

In February 2020, the Small Business Reorganization Act (SBRA), a new bankruptcy procedure for small businesses and individuals, went into effect. Since the onset of the COVID-19 pandemic and resulting economic hardships, it has become even more important for small businesses to understand their options under the SBRA.

## What is the SBRA?

The SBRA provides a streamlined and more cost-effective way for small business and individuals to restructure their debts.

## Who Qualifies to File Bankruptcy Under the SBRA?

Both small businesses and individuals (including sole proprietors) can file under the SBRA as long as the debtor has noncontingent liquidated debt (either unsecured or secured) excluding debts owed to affiliates or insiders of not more than \$2,725,625. **Importantly, the CARES Act has increased this threshold to \$7,500,000 for the next year.** Not less than 50% of the debt must have arisen from commercial or business activities. While single asset real estate entities do not qualify under the SBRA, owners and operators of real estate are eligible.

## What are the Advantages of the SBRA?

The SBRA provides for a more cost-effective and quicker restructuring process.

**Cost-savings:** (1) There is no creditors' committee (unless ordered by the Judge); (2) there are no quarterly US Trustee fees; and (3) legal fees will be less because the requirements for reorganization plans are less onerous and a lengthy Disclosure Statement is not required.

**Quicker Process:** (1) The Court must conduct a status conference no later than 60 days after the entry of the order for relief in order "to further the expeditious and economical resolution" of the case; (2) the Reorganization Plan must be filed within 90 days of the entry of the order for relief; and (3) the discharge of debts occurs upon confirmation of a consensual plan as opposed to after all payments are made or after three years if a nonconsensual plan is confirmed.

**Better for Owners:** (1) Only the Debtor may file the Reorganization Plan (creditors cannot file competing plans); (2) the Plan can be confirmed with consent of creditors and even without the consent of a single creditor as long as the payment plan is "fair and equitable"; and (3) Owners may maintain equity interests even if all senior creditors are not paid in full (subject to the "fair and equitable" requirements).

**Disclaimer:** This paper is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Please consult with an attorney for advice about your particular situation as it pertains to the SBRA. If you would like to speak with an attorney at Lasky Murphy, please contact our office at (504) 603-1500.