

FARM BANKRUPTCY BASICS

Not All Bankruptcies are Created Equal

Chapter 7

Chapter 11

Chapter 12

Chapter 13

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DISCLAIMER

The information in these materials is intended as educational material to assist farmers, landowners, and their attorneys in understanding the state and federal effects of bankruptcy, and debtor-creditor laws as they pertain to agriculture. The materials are not intended as, and should not be used as, a substitute or replacement for individual legal advice. Each person should consult a lawyer and the responsible state or federal agency prior to utilizing these materials in a legal proceeding or relying on them to engage in activities to which they relate. Every effort has been made to ensure the accuracy of the information contained in these documents; however, the nature of bankruptcy legislation and regulations is constantly changing and the effect of future regulatory and judicial developments may alter the interpretation and effect of the law. For these reasons, the utilization of materials contained herein by any person represents an agreement to hold harmless the author from any liability, claims, damages, or expenses that may be incurred by any person as a result of reference to the information in these documents.

BIOGRAPHY OF JOSEPH A. PEIFFER

Mr. Peiffer is a 1982 graduate of the University of Iowa College of Law having graduated with distinction. In 1979, he graduated with distinction from Iowa State University, with Bachelor of Science degrees in Dairy Science and Public Service and Administration in Agriculture.

From 1984 to 1985, Mr. Peiffer served as a law clerk to the Honorable William W. Thinnes (deceased), bankruptcy judge for the Northern District of Iowa. He served on the Executive Committee and held all offices of the Board of Directors of the American Board of Certification. Mr. Peiffer was certified in Business Bankruptcy by the American Board Certification in 1994.

Mr. Peiffer is a shareholder in Day Rettig Peiffer, P.C. of Cedar Rapids, Iowa. He has practiced primarily in bankruptcy and debt restructuring since completing his clerkship with Judge Thinnes in 1985. Mr. Peiffer has represented numerous creditor's committees in Chapter 11 proceedings. He frequently represents both debtors and creditors in bankruptcy litigation.

Mr. Peiffer is currently a member of the American Bankruptcy Institute, the Commercial Law League, the Iowa State Bar Association, the American Bar Association, the American Agricultural Law Association.

Mr. Peiffer testified before the Bankruptcy Review Commission in 1997 regarding the need for reform in Chapter 12 bankruptcy to assist farmers in discharging income taxes incurred when they downsize their farming operations both before and during bankruptcies.

In 1999 Mr. Peiffer testified before the United States House of Representatives Committee on the Judiciary Subcommittee on Commercial and Administrative Law about the proposals to reform Chapter 12 bankruptcy law, which he drafted with the assistance of Dr. Neil Harl of Iowa State University, and Professor Jack Williams of Georgia State University College of Law. These reforms have been incorporated in both the House and Senate Bankruptcy Reform Bills currently pending before Congress.

From 1997 through 2001, Mr. Peiffer guided the legislative process for the Iowa State Bar Association efforts to equalize the exemption treatment of pensions for people without ERISA-qualified pension plans when compared to the treatment afforded people with ERISA-qualified pension plans.

Mr. Peiffer was Debtors' Counsel in *In Re Knudsen vs. I.R.S.*, 581 F.3d 696 (8th Cir. 2009) that clarified the meaning of 11 U.S.C. § 1222(a)(2)(A); he also served as appellate counsel in *I.R.S. v. Ficken*, 430 B.R. 663 (10th Cir. BAP 2010) and submitted an *amicus curiae* brief in *Hall v. United States*, 132 S.Ct. 1882 (2012).

Mr. Peiffer is a frequent lecturer at Continuing Legal Education seminars involving bankruptcy and commercial matters.

NOT ALL BANKRUPTCIES ARE CREATED EQUAL

- I. **Goals** of farm bankruptcies generally include:
 - A. **Discharge of Debts**
 - B. **Relaxation of Terms of Repayment**
 - 1. Increase length of time of repayment
 - 2. Decrease amount of interest paid
 - 3. Decrease annual debt service requirements
 - C. **Breathing room for embattled Debtor**
 - 1. Automatic Stay protects Debtor from collection activities of creditors
 - 2. Allows Debtor the opportunity to evaluate options
 - D. **Preservation of exempt assets** – See **Iowa Exemptions** section
 - E. **Avoiding Taxes** – Chapter 12 can assist the farmer in avoiding payment of taxes on gain realized by the sale of agricultural assets that were primarily used in the farming operation.

