



Guest Commentary

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Chapter 12 Family Farmer Cases in Missouri



Agricultural economists have long warned of a looming farm crisis. However, for the most part, they have been wrong. In 2021, nationwide Chapter 12 family farmer bankruptcy filings were at the second lowest level since Chapter 12 was enacted in 1987. The low level of Chapter 12 filings is all the more surprising given that Congress more than doubled the debt limit for Chapter 12 eligibility (to \$10 million) in 2019.

Nevertheless, Chapter 12 remains an important tool for family farmers to manage financial distress. For 20 years, I have analyzed all Chapter 12 family farmer cases filed in Missouri to gain insight into how Chapter 12 works in practice. My methodology is simple. I identify all Chapter 12 filings by online docket searches for both the Eastern and Western Districts of Missouri. After adjusting for various anomalies (such as jointly administered cases and cases mistakenly filed under Chapter 12), Missouri family farmers filed 168 unique Chapter 12 cases between 2000 and 2020. This analysis does not include six Missouri Chapter 12 cases filed in 2021.

OUTCOMES OF CHAPTER 12 CASES

There are four primary possible outcomes in a Chapter 12 case.

1. Converted to Chapter 7 or dismissed before plan filed. If the debtor fails to file a plan, there are two possible dispositions of the case: convert the case to one under Chapter 7 or dismiss the case. Because of the Bankruptcy Code's longstanding hostility to involuntary farmer liquidations, the court can convert a Chapter 12 case only if the debtor consents or the debtor commits fraud in connection with the case.
2. Case converted or dismissed after a plan was filed but before confirmation. This occurs when the family farmer files a Chapter 12 plan but is unable to obtain confirmation

of a plan. If the debtor does not voluntarily convert the case to Chapter 7, the court will eventually dismiss the case.

3. Plan confirmed but no Chapter 12 discharge. This occurs when the court confirms a family farmer's plan but does not thereafter enter a discharge order. Unlike Chapter 11, where the discharge can be obtained on the effective date of the plan, a Chapter 12 discharge is normally not entered until all plan payments have been made. Many Chapter 12 debtors who confirm a plan later default in making the payments called for under the plan and never receive a discharge. These cases are typically either dismissed at some point after the default, or the debtor voluntarily converts the case to Chapter 7.
4. Plan confirmed and discharge entered. The most desired Chapter 12 outcome is to obtain a confirmed plan followed by a discharge.

Table 1 summarizes the outcomes as of March 1, 2022, for all Missouri Chapter 12 cases filed from 2000-2020.

Result	# of cases	% of total cases
Converted to Chapter 7 or dismissed before plan filed	23	13.7%
Converted to Chapter 7 or dismissed after plan filed but before confirmation	8	4.8%
Plan confirmed	135	80.4%
Plan confirmed but no discharge entered before case dismissed or converted*	71	42.3%
Plan confirmed and discharge granted	64	38.1%

*excludes 28 pending cases where a plan confirmed but no discharge entered

Several interesting conclusions can be drawn from the data in Table 1. First, 38% of Missouri debtors achieved the ultimate objective in a Chapter 12 case, i.e. confirmation of a plan followed by entry of a Chapter 12 discharge. This percentage will likely increase as more debtors in the 28 pending cases complete their plan payments and receive a discharge.

Second, most Chapter 12 debtors are able to at least file a repayment plan. More than 80% of all Chapter 12 debtors propose a repayment plan at some point in their cases. More than 95% of all debtors who file a plan eventually convince a court to confirm it.

Third, many Chapter 12 debtors fail to perform under their confirmed plans. Of the 107 closed cases where a plan was confirmed, no Chapter 12 discharge was entered in 43 of them. Therefore, about 40.1% of all confirmed plans result in a post-confirmation default that precludes entry of a discharge. Another interesting metric is comparing Missouri Chapter 12 outcomes with Chapter 12 outcomes nationwide. Although there is no readily available data for nationwide Chapter 12 outcomes for 2000 through 2020 inclusive, the Executive Office of the United States Trustee published case outcomes for 1,809 Chapter 12 cases that were closed nationwide in fiscal years 2009-2014.

Table II compares Missouri's experience with the nationwide data where available.


Outcome	Missouri (2000-2020)	Nationwide (2009-2014)
Plan confirmed and discharge entered	38.1%	41.9%
Average time between filing and entry of discharge	4.88 years	4.76 years
Median time between filing and entry of discharge	5.18 years	5.02 years

Therefore, Missouri debtors have on the average a slightly less positive set of outcomes than Chapter 12 debtors nationwide. Successful Missouri cases proceed at a slightly slower pace than their counterparts nationwide.

TIMING CONSIDERATIONS

Under Section 1221, a Chapter 12 debtor must file a plan within 90 days after the petition date. The court can extend the filing period if it concludes that the need for an extension is “attributable to circumstances for which the debtor should not justly be held accountable.” For the most part, the Missouri Chapter 12 debtors filed their plans on a timely basis as the median number of elapsed days between the petition date and the date of the first plan was only 96 days. The median number of days between the petition date and entry of a confirmation order is 162 days. Most Chapter 12 debtors have to amend their original plan one or more times in order to secure confirmation.

CONCLUSIONS

1. While Chapter 12 is far from a cure-all, it does work a significant percentage of the time, as evidenced by the 38.1% of Chapter 12 debtors who obtain a discharge.
2. Chapter 12's liberal rules governing amendments, both pre- and post-confirmation, are frequently used. Family farmers clearly need flexibility in proposing their plans and pursuing confirmation. A debtor's need to file an amended plan is not necessarily an omen that the plan will ultimately fail. In many instances, a debtor was eventually able to obtain a discharge in spite of filing one or more post-confirmation amendments. Both debtors and lenders should recognize at the outset that a substantial number of confirmed plans require post-confirmation modification.
3. Missouri's experience with Chapter 12 is very close to the nation as a whole.
4. The influence of Chapter 12 is probably much more significant than the modest number of cases indicate. The results in Chapter 12 cases provide a spectrum of potential outcomes that influence both lenders and borrowers in out-of-court workout discussions. 

A partner with Thompson Coburn, David Warfield is a 30-year veteran of the financial restructuring world who provides practical, straight-forward advice to all types of institutions that interact with a distressed business. Visit thompsoncoburn.com for more details. Thompson Coburn is an MBA associate member.