

Broward County Bar Association

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**The Nuts and Bolts of Subchapter V
of Chapter 11:**

**A New and Cost-Effective Choice for Small
Business Debtors**

Presented by:

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I. **Basic Overview of Chapter 11 Bankruptcy and Major Differences Between a Small Business Debtor Reorganization and a “Regular” Reorganization**

A. **Quick Overview of Chapter 11 and Why a Change Was Needed**

- A Chapter 11 bankruptcy is time-consuming, costly and has substantial reporting burdens. Additionally, creditors currently have much leverage under the existing Chapter 11 provisions. A Small Business Debtor Reorganization attempts to address these concerns by giving small businesses a better chance of successfully reorganizing, rather than simply liquidating.
- A new subchapter of Chapter 11 (Subchapter V) was created, called a “Small Business Debtor Reorganization”, or SBDR. To be eligible, a debtor must have no more than \$2,725,625 of debt. Both companies and individuals are eligible to file an SBDR, so long as at least 50 percent of the pre-petition debt arose from commercial or business activities. Given this debt limitation, more than half of all debtors who file Chapter 11 would be eligible to file an SBDR. Some benefits include:
 - **Streamlined Process.** To start, an SBDR is a simplified procedure compared to existing Chapter 11. Under the Act, only the debtor may file a plan, and that plan must be filed within 90 days after the petition date. In addition, there is no creditors’ committee, unless ordered by the court. A disclosure statement, which is typically a long document describing the plan, is no longer necessary under the Act.
 - **Easier Path to Reorganization.** The most powerful aspect of the Act, however, is that it makes a successful reorganization more of a possibility. Currently, at least one class of creditors whose rights are being modified in the plan must vote in favor of the plan for that plan to be confirmed. Therefore, if no creditors vote to accept a plan, the plan cannot be approved by the court. The Act does away with this requirement. If all other requirements under the law are met, then a plan can be confirmed even if all creditors reject the plan, or do not vote at all.
- Additionally, it is typically very difficult for a business owner to retain his or her equity interest in the reorganized Chapter 11 debtor. With certain exceptions, all creditors must be paid before a business owner can retain

his or her equity interest. This is known as the “absolute priority rule”. The Act does away with the “absolute priority rule”. It will now be much easier for a business owner to retain his or her equity interest in the business. This rule was replaced by other, more relaxed, requirements, which essentially require that the debtor’s disposable income, for a period between 3 to 5 years, be devoted to payments under the plan.

- **Trustee.** One of the controls put in place to ensure that small business debtors comply with all of their requirements under the Act is that a trustee, with limited duties and powers, will be appointed in every case. The trustee’s role is to facilitate the development of a consensual plan and make distributions under the plan, while the debtor still runs the business.
- In enacting the SBRA, the House Judiciary Committee stated: Small businesses--typically family-owned businesses, startups, and other entrepreneurial ventures— “form the backbone of the American economy.” By their very nature, however, the longevity of these businesses is limited. According to the Small Business Administration Office of Advocacy, approximately 20 percent of small businesses survive the first year, but by the five-year mark only 50 percent are still in business and by the ten-year mark only one-third survive. Notwithstanding the 2005 Amendments, small business chapter 11 cases continue to encounter difficulty in successfully reorganizing...the legislation allows these debtors “to file bankruptcy in a timely, cost-effective manner, and hopefully allows them to remain in business” which “not only benefits the owners, but employees, suppliers, customers, and others who rely on that business.” Report of Committee on the Judiciary, House of Representatives, Report 116-171, 116th Cong., 1st Sess., on Small Business Reorganization Act of 2019, at 1 -2.
- Chapter 11 bankruptcy is governed by 11 U.S.C. § 1101 et. seq. enacted in 1978, effective in 1979 and amended multiple times thereafter
- Amendments in 2017 enabled small businesses to elect “small business case” treatment which “simplified” certain provisions of chapter 11
- On August 23, 2019, the “Small Business Reorganization Act of 2019” (“SBRA”) was signed into law as a new subchapter V of chapter, codified 11 U.S.C. §§ 1181 – 1195
- Due to the crises faced by business as a result of the COVID-19 pandemic, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) on 3/27/20 which modified, on a temporary basis, the SBRA.