Not all bankruptcies provide the same advantages for farmers. Each of the various chapters of the Bankruptcy Code has specific eligibility limits and allows different treatment of the claims of creditors. A brief overview of the four chapters of bankruptcy that apply to farmers follows.

II. Overview of Available Types of Bankruptcy for Farmers

A. Chapter 7 – Liquidation

- 1. Used most frequently where farmer is discontinuing operations
- 2. Quickest – About 90 days from filing to discharge
- 3. Least expensive
- 4. No debt limits
- 5. Reaffirmation of debts is allowed
- 6. Some liens can be avoided on exempt tools of trade and homesteads
- 7. Other essential secured property can be redeemed from the secured creditor

B. Chapter 13 – Typically known as a wage earner plan

- 1. *Only available to individuals.* Chapter 13 is not available to corporations or partnerships.
- 2. Requires a “regular income” which can be used to make payments to creditors
- 3. **Debt limits** – \$394,725 unsecured, \$1,184,200 secured
- 4. **Plan Filing Deadline** – 15 days after the case is filed, unless extended by court order
- 5. Plan typically lasts 36 months, but can stretch to 60 months if necessary
- 6. The plan **will not** discharge debts owed for repayment of student loans, child support, property settlements incurred in a divorce or separation owed to a spouse or former spouse, restitution for criminal acts or drunk driving, consumer debts owed to a single creditor aggregating more than \$675 for luxury goods or services incurred within 90 days before filing the Petition, cash advances incurred less than 70 days before filing of \$950 as well as most state and federal income taxes.
- 7. Trustee fees equal 10% of plan payments.

8. **Super Discharge** – Can discharge fraud debts.
 9. **Lien Avoidance** – See Chapter 7.
- C. **Chapter 12 – Farmer Bankruptcy**
1. **Debt Limits** -- \$4,153,150 total
 2. Debtor must be a **family farmer**
 - a. **Income limit** – More than 50% of the income for the preceding year must come from a farming operation
 - b. **Debt type** – Excluding the primary residence, more than 80% of the debt must be debt from a farming operation owned or operated by the Debtor
 3. Available to individuals, partnerships, or corporations that qualify as family farmers (if the debtor is a corporation, more than 80% of its assets must relate to farming operations.
 4. **Plan filing deadline** – The plan must be filed within 90 days of filing the bankruptcy, unless extended by the bankruptcy court
 5. **Executory Contracts and Leases**
 - a. Unsecured creditors must receive as much as they would have received in a Chapter 7 liquidation
 - b. **Trustee fees** will be paid on all debts and claims that are paid through the Chapter 12 Trustee. Not all Circuits require the Debtors to make their payments through the Chapter 12 Trustee. If not paid through the Chapter 12 Trustee, there is no trustee fee. These fees shall not exceed 10% of payments up to \$450,000, and 3% of payments in excess of \$450,000
 - c. Interest paid on secured claims is typically 2% above the yield on a U.S. Treasury security with a maturity equal to the length of repayment
 - d. Repayment of debts, excluding executory contracts, can be extended. Examples include:
 - (a) Real estate: 15-30 years
 - (b) Machinery: 3-7 years
 - (c) Breeding livestock: 3-7 years if replacements are brought back into the herd
 - e. The absolute priority rule is **not** applicable
 - f. Net disposable income is paid to the trustee for distribution to unsecured creditors until discharge
 - g. Plan length: Typically 3 to 5 years (maximum). Longer plans are used in cases where Debtor must make significant payments to unsecured creditors based on the Liquidation Analysis
 6. Secured debt **cannot** be incurred after filing without approval from the court
 7. Use of Cash Collateral is prohibited absent agreement of secured creditor, or a bankruptcy court order
 8. Adequate Protection payments are commonly made to secured creditors
 9. Monthly reports are filed with the Chapter 12 Trustee to gauge the progress of the

bankruptcy

10. **Plan must be feasible** – The family farmer must be able to show the ability to make the payments under the plan from normal annual income.
11. **Avoidance of Income Taxes** – Chapter 12 provides the only opportunity for a family farmer to avoid paying income taxes that are the result of the sale or other disposition of farm assets used in the family farmer's farming operation provided that the disposition of the assets occurs in the tax year **before** filing the Chapter 12 bankruptcy. Avoidance of payment of income taxes can be the difference between a family farm bankruptcy succeeding and failing.

