

What is an Adversary Proceeding?

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Basically, an [adversary proceeding](#) is when one party files against another party (in the context of a bankruptcy case). There are only three parties that can file such a proceeding: the creditor, the trustee, and the debtor. The proceeding goes to court and a bankruptcy judge determines who wins the case, much like a traditional court trial.

A creditor can file an adversary against the debtor. Generally, the creditor is trying to argue that the debt owed to them shouldn't be discharged. In most cases they are trying to argue that the debt falls under a [discharge exception](#), because it was created through fraud, willful or malicious injury, or a personal injury case caused by drunk driving. Alternatively, the creditor may believe that the bankruptcy case was done in bad faith. However, as a debtor, if you have been completely honest with your attorney, they should warn you if there is any possibility that an adversary case may be filed against you.

The second party that can file is a trustee, either a chapter trustee or the [United States Trustee](#). They may argue that the schedules in the bankruptcy case were filled out fraudulently. They can also file a motion to dismiss if paperwork is completed incorrectly, filed late, or if the debtor misses a court date. A trustee can also try and get money back from a creditor who received funds or property from a debtor. And lastly, a trustee can file to undo a transfer of real property.

Finally, a debtor can file an adversary proceeding to recover damages if a creditor's actions were in violation of the U.S. Bankruptcy Code, [the automatic stay](#), or the discharge injunction.

No matter the circumstances, the bankruptcy judge determines the outcome of the proceeding. While a bankruptcy attorney can help advise and prepare you for filing an adversary proceeding, they don't have the power to fight for you against the judge.

If you are considering filing an adversary proceeding, I strongly suggest that you consult with an [experienced Arizona Bankruptcy attorney](#) to prepare yourself. An attorney can guide you through the process and give you their honest prediction of the outcome of your proceeding. Adversary proceedings are extremely complicated, and if you face a bankruptcy judge unprepared, your chances of succeeding are slim to none.

Benjamin Skinner is a bankruptcy and real estate attorney and senior associate at JacksonWhite. He focuses his practice on bankruptcy law, assisting individuals in financial distress. Benjamin also practices in the areas of residential and commercial real estate law. He has been practicing for over ten years and has handled thousands of bankruptcy and real estate cases. He is a member of the State Bar of Arizona and the Maricopa County Bar Association. Benjamin is a member of the American Bankruptcy Institute (ABI) and the National Association of Consumer Bankruptcy Attorneys (NACBA). To read more about what former clients are saying about hiring Mr. Skinner or to set up a free consultation, please visit <http://www.jacksonwhitelaw.com/arizona-bankruptcy/>.

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