

GOODWIN PROCTER

Chapter 9 vs. Chapter 11

A Summary of Key Differences

<u>Bankruptcy Concept/ Applicable Provision</u>	<u>Chapter 11</u>	<u>Chapter 9</u>
Voluntary/Involuntary Petition §303	Involuntary or voluntary filing to commence case	Must be voluntary
Eligibility §109	Generally, eligibility is not challenged in Chapter 11 as the party is presumed to be eligible to file (exceptions to eligibility include insurance companies, insured banks, stockbrokers and commodity brokers)	A municipality must demonstrate that it is eligible to be a debtor pursuant to Section 109(c), including that it is insolvent; generally eligibility of a municipality to file for Chapter 9 protection is contested by one or more creditors
Use, Sale or Lease of Property §363	Debtor cannot use, sell, or lease property outside of the ordinary course without bankruptcy court approval	Debtor can use, sell or lease its property without bankruptcy court oversight
Post-petition effect of security interest § 552	Property acquired by the estate or by the debtor after the commencement of a case is not subject to any lien resulting from a security agreement entered into pre-petition	Pre-petition security interest in special revenue bonds retained post-petition (special revenue bonds are given greater protection in Chapter 9 than general obligation bonds)
Recourse claims §1111/§927	A claim secured by a lien on property of the estate is allowed pursuant to Section 502 regardless of whether the holder of such claim had recourse against the debtor	Special revenue bondholders do not have recourse against the debtor pursuant to §1111(b)

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Retention of Professionals § 327	Bankruptcy Court approval is required to retain and pay professionals	Bankruptcy Court approval to retain and/or pay professionals is not required
Avoidance of Preferential Transfers §547/§926(b)	Payments to creditors on account of an antecedent debt made within 90 days of petition date (one year if an insider), while debtor is insolvent can be avoided by trustee/debtor-in-possession (subject to applicable defenses)	While preferential transfers can be avoided, there is an exception for payments or transfers of property made to bondholders
Exclusivity to File a Plan §1121/§941	Debtor has exclusive right to file a plan for first 120 days of case (subject to termination or extension for cause)	Only debtor has right to file plan – no deadline unless Bankruptcy Court orders one
Right to Reject Collective Bargaining Agreement §1113	Limitations/protectons regarding a debtor's right to reject a collective bargaining agreement	No such limitations or protections. Section 1113 does not apply in Chapter 9
Payment of Insurance Benefits to Retired Employees §1114	Section 1114 imposes certain requirements on a debtor seeking to modify retiree benefits	No requirements imposed on a municipality. Section 1114 does not apply in Chapter 9
Priority Wage and Severance Claim § 502(a)(4)	Claims for wages, salaries, or commissions, including severance entitled to priority up to \$11,725	No priority for wage claims. Section 507(a)(4) does not apply in Chapter 9