D. Chapter 11 – Traditional Reorganization

1. No debt limit
2. Virtually any business (except a railroad, bank, or insurance company) can be a debtor
3. Individuals, partnerships, and corporations can be Debtors
4. **Exclusive Period** (unless extended by court):
 - a. To file plan: 120 days after filing the bankruptcy
 - b. Acceptance of Plan by creditors: 180 days after filing the bankruptcy
5. Requires filing a Disclosure Statement as well as a Plan
6. The **Absolute Priority Rule** can prohibit confirmation of a Plan (*i.e.* Unless otherwise agreed by creditors, plan must provide for payment of all debt for debtor to retain ownership)
7. **Plans can generally:**
 - a. Alter interest rates on secured and unsecured debt
 - b. Alter the payback period of a loan
 - c. Provide for different treatment for various classes of claims or creditors
8. **Length of secured debt repayment:**
 - a. Real estate: 15-30 years
 - b. Machinery: 3-7 years
 - c. Breeding livestock: 3-7 years, provided that replacements are being brought back into the herd
9. **Interest rate** will generally be 2.0% greater than the yield on US Treasury Notes or US Treasury Bonds of a maturity equivalent to the length of amortization chosen for the class of claims
10. Secured debt **cannot** be obtained after filing without the approval of the court
11. Use of cash collateral is prohibited absent agreement of secured creditor, or a bankruptcy court order
12. Adequate Protection payments are commonly made to secured creditors
13. Monthly reports filed with the bankruptcy court to gauge the progress of the bankruptcy
14. Trustee fees are paid by the debtor each calendar quarter based on disbursements

IOWA EXEMPTIONS

In Iowa, the following exemptions are allowed for **each** debtor:

- **Automobile** -- \$7,000 equity in **one** motor vehicle.
- **Books** -- \$1,000 in Bibles, book collections, or family libraries.
- **Child Support and Alimony** – Child Support Payments and/or alimony to the extent reasonably necessary for the support of the debtor and dependents of the debtor.
- **Guns** – One shotgun and one rifle **or** musket. No limit on value.
- **Household goods and wearing apparel** – The debtor's interest in all wearing apparel of the debtor and the debtor's dependents kept for actual use and the trunks or other receptacles necessary for the wearing apparel, musical instruments, household furnishings, and household goods which include, but are not limited to, appliances, radios, television sets, record or tape playing machines, compact disc players, satellite dishes, cable television equipment, computers, software, printers, digital video disc players, video players, and cameras held primarily for the personal, family, or household use of the debtor and the debtor's dependents, not to exceed in value **seven thousand dollars** in the aggregate.
- **Health aids** – Professionally prescribed health aids for the debtor or a dependent of the debtor. (Eye glasses, hearing aids, wheel chairs, walkers, leg braces are examples that come to mind.)
- **Cash Value of Life Insurance** –
 - No limit if in existence more than two years prior to filing bankruptcy.
 - Limit of \$10,000 in contributions within two years of filing bankruptcy or claim of exemption.
- **Machinery, livestock, and feed for livestock, if farming** – Limit of \$10,000.
- **Pensions or annuities** on account of illness, death, or disability, or length of service.
 - IRAs, Keoghs (aka HR-10 plans), Simple IRAs, SARSEPs, and SEPPs are now exempt within limits.
 - Rollover IRAs are exempt from the claims of creditors
 - Roth IRAs in existence over two years are generally exempt provided no excess contributions were made.
 - Social security benefits, unemployment compensation and any public assistance benefit.
- **Tools or implements of a trade or business** -- \$10,000 limit.
- **Wedding ring and/or engagement ring** -- Any wedding or engagement ring owned or received by the debtor or the debtor's dependents. (Subject to some limitations).
- **Other Jewelry** -- All jewelry of the debtor and the debtor's dependents owned or received by the debtor or the debtor's dependents, not to exceed in value **two thousand dollars** in the aggregate.