- The SBRA originally defined a “small business debtor” as “a person or entity engaged in commercial or business activity with aggregate secured and unsecured debts of \$2,725,625.”
- The SBRA debt ceiling increased under the CARES Act, to \$7,500,000.
- The COVID 19 Bankruptcy Relief Extension Act of 2021 amended the SBRA to (1) exclude certain COVID-19 aid payments from income for the purposes of bankruptcy, and (2) increased the debt eligibility threshold for businesses qualifying for certain types of Chapter 11 reorganization bankruptcy extended the expiration date of the \$7.5 million debt limit to March 27, 2022. Public Law No: 117-5
- Bankruptcy Threshold Adjustment and Technical Corrections Act; S. 3823 – 117th Congress: Passed in the Senate on April 7, 2022, but has been held at the House: Increases the debt limit back to \$7.5 million not less than 50% of which arose from commercial or business activities of the debtor.

II. Eligibility Issues

- a. Debt Limitation
- b. Engaged in business
- c. Types of debts (consumer versus non-consumer)

Who is eligible? 11 U.S.C. § 1182

- A person *engaged in* commercial or business activities (including an affiliated Ch. 11 debtor)
 - With aggregate noncontingent liquidated secured and unsecured debts in an amount not more than \$2,725,625.
 - At least 50% of debt is from the commercial or business activities of the debtor.

Who is not eligible?

- Debtor whose primary business activity is OWNING Single Asset Real Estate businesses are explicitly excluded.
- Businesses cannot be publicly traded.
- Businesses cannot be an “affiliated issuer”.

Selected Eligibility Issues Opinions:

- In re Quadruple D Trust, 2022 WL 819297 (Bankr.D.Colo.2022)
- In re Offer Space, LLC, 2021 WL 1582625 (Bankr. Utah 2021)
- In re Johnson, 2021 WL 825156 (Bankr. N.D. Tex. 2021)
- In re Vertical Mac Constr., LLC, 2021 WL 3668037 (Bankr. M.D. Fla. 2021)
- In re 218 Jackson LLC 2021 WL 3669371 (Bankr. M.D.Fla.2021)
- In re Family Friendly Contracting LLC, 2021 WL 5540887 (Bankr.D.Md.2021)
- In re Rickerson 636 B.R. 416 (Bankr. W.D.Pa. 2021)
- In re McCune, 635 B.R. 409 (Bankr.D.N.M.2021)
- In re Mongeau 633 B.R. 387 (Bkrtcy.D.Kan.2021)
- In re Blue, 630 B.R. 179 (Bankr. M.D.N.C. 2021)
- In re Offer Space, 629 B.R. 299 (Bankr. D. Utah 2021)
- In re Port Arthur Steam Energy, L.P., 629 B.R. 233 (Bankr. S.D.Tex. 2021)
- In re Thurmon, 625 B.R. 417 (Bankr. W.D. Mo. 2020)
- In re Blachard, 2020 WL 4032411 (Bankr. E.D. La. 2020)
- In re Two Wheels Properties, LLC. 625 B.R. 869 (Bankr. S.D.Tex. 2020)
- In re Seven Stars on the Hudson Corp., 618 B.R. 333(Bankr. S.D. Fla. 2020)
- In re Ventura, 615 B.R. 1 (Bankr. E.D.N.Y. 2020)

III. The Subchapter V Trustee

- §1183(a) provides for appointment of a standing trustee by the UST or if there is no standing trustee a trustee in every case.
- Not an operational trustee and only operates the debtor's business if the debtor is removed as a DIP.
- Trustee's service terminates upon substantial consummation of a plan unless reappointed by U.S. Trustee to modify a plan after confirmation or if debtor is removed as DIP.
- Trustee will provide to the UST a "verified statement" that they are disinterested, stating their rate of compensation and accepting the appointment.

