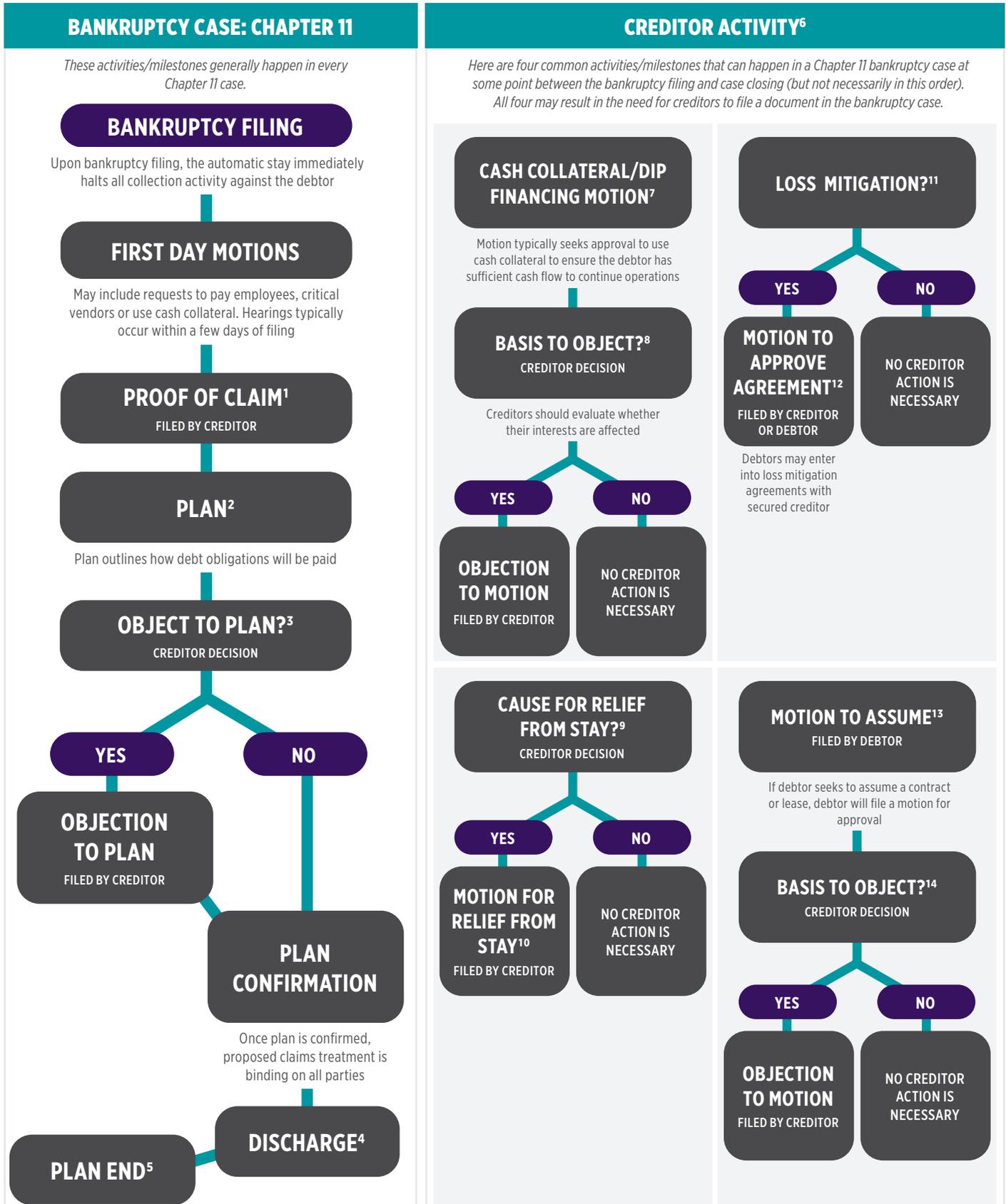


For a detailed reference guide with expanded definitions, see page two and find the correlating endnote.



CHAPTER 11 LIFECYCLE: CREDITORS QUICK REFERENCE GUIDE

The chart on the previous page provides a high-level overview of the Chapter 11 process for creditors, including documents that a creditor may need to file in the bankruptcy court. It does not account for all of the possible permutations of a Chapter 11 case, nor does it address processes that may be specific to particular bankruptcy jurisdictions. The chart provides some distinction between the processes under Subchapter V, which applies to certain small-business debtors, as well as individuals whose debts are primarily business debts, who meet certain debt limits. If you have any questions regarding the processes outlined in this chart, please seek legal counsel.