- **Deposits** -- The debtor's interest, not to exceed **five hundred dollars** in the aggregate, in any combination of the following property:
 - a. Any residential rental deposit held by a landlord as a security deposit, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.
 - b. Any residential utility deposit held by any electric, gas, telephone, or water company as a condition for initiation or reinstatement of such utility service, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.
 - c. Any rent paid to the landlord in advance of the date due under any unexpired residential lease.
- **Veteran's benefits, disability or illness benefits** – are exempt from the claims of creditors.
- **Accrued Wages and Tax Refunds** – Exempt up to \$1,000. This is in addition to the garnishment limitations provided in the Iowa Consumer Credit Code.
- **Garnishment Limitations** -- The annual garnishment limitations per judgment creditor are set forth below. The balance of a person's paycheck is exempt from the claims of creditors.
 - \$250 per year if income is \$12,000 or less annually
 - \$400 per year if income is >\$12,000 but <\$16,000
 - \$800 per year if income is >\$16,000 but < \$24,000
 - \$1,500 per year if income is >\$24,000 but <\$35,000
 - \$2,000 per year if income is >\$35,000 but <\$50,000
 - 10% of expected earnings if income >\$50,000.
- **Personal Injury Settlements** -- The debtor's interest in payments reasonably necessary for the support of the debtor or the debtor's dependents to or for the benefit of the debtor or the debtor's dependents, including structured settlements, resulting from personal injury to the debtor or the debtor's dependents or the wrongful death of a decedent upon which the debtor or the debtor's dependents were dependent.
- **Wild card** -- \$1,000. This is to be used as an exemption for any type of property the debtor wishes to claim which has not previously been claimed in any of the lists set forth above.
- **Homestead exemption** – Unlimited value in a homestead up to half an acre in the city or town limits, and not to exceed 40 acres if outside an incorporated town.
 - **EXCEPTIONS TO HOMESTEAD EXEMPTIONS**
 - **Consensual liens** such as mortgages
 - Debts acquired at any time for **improvement of the homestead**
 - **Pre-existing debt** – Debt acquired before the homestead

Please note: Each family unit, whether single or married, can claim one homestead as exempt. A couple **cannot** claim two homesteads, even though they are entitled to one exempt automobile each.

NECESSARY DOCUMENTS FOR FARM DEBT RESTRUCTURING OR BANKRUPTCY

Copies of the following documents should be taken, by the farmer, to his or her attorney or account when seeking debt restructuring or bankruptcy advice:

- **Cash Flow Projections** showing how the operation is currently working and how it is projected to work if the restructuring is successful;
- **CCC Documents** which include CRP contracts, farm program documents, and any other matters involving ASCS, including notices of non-compliance;
- **Current list of all assets and liabilities** supported by appraisals;
- **Depreciation Schedules** given to creditors within the past three years;
- **(if divorced)** all divorce decrees, stipulations and/or orders relating to disposition of property (property settlements), payment of child support, and alimony;
- **Financial Statements** given to creditors within the past three years;
- **Financing Statements (UCC Statements)** signed by the Debtors at any time;
- **Guarantees** signed by the Debtors;
- **Income tax returns** filed for the past five years (for all individuals and entities seeking representation);
- **Plat Book Pages** showing every township where owned and leased property is located with the properties highlighted and the name used by the farmer when speaking of the property;
- **Leases on equipment** that are currently in force;
- **Leases on land** that are currently in force;
- **Life insurance policies** with beneficiaries designated;
- **Mortgages and deeds of trust** signed by the Debtors;
- **Promissory notes** currently in force;
- **Real estate contracts** signed by the Debtors; and
- **Security Agreements** signed at any time.

FOR CORPORATIONS (In addition to the documents listed above):

- **All corporation records**, such as record book and stock register.

