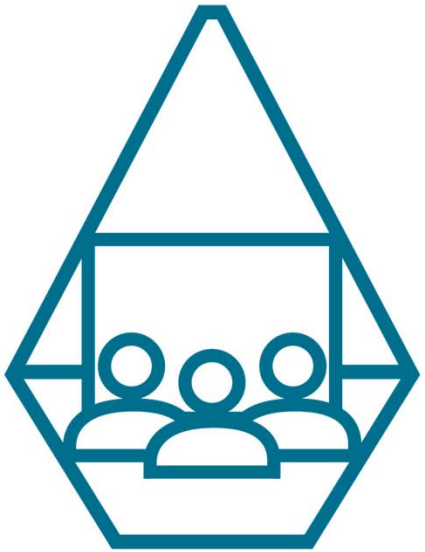

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Special Considerations in **Oil & Gas Bankruptcies**

IN TEXAS & LOUISIANA

Presented by Armistead M. Long and Jean M. Smith

Gordon Arata

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October 15, 2026

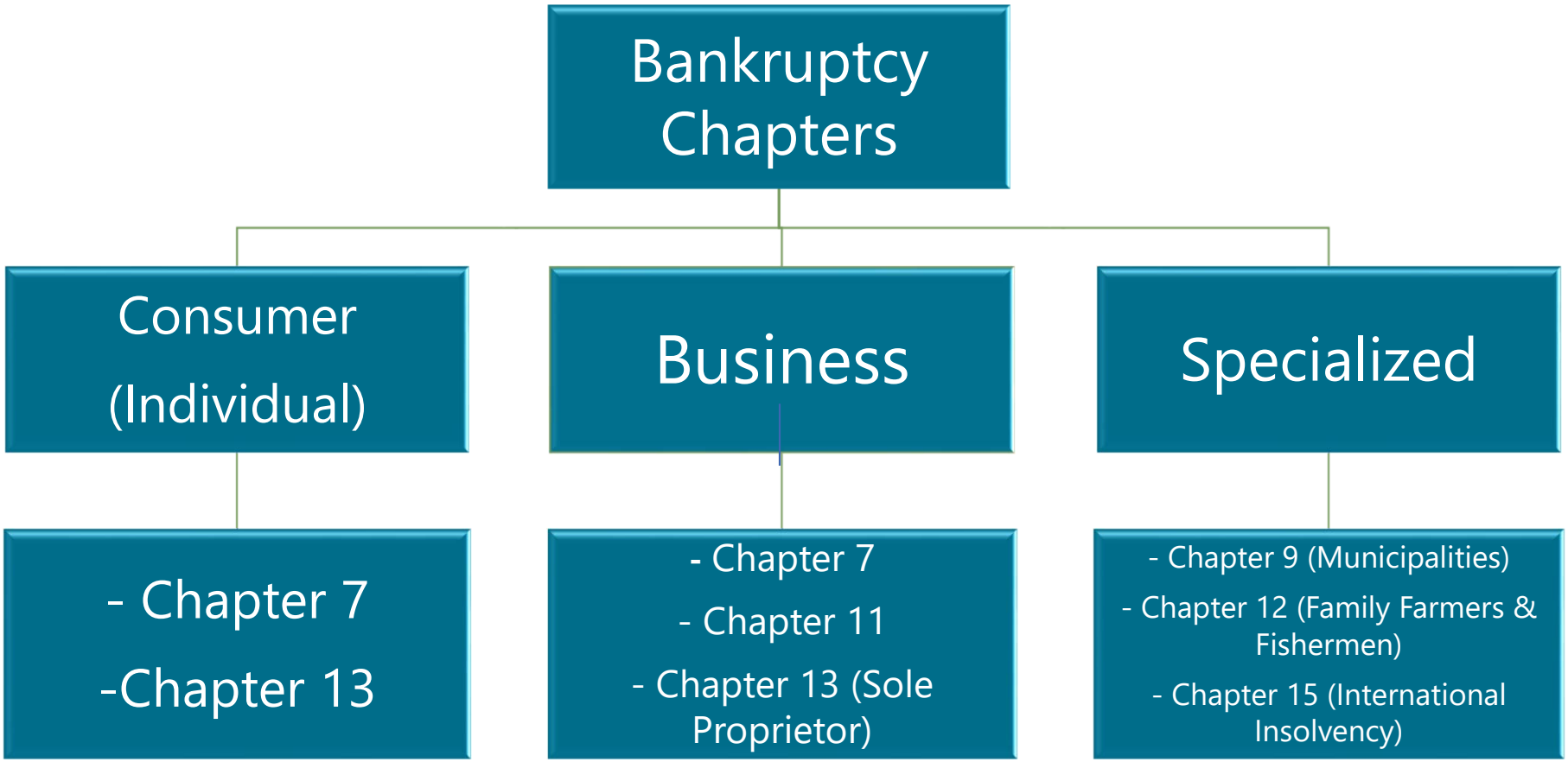
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Session Objectives

