

BANKRUPTCY AS A TOOL FOR FARMERS

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Durham, NC
March 25, 2026



The Land Loss Prevention Project (LLPP) was founded by the North Carolina Association of Black Lawyers in 1982 and incorporated in 1983 as a nonprofit law firm in response to the steep decline of Black owned land. Our work on behalf of farmers and landowners involves direct legal representation, technical assistance, collaborative policy analysis and innovation, and training for community groups, attorneys and advocates.

Our direct legal services work includes foreclosure prevention, estate and farm succession planning, heir property, farm business planning and entity formation, farm leases, and Chapter 12 and 13 bankruptcy.

WHAT DOES BANKRUPTCY OFFER?

From *Bankruptcy Basics*, a publication of the United States Courts:

“A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision:

[I]t gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.

Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).”

WHAT DOES BANKRUPTCY OFFER?

Bankruptcy as a lever to pull when debts have become overwhelming, in order to give more control and options.

Helpful in some circumstances, and less so in others.

WHAT DOES BANKRUPTCY OFFER?

Some of the most useful benefits:

- Automatic stay (pause) of any collection efforts, including foreclosure or repossession (as long as those processes have not become final under state law).
- Ability to pay delinquency (arrears) on secured debts over time.
- Opportunity to discharge - get rid of - unsecured debts, sometimes paying less than what is owed, or nothing, on these debts.

TYPES OF BANKRUPTCY,
BY CHAPTER

CHAPTER 7

- Simplest and most common.
- Short time frame (usually over in a few months).
- Most useful for discharging unsecured debts (where there is no collateral) – such as credit card debt, unsecured operating loans, accounts with suppliers, and medical debt.
- Usually NOT much use for secured debts.
 - Does not give time to “cure” delinquency.
 - Most likely will only briefly pause foreclosure or repossession.



CHAPTER 13

- Still get to discharge unsecured debt, sometimes paying little to nothing on it.
- Allows payment of delinquency on secured debt over time - 3 to 5 years of bankruptcy “plan.”
 - Can expect to pay both usual payment and delinquency.
 - No delinquency remains at end of bankruptcy, so foreclosure or repossession does not continue; usual payments do continue.
- Longer, more involved process.
 - Monthly payments for 3-5 years.
 - Must update court about changes in financial circumstances, and get approval for major financial decisions (such as new loans or sales of property).



CHAPTER 12

- For family farmers and family fishermen.
- Somewhat similar to Chapter 13.
 - More involved process.
 - 3-to-5-year plan.
 - Can pay off delinquency on secured debt over time.
 - Unsecured debt discharged.
- Has extra benefits and flexibility for farmers, to be discussed.



MORE DETAILS ON CHAPTER 12: ADVANTAGES

More tailored to farmers' seasonal ups and downs.

For example, flexibility in how payments are scheduled – payments do not have to be monthly.

Gives more options for modifying secured loans than other chapters.

If a secured lender has been refusing to offer attractive loan servicing options, restructuring, or modification, a farmer may be able to obtain similar results in a bankruptcy, and a Chapter 12 offers the strongest ability to do that.

“Cramdown:” lowering the amount of a secured loan to the value of the collateral. In Chapter 12, can even do this on a home mortgage, which is not allowed in Chapter 13.

Lowering interest rates (to market rate).

Extending length of loan (to term typical for type of loan).

Can be used to wind down or downsize the farm operation.

For example, can propose to sell property over time, or to sell one portion of property rather than losing all of it in a foreclosure.



MORE DETAILS ON CHAPTER 12: ELIGIBILITY FOR INDIVIDUALS

Chapter 12 is likely to be the best option for a farmer, if they meet the eligibility requirements.

Eligibility for individual farmer (and spouse if filing jointly):

- Total debts (secured and unsecured) must not exceed \$12,562,250.
- At least 50% of debts (other than home mortgage) must arise out of the farming operation.
- More than 50% of the gross income for the prior tax year (or preceding 2nd and 3rd years) must have come from the farming operation.



MORE DETAILS ON CHAPTER 12: ELIGIBILITY FOR CORPORATIONS AND PARTNERSHIPS

A corporation or partnership can file as a family farmer or fisherman too.