FOR PARTNERSHIPS (In addition to the documents listed above):

- **All partnership documents and records**, such as partnership agreements.

The documents listed above can be obtained from the following sources:

- **Corporation or Partnership Documents** -- Can generally be obtained by asking the attorney involved in the preparation of these documents.
- **Divorce documentation** -- Can be obtained from the Clerk of Court in the county where

the divorce was granted or from the attorney involved in the divorce.

- **Equipment leases** -- Can be obtained from the leasing company.
- **Financial statements** -- Creditors must release copies of all documents signed by Debtors;
- **Financing Statements, Continuation Statements, and Amendments** -- Can be obtained from the Secretary of State as well as the involved creditors.
- **Income tax returns** -- Can be obtained from the Internal Revenue Service or the farmer's tax preparer if the farmer has not retained copies. The tax preparer generally retains a copy of all income tax returns prepared by them.
- **List of assets and liabilities** -- Must be supplied by the farmer. In the event appraisals have not been taken, a list of assets and liabilities with the farmer's best estimate of value for assets and the extent of liabilities is a good starting point.
- **Mortgages** -- Can be obtained from the County Recorder in the county where the real estate is located. A Mortgage and a Deed of Trust are essentially the same type of document and both would be a matter of public record in the county where the real estate is located.
- **Promissory Notes** -- Can be obtained from the creditors involved. The creditors must provide copies of notes, mortgages, security agreements, loan agreements and other loan documents if requested by the borrowers.
- **Written Real Estate Leases** -- If recorded, can be obtained from the County Recorder. Otherwise, ask the landlord for a copy.
- **Security Agreements** -- Must be provided to the Debtors upon request, like notes and financial statements given to creditors.

GLOSSARY

A

Absolute priority rule – A bankruptcy rule which states that no creditor in a lower class of creditors may be paid or retain any of the debtor’s property until classes with higher priorities have been paid in full.

Acceleration clause – A provision in a credit agreement which allows a creditor the opportunity to immediately demand repayment of an entire amount of debt owed because of a debtor’ default.

Adequate Protection – Typically payments to a secured creditor during a bankruptcy for the privilege of using the collateral. Can also include other assurances of protection of collateral such as payment of real estate taxes and providing insurance.

Administrative Expense – Expenses which occur during the bankruptcy, such as attorney fees, trustee fees, appraiser fees, accountant fees, Unites States Trustee fees (Chapter 11 only), and other costs of preserving the bankruptcy estate such as utilities, insurance, and rent.

Amortization – The length of time over which a loan is repaid; e.g., five years, seven years, thirty years.

Answer – A written statement by a defendant in a lawsuit stating the reasons for their defenses to the statements made by the plaintiff.

Attachment – A legal proceeding whereby a creditor seeks to have the court enter an order which will prohibit the debtor from selling or disposing of the collateral securing the creditor’s loan.

Automatic stay – A provision of the bankruptcy code which effectively stops all collection activities by creditors once a bankruptcy is filed.

B

Balance Sheet – A listing of all assets with values and a listing of all debts of a Debtor; synonymous with Financial Statement.

Bankruptcy – A condition where a debtor cannot pay debts now or as they come due and uses the protection of the law to either liquidate property or reorganize his or her financial affairs.

Bankruptcy Code – Federal law which governs bankruptcy proceedings.

Bankruptcy court – Special courts under federal law which deal exclusively with administering bankruptcy proceedings, presided over by a bankruptcy judge.

Bankruptcy estate – The property of a debtor, which comes under the jurisdiction of the bankruptcy court and trustee when a person files for protection under the Bankruptcy Code.

Bankruptcy trustee – A person appointed by the bankruptcy court to take charge of the bankruptcy estate and handle any actions on behalf of the estate.

C

Capital gain – The difference between the net sales price and the adjusted basis of the property sold.

Cancellation of debt income – Taxable income realized by a Debtor whose debt has been canceled or forgiven. This income is not taxed if the Debtor is insolvent before and after the cancellation or if the debt is discharged in bankruptcy.

Cash collateral – Money or the equivalent of money including the proceeds from the sale of

collateral securing the repayment of indebtedness to a creditor.

