity owners at the helm without prohibitive administrative costs

WHO GETS IN?

ELIGIBILITY GATEKEEPERS

- **Entity Status:**
 - **Chapter 13:** Individuals only
 - **Sub V:** Corporations, LLCs, Partnerships, and Individuals engaged in commercial or business activity
- **The 50% Rule:**
 - **Sub V:** at least 50% of aggregate debt must arise from business operations
- **Operating Debt Caps:**
 - **Sub V/Chapter 13:** debt must fall under statutory ceilings on petition date
 - **Ch. 13:** unsecured debts less than \$526,700 and secured debts less than \$1,580,125
 - **Sub V:** aggregate noncontingent liquidated secured and unsecured debts less than \$3,424,000
 - **Sub V:** debts of affiliated debtors count towards cap



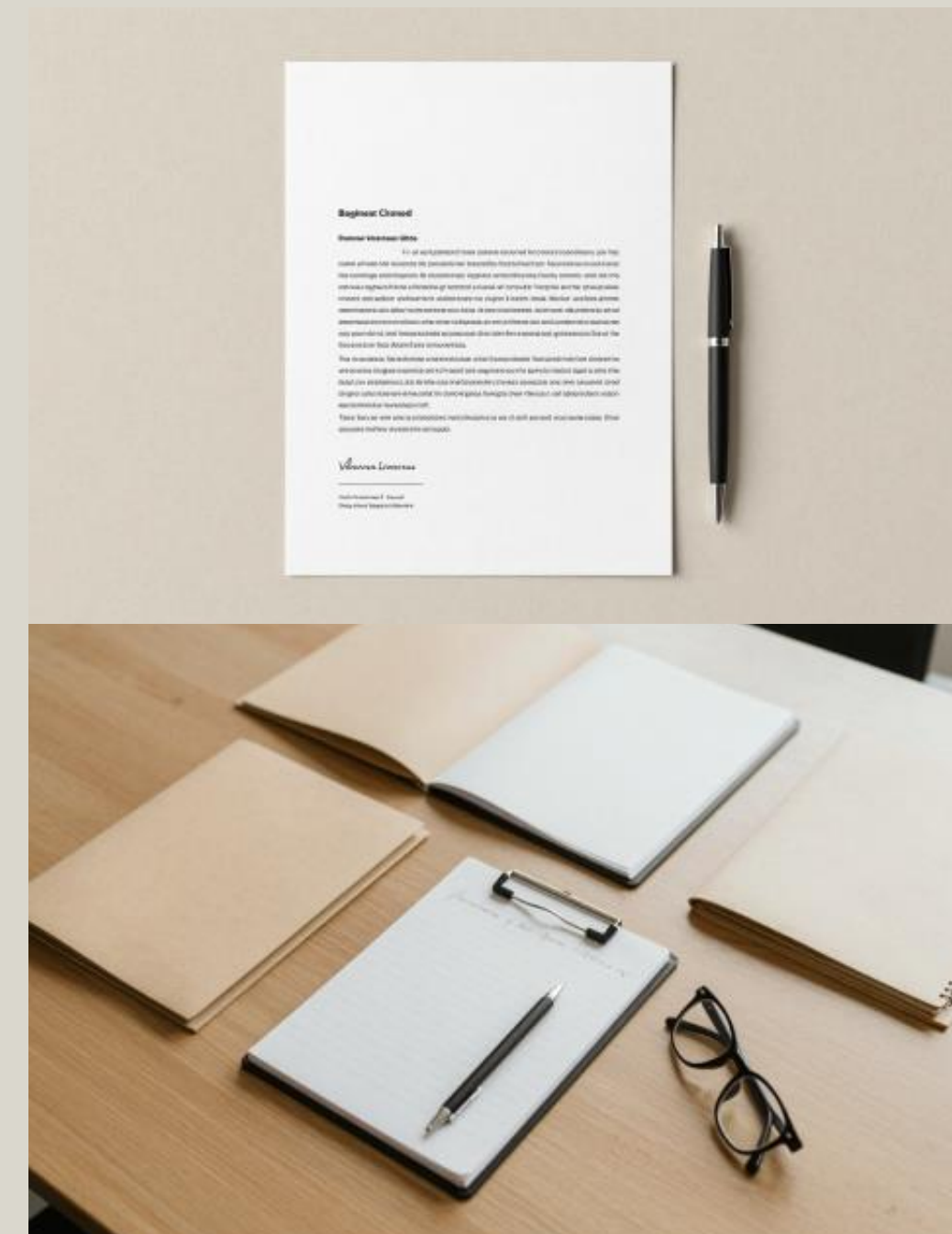
THE PRE-CONFIRMATION CLOCK



- **Plan Filing:**
 - **Sub V:** Strict 90-day window to build a comprehensive negotiated plan
 - **Ch. 13:** Quick 14-day deadline, but routinely amended over several months
- **Extension:**
 - **Sub V:** High Statutory Bar
 - Delays not justly attributable to the debtor
 - **Ch. 13:** Lower standard
 - For good cause
- **Judicial Checkpoint:**
 - **Sub V:** 60-day mandatory Status Conference with status report due 14 days prior
 - **Ch. 13:** No early judicial check

CONFIRMATION MECHANICS

- **Consensual Confirmation (Sub V):**
 - **Requirements:** every impaired class of creditors votes “yes”
 - **Trustee Status:** Trustee’s service terminates automatically based on substantial consummation
 - **Plan Payments:** Debtor makes plan distributions directly to creditors
- **Non-Consensual Cramdown (Sub V):**
 - **Requirements:** can be confirmed over creditor objections
 - **Disposable Income Test:** Debtor must commit all net projected disposable income for 3-5 years
 - **Trustee Status:** Trustee remains attached for all 3-5 years to act as the payment agent
- **Chapter 13 Confirmation:**
 - **Baseline:** Court confirms if statutory feasibility and best-interest tests are met; no creditor voting exists and trustee reviews compliance directly