Eligibility:



- Same debt limit of \$12,562,250.
- More than 1/2 the stock or equity must be owned by one family.
- The family must conduct the farming operation.
- More than 80% of the assets (by value) must be related to the farming operation.
- At least 50% of debts (other than home mortgage) must arise out of the farming operation.
- No publicly traded stock.¹²

OTHER TOOLS
OFFERED BY
BANKRUPTCY
(CHAPTER 12 OR
13)

Can choose to abandon or surrender property that you don't want (and discharge the underlying debt.)

Can choose to abandon / get out of leases and contracts.

With court permission, under the protection of the automatic stay, can opt to sell part of collateral to pay secured debt (instead of losing all of it in a foreclosure).





WHEN TO CONSIDER BANKRUPTCY

IS THERE A RIGHT TIME TO CONSIDER BANKRUPTCY?

Considering bankruptcy is often prompted by financial strain that reaches the point of facing foreclosure or repossession.

Best to consider bankruptcy at an early stage of distress, to have time to consider all options, to avoid additions of loan fees in these processes, and to be sure to have time to file before foreclosure or repossession becomes final.

Important for advocate to be aware of timelines if farmer is denied for a loan or is denied loan servicing (i.e. requesting reconsideration or mediation, potential appeals). These events may affect a potential bankruptcy timeline, and a farmer may want to investigate bankruptcy in tandem with pursuing other options.

WHAT SIGNS POINT TOWARDS (OR AWAY FROM) BANKRUPTCY AS AN OPTION?

Bankruptcy can be most useful when there is the right balance of assets, income, expenses, and debts.

Assets: too much “nonexempt” and “unencumbered” value in assets can be a problem for bankruptcy, requiring payment of most or all debts (including unsecured) over the course of the bankruptcy.

A certain dollar amount of certain assets are “exempt,” meaning you can protect that amount from creditors – for example, \$35,000 in a homestead in North Carolina. (Can choose state or federal exemptions.)

Income compared to expenses and debt: “Goldilocks” - need enough income to cover the usual payments on secured debts as well as the delinquency on secured debt over the 3-to-5-year bankruptcy plan, plus cover living expenses. Excess income is considered “disposable” and can require paying unsecured creditors.

WHY TO CONSIDER ALTERNATIVES FIRST



Loan modification or other workout with lender(s) is always worth considering first. Agreed-upon solutions are likely easier, faster, and cheaper than bankruptcy.

Bankruptcy imposes restrictions on what you can do without court permission during the 3-to-5-year plan period of Chapter 12 or 13. You will need court permission to incur new debt, modify loans, enter into new contracts, or sell property. Need to report changes in income, expenses, or assets (such as an inheritance).

WHY TO CONSIDER ALTERNATIVES FIRST, CONTINUED



Other inconveniences: bank accounts and credit accounts may be closed automatically when bankruptcy is filed.

Some lenders may have rules restricting giving you a loan for a period of time after bankruptcy.

For Chapter 12, some bankruptcy trustees and administrators will require ongoing operational reports during the 3-to-5-year plan period.

FINDING AN ATTORNEY, AND CONSIDERING FEES/COSTS

- May need to ask around locally to find attorneys that have experience with Chapter 12.
- More common chapters are 7, 13, 11 (business).
 - For all of 2025, nationwide, there were:
 - 356,724 Chapter 7 filings
 - 207,889 Chapter 13 filings
 - 9,201 Chapter 11 filings
 - 315 Chapter 12 filings
 - While a relatively small number of filings, this is a 46% increase over Chapter 12 filings in 2024. The overall rate of increase in all bankruptcy filings from 2024 to 2025 is 11%.

