Chapter 12 After the First Year: An Analysis of the Issues

I. Introduction

"Neither a borrower, nor a lender be; for loan oft loses itself and friend, and borrowing dulls the edge of husbandry" was the sage advice of Hamlet.[1] Many farmers and rural lenders wish they had followed that axiom in the past fifteen years as the farm economy first went through an inflationary period, then collapsed by fifty percent by the mid-1980s.[2] The strain on the existing system was so great that Congress enacted Chapter 12 to the United States Bankruptcy Code, to deal specifically with farm bankruptcies effective on November 26, 1986.[3] For the practitioner familiar with bankruptcy, this Note will examine the background of Chapter 12 and compare some aspects with Chapter 11[4] and Chapter 13.[5] The body of the Note will discuss the basic provisions of Chapter 12 and how case law has interpreted this new law as it has evolved since late 1986. Potential tax problems associated with Chapter 12 will be discussed and finally the role of the trustee in a Chapter 12 proceeding will be examined.

The Joint Explanatory Statement of the Committee of Conference stated the overall public purpose of Chapter 12 as follows:

> Under current law, family farmers in need of financial rehabilitation may proceed under either Chapter 11 or Chapter 13 of the Bankruptcy

1. FAMILIAR QUOTATIONS 219 (J. Bartlett ed. 1980)(quoting W. SHAKESPEARE, HAMLET, Act I, Scene iii, Line 75).
2. *See* Walter, *Management Report-Land*, SUCCESSFUL FARMING, Feb. 1987, at 8, 8. An Iowa State University survey indicates that Iowa land values declined 63% since 1981. *Id.*
3. *See* 11 U.S.C. §§ 1201-1231 (Supp. 1986). The new Code is titled Chapter 12-Adjustment of Debts of a Family Farmer with Regular Annual Income. *Id.*
4. *Id.* §§ 1101-1174 (1982).
5. *Id.* §§ 1301-1330.