1. Assess the intersection between state oil, gas, and mineral lien laws and the Bankruptcy Code.
2. Analyze the impact of bankruptcy filings on title chains.
3. Navigate the bankruptcy timeline and claims process.
4. Assessment of the validity of leases, gathering agreements, and executory contracts post-bankruptcy filing.

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Chapter 7 versus Chapter 11

	Chapter 7	Chapter 11
Who May file?	**Individuals and Juridical Entities**	**Individuals and Juridical Entities**
End Goal?	**Liquidation of the Debtor's assets and liabilities**	**Usually reorganization of the Debtor, but occasionally liquidation**
Ideally Results in a Confirmed Bankruptcy Plan?	**No**	**Yes**
Case Trustee Appointed?	**Yes**	**Rarely**
Debtor retains control of its assets and operations during the case?	**No**	**Yes, unless a Trustee is appointed**

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Life Cycle of a Chapter 7: *Liquidation*

1. Petition Filing & Protections

"Automatic Stay" imposed by Code.

2. Trustee Appointment & Meeting of Creditors

Trustee takes control of the estate's assets. Creditors have opportunity to examine Debtor.

3. Trustee Asset Evaluation & Liquidation

Trustee examines and determines which property is available for liquidation.

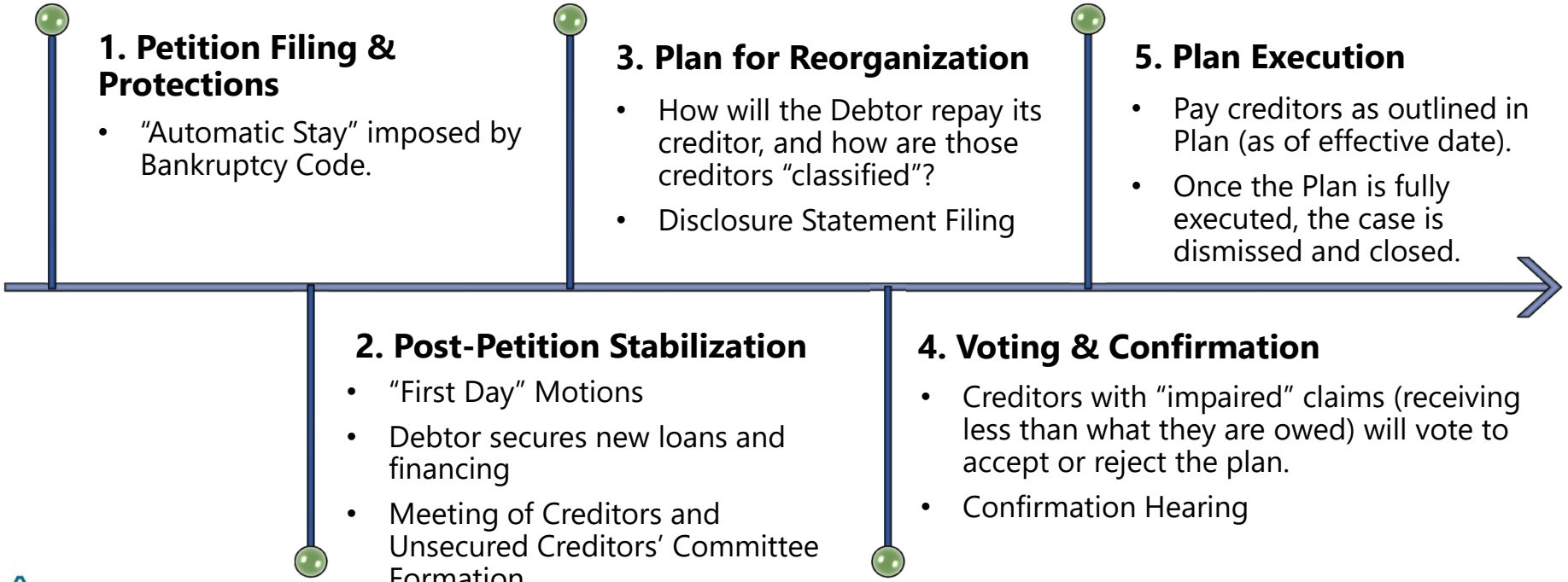
4. Discharge & Case Closure

