

Relief for the uphill battle faced by creditors in bankruptcy

Bankruptcy is a debtor's remedy, meaning many of the rules and regulations are more favorable to debtors than to creditors. To even the playing field a bit, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005.

Several of its provisions were put in place to provide assurances to creditors that the system is fair and impartial. Of note, those that file must now undergo credit counseling both prior to filing and prior to receiving a bankruptcy discharge.

Also of significance are the changes to the Bankruptcy Code regarding what chapter of case a debtor is eligible to file. Prior to enactment of BAPCPA, many creditors were missing out on substantial payments because most debtors elected to file a Chapter 7 case, which acts as a total liquidation of debts, other than debts that are reaffirmed. The result was that most unsecured creditors were losing out on repayment of their entire outstanding balance.

With BAPCPA, debtors are no longer free to decide what type of case to file. Rather, a complex mathematical computation is performed prior to filing, and if the results show a debtor has funds available to repay a portion of their unsecured debt, that debtor may be required to file a [Chapter 13](#) case.

Chapter 13 is similar to debt consolidation, in that the debtor proposes a plan of repayment to all creditors, to include paying back a percentage of unsecured debt. The result is that unsecured creditors, such as credit card companies and medical providers, receive some payment.

A creditor is also permitted to file an objection to the proposed repayment plan. The most common objections are to the interest rate and value of secured claims. There are other bases for objecting, including that plan is not feasible or that the case was filed as a delay tactic.

Aside from having a statutory basis for objecting, a creditor must also adhere to the Bankruptcy Court's local rules when objecting to avoid the risk of an improperly filed objection.

While bankruptcy is still a very viable option for those with overwhelming debt, the arena is now viewed as being much more equal. Creditors have many tools at their disposal when a consumer [files bankruptcy](#) and should take full advantage of those tools to maximize repayment where possible.

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