

Bankruptcy issues from the creditor perspective

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During a bankruptcy case, we often hear about the debtor perspective. Whether due to unfavorable market conditions or poor planning, the result is financial hardship that inhibits a borrower from completing a loan agreement.

On the other side is the creditor, a lender that supplied funding and would like to recover as much of the investment as possible. Legal issues from the creditor perspective differ from that of the debtor. Some typical creditor-related issues include:

Standing to lift a stay

When a bankruptcy is filed, the debtor gets the benefit of an automatic stay preventing collections activities by the creditor. To enforce a security interest, the creditor can request to lift the stay.

More frequently, given recent rulings by the Oklahoma Supreme Court in foreclosure matters, debtors challenge the creditor's right to even enforce the security interest. Thus, the result is the debtor seeks the stay to remain in place. Creative debtor attorneys are now making an attempt to use the state Supreme Court's reasoning in bankruptcy court as well.

Timely execution of the statement of intention

There is some case law holding when debtors fail to timely perform their stated intent, the stay is lifted. When this happens, it is appropriate for a lender to file for relief

from the stay and cite these cases as legal authority for the request.

Appropriate value for vehicles in a Chapter 13

A Chapter 13 “reorganizes” debt and allows the debtor to make one monthly payment to a trustee, who then disburses payment to the creditors. When a vehicle loan is involved, lenders are seeing frequent attempts to cram down the vehicle’s value in order to pay less. A savvy creditor will know how and when to object to this type of plan treatment.

Adequate protection payments in a Chapter 13

Often, it takes months for a Chapter 13 plan to confirm. For the creditor, this presents the problem of not receiving payment on their loan for a significant amount of time. The remedy is to seek an order of adequate protection, which will direct the trustee to make a pro rata payment to the creditor pending confirmation of the plan.