The Trustee's Duties Include:

- Appear at §1188 status conference and at any hearing concerning (a) value of property subject to a lien, (b) confirmation of a plan, (c) modification of a plan post-confirmation, (d) the sale of property
- Account for all property received, examining proofs of claim, opposing a debtor's discharge where "advisable", furnishing information about the estate to any party in interest, and filing a final report and accounting.
- If ordered (a) investigate debtor's acts, conduct, assets, liabilities, financial condition and operations of the debtor, whether the business should continue, and "any other matter relevant to the case or to the formulation of a plan"; (b) furnish information to taxing bodies for any year where debtor did not file a tax return, and (c) filing post-confirmation reports as necessary or as ordered by the Court
- Ensure debtor makes timely plan payments
- Provide domestic support obligation notices per §704(c)(1)
- Help in the development of a consensual plan

IV. The Plan

a. Timing

b. Debtor has Exclusive Right to File Plan

c. Plan Content Requirements

- Only a debtor can file a plan
- Eliminates separate disclosure statement
- A plan can provide for payments to creditors over 3-5 years
- SBRA Trustee collects and distributes plan payments to creditors
- SBRA Trustee fees are paid under plan, based upon trustee's hourly billed fees.
- Administrative claims can be paid over the life of the plan (3 to 5 years)
- § 1190(3) permits modification of claims secured by mortgages on the debtor's principal residence (unlike § 1123(b)(5), which precludes modifications of claims secured by mortgages on a debtor's principal residence)
- The Court can confirm a plan even if all classes reject it!
- The debtor does not need to file a separate disclosure statement, but the plan must set out a history of the debtor's operations, a liquidation analysis and a feasibility analysis (*i.e.*, debtor's analysis and projections of debtor's ability to perform under the plan and make payments). Section 1181.
- If Court orders compliance with section 1125, then under 1187(c) expedited procedures of section 1125(f) apply.
- Only the debtor may file a plan. Section 1189(a). There is no competing plan challenge under the SBRA.
- Section 1190 sets out the required contents of a plan.
- Plan must be filed within 90 days, time may be extended if the extension need is attributable to circumstances for which the debtor should not justly be held accountable. §1189 (b)

- Plan shall be no less than 3 no more than 5 years.
- An individual debtor can modify a non-purchase money mortgage on principal residence, where the loan was used primarily in connection with the debtor's business. §1190(3)
- Administrative expense claims can be paid over the life of the plan. §1191(e)
- Absolute priority rule eliminated: existing equity can retain their interests even though creditors are not paid in full.
- Trustee distributes payments to creditors §1190(2)

V. Confirmation of the Plan and Discharge
a. Consensual Plans versus Non-Consensual Plans
b. Cramdown – Disposable Income
c. No Absolute Priority Rule
d. Other Requirements
e. Post-Confirmation Issues

- A plan is fair and equitable if the plan commits all projected net disposable income for a period of three to five years to payments under the plan (the “best efforts test”). § 1191(c)(2).
- Disposable income defined in 1191(d) – essentially same as before SBRA – everything but maintenance, DSO, necessary business expenses
- The debtor must demonstrate a “reasonable likelihood” that it will be able to make all payments under the plan, and the plan must provide “appropriate remedies, which may include the liquidation of nonexempt assets” to protect creditors if the debtor fails to make plan payments. § 1191(c)(3)(A)(i).

VI. Case Studies

VII. Conclusion/Q&A

Resources:

A Guide to the Small Business Reorganization Act of 2019, by Judge Paul W. Bonapfel, U.S. Bankruptcy Judge, N.D. Ga.:

<http://www.gamb.uscourts.gov/USCourts/news/small-business-reorganization-act-2019-1>

The Small Business Reorganization Act: see following pages

§ 1181. Inapplicability of other sections

(a) In general.--Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a) (15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.

(b) Court authority.--Unless the court for cause orders otherwise, paragraphs (1), (2), and (4) of section 1102(a) and sections 1102(b), 1103, and 1125 of this title do not apply in a case under this subchapter.

(c) Special rule for discharge.--If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

 **§ 1182. Definitions**

In this subchapter:

(1) Debtor.--The term “debtor”--

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

(B) does not include--

(i) any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$7,500,000 (excluding debt owed to 1 or more affiliates or insiders);

(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

(iii) any debtor that is an affiliate of an issuer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

(2) Debtor in possession.--The term “debtor in possession” means the debtor, unless removed as debtor in possession under [section 1185\(a\)](#) of this title.

