Business Reorganization Under Chapter 11 of the Bankruptcy Code
(Commercial Bankrputcy)

Typically, Chapter 11 is used to reorganize a business which may be a corporation, sole proprietorship or partnership. Chapter 11 bankruptcy proceedings may be voluntary or involuntary. There is a two-pronged test to help determine whether a company qualifies to file a Chapter 11 bankruptcy as a "small business" case. The company must first partake in commercial and business activities with debts being non-contingent, liquidated, secured and unsecured debts that are less than $2,119,000. Second, the company must never have been appointed a creditors' committee that was appointed by a U.S. Trustee, or the court must determined the committee is inactive and will not influence the current petition.

The Federal Bankruptcy Code states that in a Chapter 11 bankruptcy case a company is protected from claims by creditors while it attempts to reorganize its finances under a plan approved by the court. This is also referred to as the automatic stay. The automatic stay provides a period of time in which all judgments, collection activities, foreclosures, and repossessions of property are suspended and may not be pursued by the creditors on any debt or claim that arose before the filing of the bankruptcy petition. As with cases under other chapters of the Bankruptcy Code, a stay of creditor actions against the chapter 11 debtor automatically goes into effect when the bankruptcy petition is filed. Under certain circumstances a secured creditor can obtain an order from the Court granting relief from the automatic stay.

Chapter 11 is also referred to as "reorganization" because the business is given a period of time to create a plan that will reconstruct the company and help to relieve the financial problems for the company.

In the beginning of this process, a company will file a petition in their local bankruptcy court. When a company files their petition, they must attach a schedule of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and leases, a statement of financial affairs, and the past two years tax returns.

In the case where an individual who runs a company files for bankruptcy, other documents are required to be attached to the petition, such as a certificate of credit.

The company must be prepared to pay a filling fee of approximately $1,000.00 and an administrative fee of approximately $39.00; however, these fees frequently change.

The voluntary petition will include standard information concerning the debtor's name(s), the last four digits of the debtor's social security number or the business tax identification number, residence, location of principal assets (if a business), the debtor's plan or intention to file a plan, and a request for relief under the appropriate chapter of the Bankruptcy Code. Upon filing a voluntary petition for relief under chapter 11 or, in an involuntary case, the entry of an order for relief, the debtor automatically assumes an additional identity as the "debtor in possession." The term refers to a debtor that keeps possession and control of its assets while undergoing a reorganization under chapter 11,

without the appointment of a case trustee. A debtor will remain a debtor in possession until the debtor's plan of reorganization is confirmed, the debtor's case is dismissed or converted to chapter 7, or a chapter 11 trustee is appointed. The appointment or election of a trustee occurs only in a small number of cases. Generally, the debtor, as "debtor in possession," operates the business and performs many of the functions that a trustee performs in cases under other chapters. These duties, set forth in the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, include accounting for property, examining and objecting to claims, and filing informational reports as required by the court and the U.S. trustee or bankruptcy administrator, such as monthly operating reports.

After the petition is filed, the automatic say takes effect which prevents all judgments, collections, foreclosures, and repossessions from taking place. This period of time is used to attempt to resolve some of the company's financial problems

The U.S. Trustee monitors the progress of the chapter 11 case and supervises its administration. He will asses the company's capability, the progress on the company's plan of reorganization and discuss the different reports the company must complete. It is very important that the company be aware of the deadlines for the reports to be filed because in some cases it is challenging to attain extensions. By law, the Debtor must pay a quarterly fee to the U.S. Trustee for each quarter of a year until the case is dismissed or converted. The amount of the fee will depend on the Debtor's disbursements each quarter. In small business cases, the process varies because the case is put on a fast track and limits the amount of time a company has to file a plan. For example, a small company must file their plan in the first 180 days after filing their petition and may receive an extension during the "exclusivity period" of 300 days, but only if the court believes the extra time will be useful. However, in a large commercial bankruptcy case the "exclusivity period" could last up to 18 months. If a company is classified as a small business they need be aware of the different procedures.

The U.S. Trustee acts as the moderator between the creditor and the company. The Trustee is allowed to conduct a "section 341 meeting", in which the company under oath is question by the Trustee and the creditors. Another responsibility of the Trustee is to appoint a creditor's committee, which consist of the seven creditors who hold the largest unsecured claims. The committee is allowed to investigate the company's operations and help the company to create a plan. After appointing a committee, the company must file a disclosure statement, which a court must approve. The disclosure statement is a document that discusses information about the company and assists the creditors who hold the claims to make an informed decision about the plan. Following the approval of the disclosure statement, the next step is the acceptance of the plan of reorganization. The plan must include the classifications of the claims and the treatment plan for reorganization. After the plan is submitted, any party involved in the case can file and objection to the plan. If there are no objections filed, a hearing is held to confirm the plan if it meets the all the required criteria. The plan must be practical, submitted on time and in good faith. It must meet the requirements of the Bankruptcy Code. The Court must find that confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization.

Before the plan goes into effect, the parties in the case may file a postconfirmation modification of the plan, which allows the parties to make adjustments to the plan. However, the adjustments must be approved.

A final decree closing the case will be entered after the estate has been "fully administered.