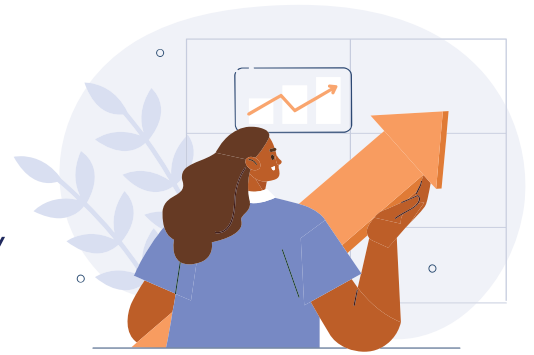


bankruptcy basics

WHAT IS AN ADVERSARY COMPLAINT?



What is an adversary proceeding?

An adversary proceeding is a complaint asking the court to rule on an issue related to a bankruptcy case. It can be filed by any interested party including the debtor, creditor or someone not involved in the bankruptcy.

An adversary proceeding is different from the main bankruptcy case — the main bankruptcy case involves a debtor and the creditors of that debtor, and the main bankruptcy case has its own separate electronic docket and case number.



What happens in an adversary proceeding?

When an adversary proceeding is filed, the clerk's office starts a separate electronic docket to record all activity in the adversary proceeding. Each adversary proceeding has its own adversary number. After an adversary complaint is filed, the person or entity being sued (defendant) has a specific deadline to file and serve a written response to the complaint, and then a series of pre-trial hearings/conferences take place until the lawsuit is settled, dismissed, or goes to trial.

What type of cases must be brought as an adversary?

The following is a list of some, but not all, actions that must be brought by adversary proceeding:

- Object to or revoke the debtor's discharge.
- Determine the dischargeability of a particular debt.
- Revoke confirmation of a Ch. 13 plan.

continued →

bankruptcy basics

WHAT IS AN ADVERSARY COMPLAINT?

- Subordinate a claim or interest, i.e. change the priority of a claim.
- Pursue money from a party not in the bankruptcy proceeding
- obtain injunctive relief
- Resolve a dispute between two parties that is related to bankruptcy

How do I file an adversary complaint?

An adversary proceeding complaint is filed with the clerk's office, it must be filed with a completed Adversary Proceeding Coversheet.

Different stages of an adversary complaint:

If the defendant wants to oppose the lawsuit, they will need to file an answer in response to the complaint within the required time period of 30 days. Otherwise, the court will issue a default judgment in the plaintiff's favor.

Assuming that the defendant responds to the complaint, each party will go through the discovery process. This may involve depositions, interrogatories, requests

for admissions, and other litigation tools designed to gather information from the other party. Once each side has a clearer sense of the strength of their position, they may be able to resolve the dispute outside court. Mediation might be effective, or the parties might be able to reach a mutually acceptable settlement. If they cannot reach an understanding outside court, they will need to go through a trial before a judge or jury. This will follow formal rules of evidence and procedure. The judge or jury then will issue a verdict in favor of one side or the other. The losing party has a right to appeal if they believe that there was an error in the process.

Seeking legal advice is recommended

It is highly recommended that legal advice be obtained from an attorney before filing an adversary proceeding complaint.