 **§ 1183. Trustee**

(a) In general.--If the United States trustee has appointed an individual under [section 586\(b\) of title 28](#) to serve as standing trustee in cases under this subchapter, and if such individual qualifies as a trustee under [section 322](#) of this title, then that individual shall serve as trustee in any case under this subchapter. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case, as necessary.

(b) Duties.--The trustee shall--

- (1)** perform the duties specified in [paragraphs \(2\), \(5\), \(6\), \(7\), and \(9\) of section 704\(a\)](#) of this title;
- (2)** perform the duties specified in [paragraphs \(3\), \(4\), and \(7\) of section 1106\(a\)](#) of this title, if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;
- (3)** appear and be heard at the status conference under [section 1188](#) of this title and any hearing that concerns--
 - (A)** the value of property subject to a lien;
 - (B)** confirmation of a plan filed under this subchapter;
 - (C)** modification of the plan after confirmation; or
 - (D)** the sale of property of the estate;
- (4)** ensure that the debtor commences making timely payments required by a plan confirmed under this subchapter;
- (5)** if the debtor ceases to be a debtor in possession, perform the duties specified in [section 704\(a\)\(8\)](#) and [paragraphs \(1\), \(2\), and \(6\) of section 1106\(a\)](#) of this title, including operating the business of the debtor;
- (6)** if there is a claim for a domestic support obligation with respect to the debtor, perform the duties specified in [section 704\(c\)](#) of this title; and
- (7)** facilitate the development of a consensual plan of reorganization.

(c) Termination of trustee service.--

(1) In general.--If the plan of the debtor is confirmed under [section 1191\(a\)](#) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and [section 1185\(a\)](#) of this title.

(2) Service of notice of substantial consummation.--Not later than 14 days after the plan of the debtor is substantially consummated, the debtor shall file with the court and serve on the trustee, the United States trustee, and all parties in interest notice of such substantial consummation.

§ 1184. Rights and powers of a debtor in possession

Subject to such limitations or conditions as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under [section 330](#) of this title, and powers, and shall perform all functions and duties, except the duties specified in [paragraphs \(2\), \(3\), and \(4\) of section 1106\(a\)](#) of this title, of a trustee serving in a case under this chapter, including operating the business of the debtor.

§ 1185. Removal of debtor in possession

(a) In general.--On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.

(b) Reinstatement.--On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

§ 1186. Property of the estate

(a) Inclusions.--If a plan is confirmed under [section 1191\(b\)](#) of this title, property of the estate includes, in addition to the property specified in [section 541](#) of this title--

(1) all property of the kind specified in that section that the debtor acquires after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first; and

(2) earnings from services performed by the debtor after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first.

(b)Debtor remaining in possession.--Except as provided in [section 1185](#) of this title, a plan confirmed under this subchapter, or an order confirming a plan under this subchapter, the debtor shall remain in possession of all property of the estate.

§ 1187. Duties and reporting requirements of debtors

(a)Filing requirements.--Upon electing to be a debtor under this subchapter, the debtor shall file the documents required by subparagraphs (A) and (B) of [section 1116\(1\)](#) of this title.

(b)Other applicable provisions.--A debtor, in addition to the duties provided in this title and as otherwise required by law, shall comply with the requirements of [section 308](#) and paragraphs (2), (3), (4), (5), (6), and (7) of [section 1116](#) of this title.

(c)Separate disclosure statement exemption.--If the court orders under [section 1181\(b\)](#) of this title that [section 1125](#) of this title applies, [section 1125\(f\)](#) of this title shall apply.

§ 1188. Status conference

(a)In general.--Except as provided in subsection (b), not later than 60 days after the entry of the order for relief under this chapter, the court shall hold a status conference to further the expeditious and economical resolution of a case under this subchapter.

(b)Exception.--The court may extend the period of time for holding a status conference under subsection (a) if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

(c)Report.--Not later than 14 days before the date of the status conference under subsection (a), the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.

§ 1189. Filing of the plan

(a)Who may file a plan.--Only the debtor may file a plan under this subchapter.