DISCHARGE RULES - TIMING & DEBTOR STRUCTURE

- **Consensual Sub V (§ 1141(d)):**
 - **All Entities:** discharge is granted immediately upon plan confirmation
- **Non-Consensual Cramdown (§ 1192):**
 - **All Debtors:** discharge is strictly deferred until plan payments are completed
- **Chapter 13:**
 - **Baseline:** discharge is strictly deferred until completion of payments under the plan

SUB V ADVANTAGES, DISADVANTAGES & STRATEGY

- **Elimination of the Absolute Priority Rule:**
 - Business owners keep 100% equity even if unsecured creditors aren't paid in full
- **Elimination of Administrative Overhead:**
 - No official unsecured creditors' committee charging fees to the estate
 - No quarterly U.S. Trustee fees
 - No separate Disclosure Statement required (unless court ordered)
- **Debtor-in-Possession Authority:**
 - Existing management maintains day-to-day operational control

SPECIFICALLY: STRIPPING & MODIFYING LIENS ON PRIMARY RESIDENCES

- **The General Rule:**
 - In Chapter 13, you cannot modify a claim secured solely by the debtor's primary residence
- **The Sub V Exception: (§ 1190(3))**
 - Debtors can modify a residential mortgage if:
 - The loan proceeds were used primarily in connection with the debtor's business
 - The mortgage was not created to acquire the residence
- **Practically:**
 - Allows small business owners who pledged their homes for working capital to restructure these loans





COMPARATIVE ADVANTAGE SUMMARY

- **When Ch. 13 is Advantageous:**
 - **Consumer arrearages:** main objective is curing a primary residential mortgage in default
 - **Low friction and cost:** personal income is stable; client cannot afford Sub V trustee hourly fees or operational reporting
- **When Sub V is Advantageous:**
 - **Business-funded mortgage:** debt on primary residence was used to fund the business
 - **High business debt:** debt exceeds Ch. 13 debt limits or business creditors will vote against plan

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QUESTIONS?