Chattel – Moveable property; see also personal property.

Collateral – Property which a debtor agrees to pledge as security for the repayment of a debt.

Confirmation – Approval by the bankruptcy court of a debtor's plan or reorganization under Chapter 11, 12, or 13.

Continuation Statement – A written statement filed with the Secretary of State or County Recorder which extends the effectiveness of a Financing Statement for 5 years.

Creditor – One whom is owed money or other things by obligation or promise.

Cross-collateralization – Typical provision of creditor's security documents which pledges collateral for all loan obligations to the creditor. E.g., if cross-collateralized, a security interest in farm equipment would also secure repayment of all other debts owed to the same creditor.

D

Debtor – One who owes a debt.

Deed of trust – A lien on real property – synonymous with a mortgage in Iowa.

Default – A failure to perform an obligation imposed by law or contract.

Deficiency – Unpaid balance of a debt secured by property on which there is a security agreement, where the sale of the property has failed to pay the full amount of the debt owed.

Deficiency judgment – court order for personal liability of the debtor on an obligation in which the

collateral securing the obligation has a value less than the obligation.

Discharge – The cancellation of an obligation; in bankruptcy, the cancellation or forgiveness of indebtedness.

Disclosure Statement – A document filed in a Chapter 11 bankruptcy which basically explains the circumstances leading to the bankruptcy, explains the provisions of the Plan and gives information to the creditors which should be useful to them in making their decisions regarding voting on the Plan of Reorganization.

District court – In Iowa, the courts named by county, where most civil actions are begun.

E

Eviction – The action of depriving a person of the possession of land or rental property which the person has held or leased.

Exclusive period – In a Chapter 11 bankruptcy, the 120-day period of time after filing the bankruptcy during which only the Debtor can file a Plan of Reorganization and seek the 180-day acceptance of the Plan by creditors.

Execution – Legal process of enforcing a judgment. On a money judgment, usually is handled by seizing and selling property of the debtor.

Executory contract – A contract in which performance of obligations under the contract is owed by the parties to each other. Examples of Executory Contracts in Iowa are real estate purchase contracts and leases.

Exemption – Privilege allowed by law to a judgment debtor that they may hold certain property from all liability to being seized or sold on

execution or by any other court order.

F

Financial Statement – A listing of all assets with values and a listing of all debts of a Debtor; synonymous with Balance Sheet.

Financing statement – A document, signed by the debtor and filed with the Secretary of State or with the County Recorder describing collateral pledged to a creditor, to perfect its security interest on the collateral. It remains effective for 5 years from the date of filing.

Foreclosure – Process by which a creditor with a mortgage can force a debtor to give up his or her interest in the property because of default and have the property sold to satisfy the debt. Also may be referred to as foreclosure by sale or performance foreclosure. See also strict foreclosure.

Forfeiture – Process by which a seller of real estate contract can force a debtor to give up his or her interest in the property because of a default in compliance with the terms of the contract.

G

Garnishment – A process under law where a debtor's property, money or credits under another party's control are applied as payment of a debt to a creditor.

Guarantee – Legal obligation of one party to be responsible for payment of the debts of another party. Creditor is not required to notify the guarantor of default of the debtor on the underlying debt in order to collect. Also known as Continuing Guarantees.

H

Homestead – In Iowa, a building which can be used for a home and an amount of land not to exceed one-half acre inside city limits and not to exceed 40 acres if outside the city limits.

I

Impaired claims – claims in a bankruptcy that are not being paid according to the original agreements that existed at the time the bankruptcy was filed. Impairment can result from a change in the length of repayment, a change in the dates of repayment, a change in collateral securing the repayment, or a change in the interest rate charged.

Interest – Right or legal share in something.

J

Judgment – Determination of law as the result of an action in court whether a legal duty or liability does or does not exist. This judgment is then filed with the Secretary of State or with the County Recorder.

Judgment creditor – A person who has obtained a money judgment in court and can now enforce the judgment by execution.

Judgment debtor – A person who has a money judgment taken against him or her which has not been satisfied.

Judgment lien – A lien which can be filed by a judgment creditor against real property of a judgment debtor in order to satisfy the judgment.