(b)Deadline.--The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

§ 1190. Contents of plan

A plan filed under this subchapter--

(1) shall include--

(A) a brief history of the business operations of the debtor;

(B) a liquidation analysis; and

(C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

(2) shall provide for the submission of all or such portion of the future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; and

(3) notwithstanding [section 1123\(b\)\(5\)](#) of this title, may modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was--

(A) not used primarily to acquire the real property; and

(B) used primarily in connection with the small business of the debtor.

§ 1191. Confirmation of plan

(a) Terms.--The court shall confirm a plan under this subchapter only if all of the requirements of [section 1129\(a\)](#), other than paragraph (15) of that section, of this title are met.

(b) Exception.--Notwithstanding [section 510\(a\)](#) of this title, if all of the applicable requirements of [section 1129\(a\)](#) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(c) Rule of construction.--For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

(1) With respect to a class of secured claims, the plan meets the requirements of [section 1129\(b\)\(2\)\(A\)](#) of this title.

(2) As of the effective date of the plan--

(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

(3)(A)(i) The debtor will be able to make all payments under the plan; or

(ii) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

(B) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

(d) Disposable income.--For purposes of this section, the term “disposable income” means the income that is received by the debtor and that is not reasonably necessary to be expended--

(1) for--

(A) the maintenance or support of the debtor or a dependent of the debtor; or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

(e) Special rule.--Notwithstanding [section 1129\(a\)\(9\)\(A\)](#) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in [paragraph \(2\)](#) or [\(3\) of section 507\(a\)](#) of this title may be confirmed under subsection (b) of this section.

§ 1192. Discharge

If the plan of the debtor is confirmed under [section 1191\(b\)](#) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court

shall grant the debtor a discharge of all debts provided in [section 1141\(d\)\(1\)\(A\)](#) of this title, and all other debts allowed under [section 503](#) of this title and provided for in the plan, except any debt--

(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

(2) of the kind specified in [section 523\(a\)](#) of this title.

§ 1193. Modification of plan

(a)Modification before confirmation.--The debtor may modify a plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of [sections 1122](#) and [1123](#) of this title, with the exception of subsection (a)(8) of such [section 1123](#). After the modification is filed with the court, the plan as modified becomes the plan.

(b)Modification after confirmation.--If a plan has been confirmed under [section 1191\(a\)](#) of this title, the debtor may modify the plan at any time after confirmation of the plan and before substantial consummation of the plan, but may not modify the plan so that the plan as modified fails to meet the requirements of [sections 1122](#) and [1123](#) of this title, with the exception of subsection (a)(8) of such [section 1123](#). The plan, as modified under this subsection, becomes the plan only if circumstances warrant the modification and the court, after notice and a hearing, confirms the plan as modified under [section 1191\(a\)](#) of this title.

(c)Certain other modifications.--If a plan has been confirmed under [section 1191\(b\)](#) of this title, the debtor may modify the plan at any time within 3 years, or such longer time not to exceed 5 years, as fixed by the court, but may not modify the plan so that the plan as modified fails to meet the requirements of [section 1191\(b\)](#) of this title. The plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan, as modified, under [section 1191\(b\)](#) of this title.

(d)Holders of a claim or interest.--If a plan has been confirmed under [section 1191\(a\)](#) of this title, any holder of a claim or interest that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless, within the time fixed by the court, such holder changes the previous acceptance or rejection of the holder.

§ 1194. Payments

(a)Retention and distribution by trustee.--Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor after deducting--

(1) any unpaid claim allowed under [section 503\(b\)](#) of this title;

(2) any payment made for the purpose of providing adequate protection of an interest in property due to the holder of a secured claim; and

(3) any fee owing to the trustee.

(b)Other plans.--If a plan is confirmed under [section 1191\(b\)](#) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

(c)Payments prior to confirmation.--Prior to confirmation of a plan, the court, after notice and a hearing, may authorize the trustee to make payments to the holder of a secured claim for the purpose of providing adequate protection of an interest in property.

§ 1195. Transactions with professionals

Notwithstanding [section 327\(a\)](#) of this title, a person is not disqualified for employment under [section 327](#) of this title, by a debtor solely because that person holds a claim of less than \$10,000 that arose prior to commencement of the case.

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