FINDING AN ATTORNEY, AND CONSIDERING FEES/COSTS, CONTINUED

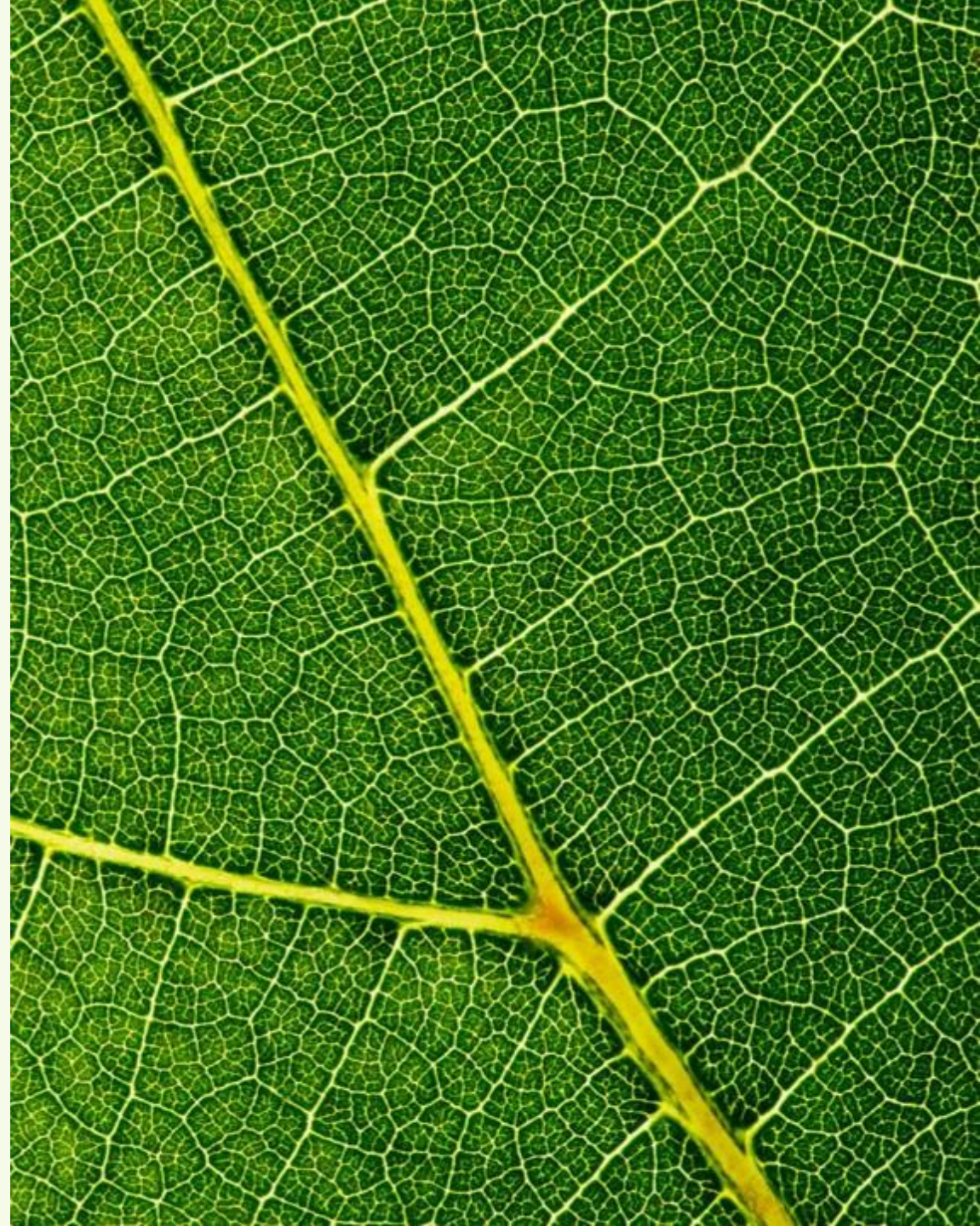
- Can be hard to find a pro bono or “low bono” attorney for Chapter 12.
- Chapter 12 attorneys may require a retainer (several thousand \$\$ or more), plus additional fees spread throughout plan.
- For Chapter 13, the most common attorney’s fee is \$6500, spread throughout the 3-to-5-year plan.
- Filing fee is \$278 for Chapter 12, \$313 for Chapter 13, and \$338 for Chapter 7.

HOW THE PROCESS BEGINS

Initial conversation with an attorney:

They will want to get a sense of the complexity of the financial situation and farm operation, as well as what kind of records have been kept. They may be able to give an estimate of their attorney's fees and/or their fee structure.

