

# What are involuntary bankruptcies?

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Bankruptcies are on the rise. Expectations are that, unless oil and gas prices reverse course, related bankruptcy filings

will continue.

The majority of these filings will be commenced by a debtor seeking shelter from creditors, known as voluntary filings. Used much less frequently are involuntary filings, where one or more creditors initiate a bankruptcy case without a debtor's consent.

Two requirements must be met to force a debtor into an involuntary bankruptcy. One pertains to the number of creditors involved. Debtors with less than 12 creditors require only one creditor holding at least \$15,325 in aggregate unsecured claims to file the petition to start an involuntary case. Debtors with 12 or more creditors require a petitioning group of three or more creditors holding the same amount. The second requirement is that the debtor is generally not paying its debts as they become due. When these requirements are met, an individual or business (farmers are the exception), can be compelled into bankruptcy.

Involuntary bankruptcies can be used strategically by creditors in certain situations. The most common is to initiate creditor protections afforded by the Bankruptcy Code, which apply equally whether a case is voluntary or involuntary. Creditor protections include stopping a debtor from paying select debts to the detriment of other creditors, and allowing preferential and fraudulent transfers, made pre-bankruptcy, to be reversed in certain situations. The ability to potentially remove incompetent or bad-acting management is another compelling creditor protection.

Another motive is control of venue. Bankruptcy law permits a proceeding to be commenced in various jurisdictions, including an entity's state of formation. Thus, a corporation incorporated in Delaware may file bankruptcy there, even if its headquarters, operations and creditors are in Oklahoma. Such filings can increase costs for other interested parties located in Oklahoma. To prevent such a filing, a creditor may

wish to commence an involuntary case in its preferred jurisdiction.

While involuntary bankruptcy can be an effective tool for a creditor, it is not without costs and risks. A debtor can challenge by arguing that the debts of the creditor are not valid or that the debtor has been paying on time. Resolution of these issues can require expensive litigation. These potential costs should be carefully considered when strategizing on whether an involuntary bankruptcy may be advisable.