L

Land contract – Installment agreement for the purchase and sale of land; and a land contract is the same as a real estate contract.

Lien – An interest in collateral which provides that the collateral may be taken and sold in order to pay a debt if a debtor defaults. See also security interest.

Lifting the automatic stay – Procedure whereby the bankruptcy court gives the creditor permission to begin its collection procedure.

Liquidation analysis – Calculation of the payment to various classes of creditors in a reorganizational bankruptcy in the event that the property were to be liquidated under a Chapter 7 bankruptcy.

M

Mediation – The process of negotiation and communication between a farmer and creditors which leads to the mediation agreement or mediation release.

Mediation Agreement – A written document negotiated in mediation which sets forth the terms of a settlement between a farmer and some or all of the farmer's creditors.

Mediation release – In Iowa, the written document necessary for a creditor to begin collection proceedings against a farmer.

Mortgage – A lien on real property.

N

Net disposable income – In a Chapter 12 bankruptcy, income remaining after the Debtor has made planned payments and has utilized or retained a reasonable amount for living expenses.

O

Original notice and complaint – Documents used to bring a civil action.

P

Perfection – the process which establishes the priority of a creditor's lien interest in property owned by the debtor. In Iowa, perfection is accomplished as is set forth below:

- **Airplanes** – Filing with the F.A.A. in Oklahoma City, Oklahoma.
- **Chattels** – Financing Statement filed with the Secretary of State of the state where the business is incorporated.
- **Fixtures** – Financing Statement filed with the County Recorder where the fixtures and real estate are located.
- **Judgments** – Transcription in the county where the real estate is located.
- **Motor vehicles** – Notation of lien on title of vehicle.
- **Real estate** – Filing mortgage, assignment, deed of trust or real estate contract with the County Recorder where the land is located.
- **Stock/Securities** – Possession required.

Personal property – Movable property. See also chattel.

Priority creditor – Creditors whose claims have a higher priority of payment under the bankruptcy code than claims held by unsecured creditors. Examples include administrative expenses, certain wage claims, and taxes (both income and real estate).

Promissory note – In essence, an I.O.U. which states the amount of debt and the terms of repayment.

Purchase money security interest – A lien which is created when a debtor uses money loaned by a creditor to make a purchase and gives the creditor a lien on the property purchased with the creditor's money.

R

Reaffirmation agreement – An agreement between a Chapter 7 Debtor and a creditor in which the Debtor agrees to repay all or part of the debt owed to the creditor.

Real property – Land, real estate.

Redemption – the right of a debtor to regain title to property under a foreclosure judgment by paying the judgment or fulfilling other conditions. Junior creditors also have redemption rights.

Replevin – An action brought by the plaintiff or claimant for the return of personal property which the claimant believes has been wrongfully detained or taken from him or her. This typically occurs when a creditor seeks to have the personal property securing the indebtedness to that creditor ordered to be turned over to the creditor by the court.

S

Secured debt – Debt which has property pledged to ensure repayment of an obligation.

Secured party – A creditor, seller or other person who holds a security interest or other secured lien in property of a debtor.

Security agreement – A written document, which creates or provides for a security interest.

Security interest – An interest in collateral, which provides that the collateral may be taken and sold in order to satisfy a debt if a debtor defaults. See also lien.

Small claims court – In Iowa, a special court which provides quicker, more informal and expensive judgments in actions for evictions, replevin of property valued at \$5,000 or less and money judgments for \$5,000 or less.

Strict foreclosure – Process by which the creditor receives title to real property without a period of redemption or sale of the property in exchange for having no right to obtain a deficiency judgment.

Subordination – A written agreement between creditors which alters the priority of creditors upon the liquidation of collateral.

T

Tax attributes – colloquially known as tax goodies, which include net operating loss carry forward; investment tax credit; basis in assets.

Termination statement – A written document filed with the Secretary of State or County Recorder ending the effectiveness of a Financing Statement.

U

Unsecured debt – Debt not subject to a security interest.

Unsecured party – A creditor, seller or other person who is owed a debt without having obtained a security interest through a security agreement on property of the debtor.