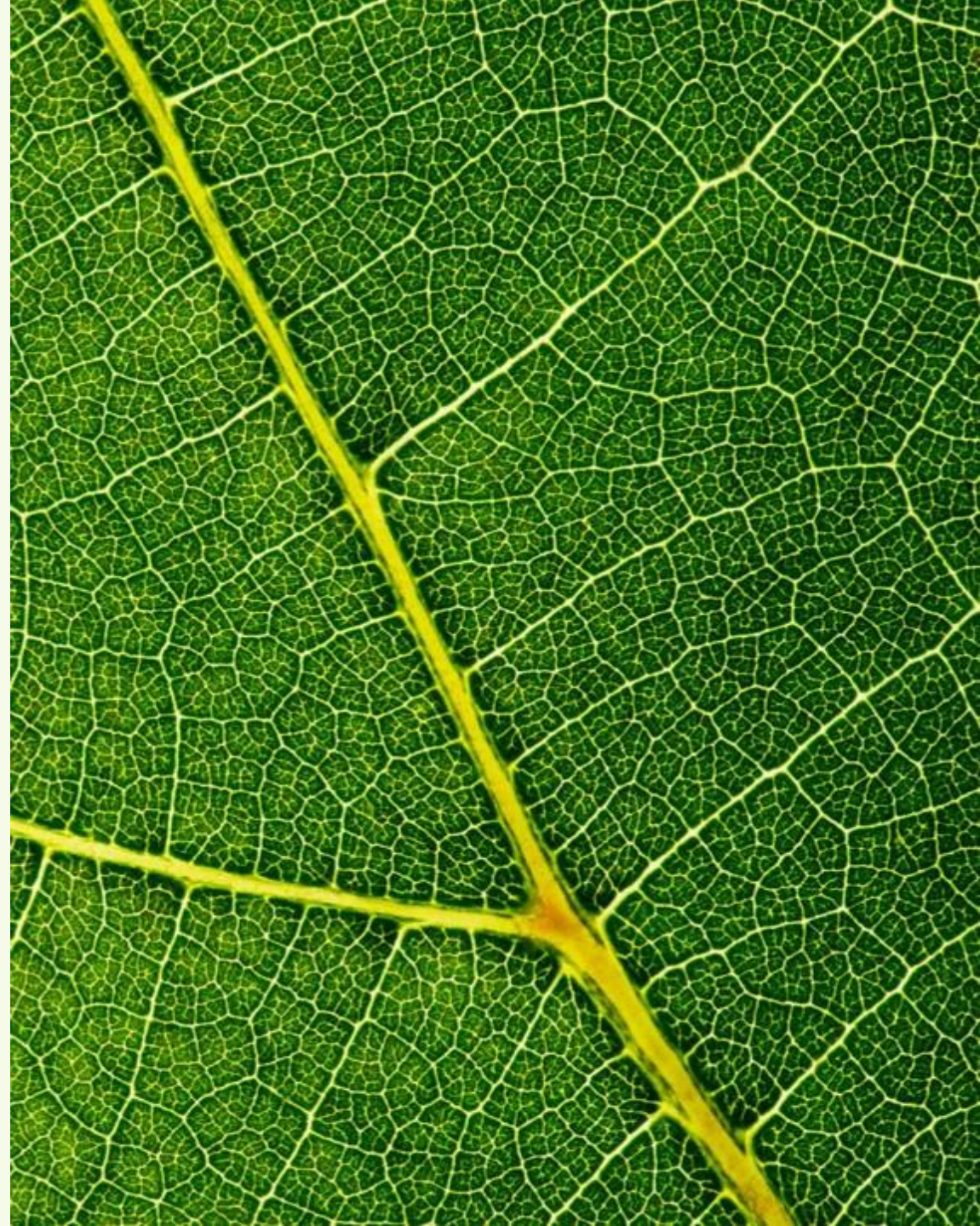
Good recordkeeping and having plans to improve cash flow are major opportunities for advocate assistance here. This can help reduce attorney work and fees.



HOW THE PROCESS BEGINS (CONTINUED)

Eventually, the attorney's evaluation, as well as the bankruptcy filing itself, will require a comprehensive view of all finances:

- All assets and their value,
- Income – all sources,
- Expenses – farm and living, and
- Debts – farm and personal/consumer.



HOW THE PROCESS BEGINS (CONTINUED)

Documents an attorney will need to see:

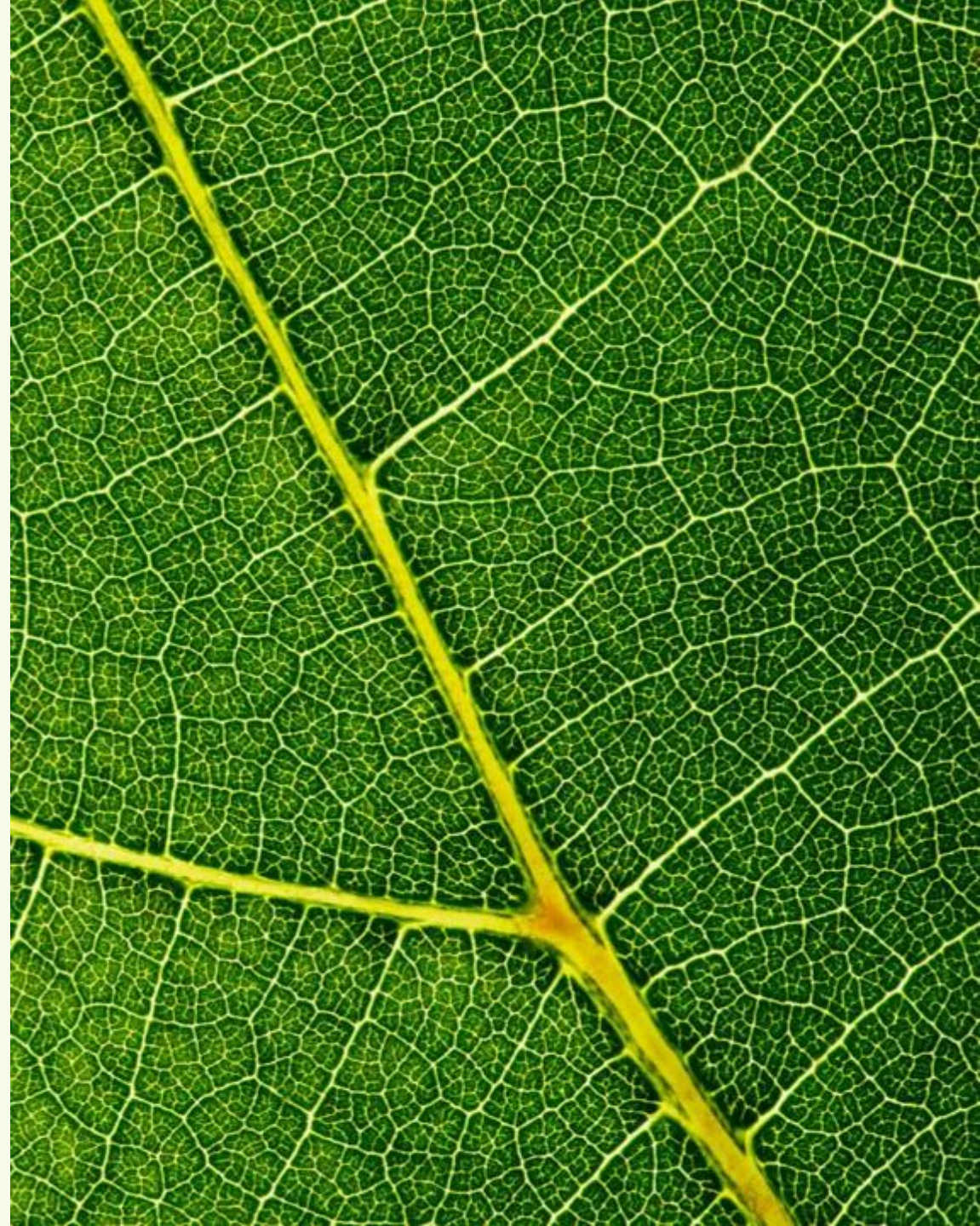
Bank statements

Loan statements

Last 3 years' income tax returns (must be filed in order to file bankruptcy, unless not required to file under tax law)

Credit reports

Bookkeeping related to the farm operation, such as profit/loss projections, cash flow, balance sheets, other operational reports