Debtor released from personality for all debts, subject to certain exceptions.

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Life Cycle of a Chapter 11: *Reorganization*



1. Petition Filing & Protections

- "Automatic Stay" imposed by Bankruptcy Code.

2. Post-Petition Stabilization

- "First Day" Motions
- Debtor secures new loans and financing
- Meeting of Creditors and Unsecured Creditors' Committee Formation
- **Claims Bar Date Notice**

3. Plan for Reorganization

- How will the Debtor repay its creditor, and how are those creditors "classified"?
- Disclosure Statement Filing

4. Voting & Confirmation

- Creditors with "impaired" claims (receiving less than what they are owed) will vote to accept or reject the plan.
- Confirmation Hearing

5. Plan Execution

- Pay creditors as outlined in Plan (as of effective date).
- Once the Plan is fully executed, the case is dismissed and closed.

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Why Bankruptcy Matters to a Landman



Evaluation of Encumbrances on Debtor Property



Understanding Whether an Oil and Gas Lease is Just a Contract



When an Oil and Gas Lease is Subject to a § 363 Sale

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Assessing Encumbrances on the Debtor's Property

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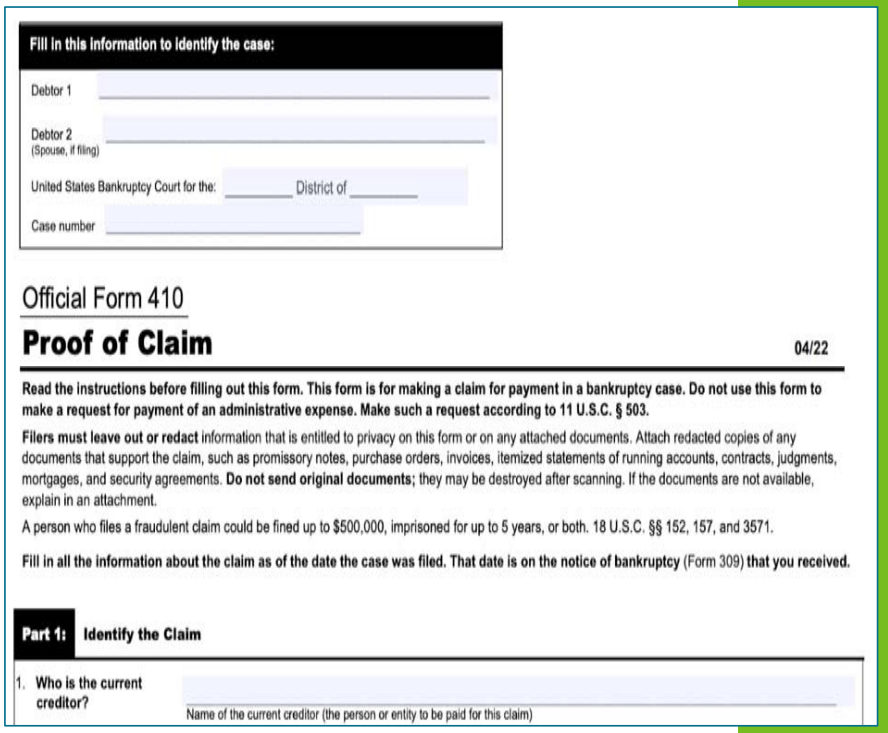
Encumbrances on the Debtor's Property

