

What is a Bankruptcy Adversary Proceeding?

The term adversary proceeding is just what it sounds like. Parties to a bankruptcy are arguing adverse points in court. Three parties to the proceedings are able to participate in an adversary proceeding. The creditor, the trustee from within the chapter or the United States representative and the debtor. No matter who files the adversarial proceedings, a judge will be brought into the process to make a final decision on the issues presented. Most debtors never meet the judge, so it is vital that they have a bankruptcy attorney to represent their interests in the adversary proceedings.

Creditor Filing

If a creditor files an adversary proceeding, they are normally presenting the argument that the debts owed them should not be included in the discharge of bankruptcy. It may be the position of the creditor that the debt in question falls into one of the exceptions to the bankruptcy discharge. A creditor who files an adversary proceeding may also be representing the position that the bankruptcy filing was made in bad faith, or in a fraudulent nature. It is common for a creditor to pursue an adversary proceeding, but if a debtor has been upfront about their debts to their bankruptcy attorney and within their filing then their bankruptcy attorney will have the facts to represent their client to satisfaction against the creditor.

Trustee Filing

In the case that a United States or chapter trustee files an adversary proceeding, they may have filed based on the argument that necessary schedules were not properly filled out or were intentionally fraudulent. A trustee may also file a motion to dismiss the bankruptcy filing if the paperwork was not completed in a timely manner or if the debtor misses a scheduled court date. Trustees may also file for an adversary proceeding on part of the debtor against a creditor that has received funds or tried to collect monies from a debtor that has filed a petition for bankruptcy.

A United States Trustee has the ability to file an adversarial proceeding to move the filing from a Chapter 7 to a Chapter 13 if there is proof of bad faith, or to dismiss the bankruptcy filing if it is their view that the bankruptcy petition was done to abuse the bankruptcy system.

Debtor Filing

When a debtor files for an adversary proceeding against a creditor, the debtor may recover damages due to a creditor's actions that violate the US Bankruptcy Code. The rights of automatic stay in the case of a legitimate filing of a bankruptcy protect a debtor of pursuance or payment of debts for creditors listed in their bankruptcy petition. If a creditor continues to pursue a debtor after an automatic stay is put in place, they are in direct violation of the US Bankruptcy Code.

The Bottom Line

No matter who files an adversarial petition during a bankruptcy, there is no decided outcome of the filing. A judge had to weight the facts on both sides of the case to determine which argument has merit.

From the perspective of a debtor, it is vital that they be represented by a bankruptcy attorney so that in the case of an adversary petition, they have the protection they need to ensure their bankruptcy will go through without issue.