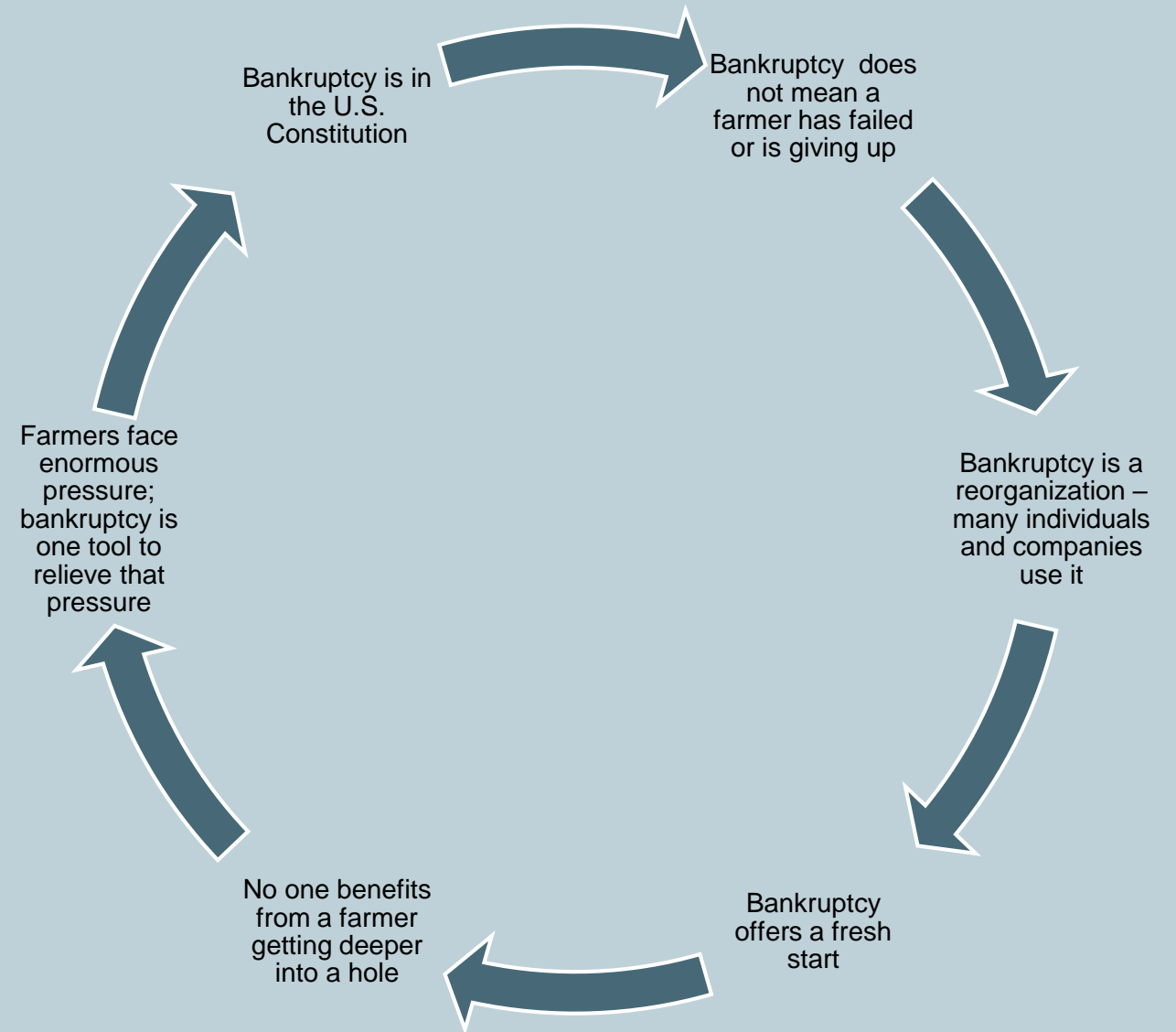
ENCOURAGE BEING HONEST AND FORTHCOMING

When the advocate has spent time to build trust during what is usually a high-stress situation, they can help the farmer be honest and forthcoming:

With the attorney – they are not there to judge you, and the more information you can give, the better they can help you.

With the bankruptcy court – very detailed and complete financial information will be filed with the court. Documents are signed under penalty of perjury, and knowingly lying or concealing assets is a federal crime.

ADDRESSING FEARS AND STIGMA AROUND BANKRUPTCY



BANKRUPTCY CAN INVOLVE PERSONAL TOPICS

It gets quite personal to reveal everything about your financial life.

Can expect questions like:

- Do you owe alimony or child support
- How much do you spend on pet food
- How much is your wedding ring worth
- How much do you spend on alcohol or cigarettes
- Have you been involved in any court proceedings



COMMON MISCONCEPTIONS





IF I FILE BANKRUPTCY, IT
MEANS I'M GIVING UP
FARMING

IF I FILE
BANKRUPTCY, IT
MEANS I WILL LOSE
EVERYTHING I
HAVE



IF I FILE BANKRUPTCY, IT
MEANS MY CREDIT IS
RUINED FOREVER





**ONCE I FILE
BANKRUPTCY, I'M ALL
DONE!**



QUESTIONS?

THANK YOU!

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