- The Bankruptcy Code permits the trustee or debtor-in-possession to avoid certain un-perfected liens, thereby rendering such liens unsecured. *See* 11 U.S.C. § 544(a).
- Any liens against Debtor property **must be properly recorded** with documented intent to enforce to ensure secured status and possible repayment before general, unsecured creditors.
- Examples: Operator's Liens, LOWLA / OWG Liens, and any assignments of interests.
- If you have a pre-petition claim, you are entitled to assert that claim in the form of a "Proof of Claim."

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Proof of Claim (*Must be Timely*)

- Timely proof of claim filing within the debtor's bankruptcy case is critical to preserving lien claims.
- Absent prior pending enforcement suits, lien claims also require filed 546(b) Notices.
- Pay attention to claims bar dates.
- Compare filed claims against the Debtor's listing (or non-listing) of that claim.
- Note: bankruptcy claims are filed under penalty of perjury.



Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: _____ District of _____

Case number _____

Official Form 410

Proof of Claim 04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?** _____ Name of the current creditor (the person or entity to be paid for this claim)

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Section 365 versus 363: Understanding How Lease Interests Are Treated

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What is 11 U.S.C. § 365?

- Section 365(a) gives a trustee or debtor-in-possession the power to assume or reject any executory contract or unexpired lease of the debtor.
  - **Assumption** requires the debtor to cure all prepetition defaults, compensate the counterparty for actual pecuniary loss, and provide adequate assurance of future performance.
  - **Rejection**, by contrast, constitutes a breach of the contract deemed to occur immediately before the filing of the bankruptcy petition, leaving the non-debtor counterparty with effectively a damages claim.

What is an executory contract?

- Undefined in the Bankruptcy Code.
- *Fifth Circuit Definition*: A contract is executory if, at the time of the bankruptcy filing, the failure of either party to complete performance would constitute a material breach of the contract, thereby excusing the performance of the other party. *Matter of Murexco Petroleum, Inc.*, 15 F.3d 60, 62–63 (5th Cir. 1994).
- Notwithstanding this definition, state law determines whether oil, gas, and mineral leases are considered executory contracts or not.

Are Leases Considered Executory Contracts in Texas?

→ No! In Texas, the prevailing legal view is that standard oil and gas leases are *not* executory contracts subject to 11 U.S.C. § 365 of the Bankruptcy Code – i.e., they are real property rights.

Executory Contracts in Texas (Well-Settled)

"In Texas it has long been recognized that an oil and gas lease is **not a 'lease' in the traditional sense** of a lease of the surface of real property. In a typical oil or gas lease, the lessor is a grantor and grants a **fee simple determinable** interest to the lessee, who is actually a grantee. Consequently, the lessee/grantee acquires ownership of all the minerals in place that the lessor/grantor owned and purported to lease, subject to the possibility of reverter in the lessor/grantor. The lessee's/grantee's interest is 'determinable' because it may terminate and revert entirely to the lessor/grantor upon the occurrence of events that the lease specifies will cause termination of the estate."

