

Adversary Proceedings in Bankruptcy

Adversary Proceedings: what are they? The simple answer to this question is that an adversary proceeding is a civil action in the Federal Bankruptcy Court; it's a lawsuit. All adversary proceedings are governed by the Federal Rules of Bankruptcy Procedure "F.R.B.P." Part VII. F.R.B.P. Rule 7001 provides that a party can file an adversary proceeding to recover money or property; to determine the validity, priority, or extent of a lien or other interest in property; to obtain the court's approval to sell property; to object to or revoke a discharge; to object to the an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan; to determine the dischargeability of a debt; to obtain an injunction or other equitable relief; to subordinate any allowed claim or interest; or to obtain a declaratory judgment to any of the foregoing. There are some exceptions stated in the Rule, but you get the idea.

From the moment you file for bankruptcy, your entire estate comes under the scrutiny of the trustee and the court. Your bankruptcy lawyer's job is to protect your interests in your estate. Sometimes this requires the additional work of filing an adversary proceeding.

Why are they used? Adversary proceedings are used to protect your estate. As an example, I have a client whose home was in foreclosure at the time I filed a chapter 13 case on her behalf. Upon reviewing her mortgage documents, I determined that I could possibly cramdown her mortgage because some persuasive case law supported this in her situation. In order to gain the court's approval to cramdown her mortgage, I needed to file an adversary proceeding against the lender. This is just one example of why we use adversary proceedings in bankruptcy cases.



Who can initiate them? Any party can file an adversary proceeding, but remember that an adversary proceeding has limited scope as discussed above. Generally, the debtor will initiate an adversary proceeding to protect her estate from creditors who have not followed the law.

How do they affect bankruptcy proceedings? Generally, an adversary proceeding will cause your bankruptcy discharge to be suspended, or put on hold, until your adversary case has been decided. This is especially true if the subject of the adversary is to dispute your discharge.

A knowledgeable bankruptcy attorney will first listen to your unique concerns and create a strategy that will help you to achieve your financial objectives with the least amount of liability. One of the best reasons to file an adversary case is to protect your home from the predatory lenders who may have lost your note. Talk to your bankruptcy lawyer today.