

Bankruptcy Topics: Creditors and Clawbacks

by Windtberg & Zdancewicz, PLC on October 7, 2013

The term “clawback” can be defined as money that is paid out or distributed, and then that payment is revoked (taken), or “clawed back,” as the result of certain circumstances. In bankruptcy proceedings, the trustee may use the clawback provision to void or undo certain debtor actions.

Generally speaking, the two categories of transactions subject to clawback are:

- Fraudulent transfers: Assets that a debtor intentionally moves or hides to avoid including them in a bankruptcy
- Preferential transfers: Payments made to a creditor within 120-180 days before filing for bankruptcy, might be clawed back by the bankruptcy trustee under the rubric of preferential payout.

If the bankruptcy trustee determines that there is the likelihood of a preferential or fraudulent transfer, they are empowered to file an adversary proceeding, also known as a “clawback suit”, to begin resolving (undoing) them and putting the assets back into the bankruptcy estate.

A clawback has the effect of restoration of assets that have been transferred back into the bankruptcy estate, to the eventual benefit of creditors. Additionally, the clawback provision protects creditors and their claims from unequal treatment by the debtor.

Working with an experienced, knowledgeable Arizona creditor’s attorney can help tremendously when evaluating a bankruptcy filing. If you would like more information about clawbacks in bankruptcy, creditors’ rights, or if you need assistance from an attorney, **contact [Windtberg & Zdancewicz](#) to schedule an initial consultation.**

The attorneys at [Windtberg & Zdancewicz, PLC](#), provide clients with experienced legal representation in all collection matters. We are experienced in creditor's rights including garnishments, charging orders, attachment, property execution, trustee's sales, foreclosures, judgments, judgment collection, domestication of foreign judgments, and creditor's issues in bankruptcy cases. If you need assistance with your collection matters, please contact us at [\(480\) 584-5660](#).

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