

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

by:

**Hon. Michelle V. Larson, U.S. Bankruptcy Court
Northern District of Texas, Dallas Division**

Todd Headden – Hayward PLLC

Moderator: Areya Holder Aurzada – Holder Law

*Materials originally prepared in large part by the Hon. Eduardo V. Rodriguez, U.S. Bankruptcy Court, Southern District of Texas, McAllen Division, and with the assistance of Terrence Wicks, Southern Methodist University School of Law Student and Extern to Hon. Michelle V. Larson

1

1

DISCLAIMER

This material does not constitute the official position of the authors or presenters and should not be construed as an indication of future rulings involving the Small Business Reorganization Act or the Bankruptcy Code.

2

2

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);

3

3

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.

4

4

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.

5

5

Subchapter V: Some New Surprises from around the Country



6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Subchapter V: The Small (and Not So Small) Business Debtor

First appeared as part of the conference materials for the
41st Annual Jay L. Westbrook Bankruptcy Conference session
"Subchapter V: The Small (and Not So Small) Business Debtor"