1. Failure to timely/accurately file a proof of claim (POC) may result in negative impact on the creditor's claim. Parties may object to the POC. The debtor or other parties in interest may object to the POC, which generally results in a court hearing. Additionally, creditors that may be oversecured should ensure that they accurately reflect their oversecured status on the POC to indicate that they may be entitled to recover attorneys' fees and/or interest incurred during the bankruptcy.
2. The plan outlines how the debtor will pay debt obligations going forward. Some business cases involve the sale of most or all assets to a third party, while others restructure and reorganize the debt. In individual cases, the debtor can propose a repayment plan that may alter prepetition agreements (i.e., extending maturity dates or changing interest rates).
3. Creditors and other interested parties may object to the plan. Objections are generally based on inaccuracies (i.e., secured creditor alleges that a significantly larger arrearage is owed than what is claimed in the plan) or feasibility (i.e., in an individual case, the plan proposes payments to creditors based on the debtor's income, and the bankruptcy court determines whether the plan is feasible such that the debtor's income is sufficient to make the plan's required monthly payments). Regular Chapter 11 plans must follow the "absolute priority rule," which requires that the claim of a creditor that objects to the plan must be paid in full before any payments are made to creditors that are junior to the dissenting creditor. In contrast, Subchapter V plans can be confirmed without following the absolute priority rule.
4. Upon successful completion of the Chapter 11 case, debtors generally will receive a discharge as provided for by the terms of the confirmed plan. Liquidating business debtors, though, will not receive a discharge. Individuals who file for Chapter 11 relief will receive a discharge after the successful completion of their plan payments. However, individuals who file for relief under Subchapter V can receive a discharge upon plan confirmation if the plan is consensual (no objections remained unresolved at the time of confirmation).
5. Individual Chapter 11 debtors and Subchapter V debtors whose plans were non-consensual can file a motion for discharge upon successful completion of their plans.
6. These activities may not occur linearly or at all in a bankruptcy case, depending on the type of claim (i.e., value of claim, security interest) and the debtor's intention regarding the particular claim. Chapter 11 cases provide more opportunities for creditors to evaluate the debtor's bankruptcy activities through monthly and quarterly filing obligations. In the event that the creditor believes that the debtor is abusing the bankruptcy process, it may seek appointment of a Chapter 11 trustee or examiner.
7. The debtor may file a motion to seek use of cash collateral and/or obtain debtor-in-possession (DIP) financing. Typically, Chapter 11 debtors have minimal cash and seek this type of approval to ensure they have sufficient cash flow to continue operations.
8. Creditors should carefully review the proposed terms and financing to determine whether the creditor's interests are affected, and if so, the creditor should strongly consider obtaining counsel to respond. A creditor may request that the bankruptcy court condition the use of cash collateral to provide "adequate protection," which often includes monthly payments to the creditor.
9. Filing a bankruptcy case "automatically stays" (stops) most collection actions against the debtor or the debtor's property. As long as the automatic stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors may file a motion for relief from the stay when "cause" exists to grant such relief, such as when the debtor indicates he or she will surrender property securing the claim or there is not adequate protection of the creditors' claim.
10. If relief from the stay is granted, the creditor may exercise its state law remedies (i.e., cannot immediately take possession of the home but can initiate the foreclosure process under applicable state law).
11. Debtors may enter into loss mitigation with the secured creditor during the case.
12. In many jurisdictions, at least one of the parties must seek court approval for loss mitigation. Depending on the jurisdiction, various documents may need to be filed by one of the interested parties, such as a motion to approve loss mitigation.
13. A debtor may "assume" (accept and continue paying under the terms of) a contract or lease. The debtor may file a motion to assume the contract or lease. Before he can assume the contract or lease, the debtor must cure any defaults or provide the creditor with assurances he will promptly cure defaults. In Chapter 11 cases, debtors can assume or reject contracts or leases as part of their plan, as well.
14. Creditors may object to a motion to assume a contract or lease, particularly if there are defaults and it does not appear likely that these defaults can be cured.

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