Nat. Gas Pipeline Co. of Am. v. Pool, 124 S.W.3d 188, 192 (Tex. 2003) (emphasis added).

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Are Leases Considered Executory Contracts in Louisiana?

→ Maybe. . .

Courts are split; leases *might* be considered immovable property rights.

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Executory Contracts in Louisiana (Split)

- In Louisiana, mineral leases are real rights, or incorporeal immovables. La. R.S. 31:16, 31:18.

- Majority View - Oil, gas, and mineral leases **are neither executory contracts nor unexpired leases** because the lessee's substantial ongoing obligations were essentially passive and a breach by the lessor of its non-interference obligations would not constitute a material breach excusing the lessee's performance. *In re WRT Energy Corp.*, 202 B.R. 579, 582–83 (Bankr. W.D. La. 1996).

- Minority View - Leases *are* executory because performance on the lease remains due for the entire term and the debtor should be able to assume or reject such a lease. *See Texaco Inc. v. Louisiana Land & Expl. Co.*, 136 B.R. 658, 667–68 (M.D. La. 1992).

Why Does this Distinction Matter?

- Since an oil, gas, and mineral lease is classified as a real / immovable property interest in Texas and Louisiana (per the majority view), it is no longer reviewed under Section 365, and is then considered property of the estate under Section 541.
- Property of the estate is subject to sales "free and clear" of various "interests," including liens, under § 363. A third party buyer under such a sale will receive the property free and clear of any liens.
- In those instances, lien claims will attach to sale proceeds subject to further administration by the bankruptcy court.

Why Does this Distinction Matter? (cont'd)

- While an underlying oil and gas lease may not be an executory contract, related agreements may be executory. This includes gas gathering agreements, exchange agreements with ongoing indemnity obligations, or other agreements with continuing mutual performance obligations. *See In re Hilltop SPV, LLC*, 667 B.R. 110, 118–121 (Bankr. W.D. Tex. 2025); *Noble Energy, Inc. v. ConocoPhillips Co.*, 532 S.W.3d 771, 776–78 (Tex. 2017).

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Final Checklist: If Your Operator or Working Interest Owner Files for Bankruptcy…

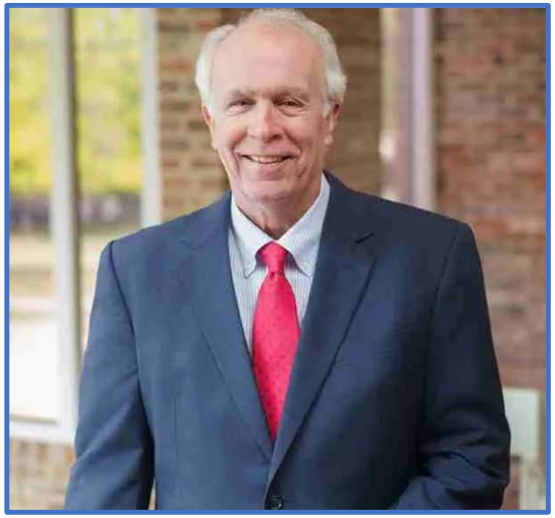


- **STOP** prosecuting any underlying claim. Honor the Automatic Stay.
- **ASSESS** your position. Tactics vary depending on who you represent.
- **REVIEW** the Debtor's schedules and statements.
- **FILE** a timely Proof of Claim and Notice of Intent to Enforce.
- **CONSIDER** filing a Motion for Relief from Automatic Stay.
- **EVALUATE** if your interest falls under Section 365 or 363.

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Additional Reading & Resources

- Jason T. Rodriguez, *Introduction to Bankruptcy Considerations for Oil and Gas Lawyers*, 16 TEX. WESLEYAN L. REV. 93 (2009).

- Chacey R. Malhouitre & Mary E. Naumann, *Trending Topics and Issues in Mineral Bankruptcy Sales*, 14 LSU J. OF ENERGY L. & RESOURCES 38 (2026).