

## Tip # 7: Reorganization plans vary greatly, but the rules behind them don't.

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As explored in our prior Tips in this series, there are many options for restructuring a struggling small business—formal restructuring vs informal workouts (see Tip #1), liquidation vs reorganization (see Tip #4), state law alternatives vs a federal bankruptcy case (see Tip #5), and Subchapter V vs traditional Chapter 11 (see Tip #6). If a reorganization under a Chapter 11 bankruptcy case seems to be the best fit, the next question usually asked by the business to its Bankruptcy and Restructuring attorney is what the plan of reorganization will be.

There is no one path to reorganization in a Chapter 11 case. Just as every small business is unique, so too are their reorganization plans. Your attorney can and should guide you through your options. However, your attorney can't tell you what your plan should be. No one knows the needs and strengths of your small business like you do. The development of a reorganization plan is a collaborative process between the small business and its Bankruptcy and Restructuring attorney.

The result of that collaborative process, in a Chapter 11 case, is a Plan of Reorganization. A Plan of Reorganization, or Plan for short, is an actual binding document in a Chapter 11 case. It is proposed by the debtor or another party involved in the case (except in a Subchapter V case where only the debtor may propose a plan – See Tip # 6 for more details on that) and must be approved the Bankruptcy Court to become effective. A Plan details how the business will continue to operate or liquidate (more to come on liquidating Plans in Tip #8) during a fixed amount of time. Usually 3-5 years. The Plan must also describe how the business will pay the claims of its creditors—and, for those that don't have to be paid in full, how much—during that same fixed time. If the court-approved Plan is successfully completed, the business will emerge at the end of the Plan term with a clean slate.

As long as the Plan complies with certain rules outlined in the Bankruptcy Code and you can show the Plan is feasible, there really are no limits on the specifics. Those basic Bankruptcy Code rules include:

- Which claims must be paid in full and those that can be discharged without full (if any) payment
- The order in which claims must be paid by type –secured, priority unsecured, general unsecured and equity
- The timing of payments for certain categories of claims
- How long you must make payments under your Plan
- How leases and executory contracts can be treated
- Who can propose a Plan and when during the bankruptcy case
- Whether you need creditor support for your Plan and how that support is counted
- How you can still confirm a Plan without creditor consent or support in some circumstances

It is your Bankruptcy and Restructuring attorney's job to understand the rules and help you successfully navigate them. Your attorney also has practical experience of what has and has not worked in other cases. The details of the Plan, beyond the basic rules, are tailored by you and your attorney to your business needs. For example, if your business is seasonal, your Plan can delay some payments until your peak season. The key is demonstrating your proposed Plan terms are fair, reasonable, and, most importantly, feasible.