The Powers and Duties of a Chapter 7 Bankruptcy Trustee

In the face of a continuing financially distressed economy, more and more individuals and entities are seeking relief from debt obligations by filing Chapter 7 liquidation bankruptcy cases. Although numerous parties are involved in a bankruptcy case, no one has a greater impact on a Chapter 7 liquidation case than the bankruptcy trustee. Therefore, the powers and duties of the trustee are particularly important for creditors to know and understand.

When a Chapter 7 bankruptcy case is filed, an estate is created that is comprised of the debtor's legal or equitable interests in property that exist at that time. The United States Trustee then appoints a member of the panel of private trustees to serve as trustee in the case.

As a representative of the bankruptcy estate, the trustee has a fiduciary obligation to protect the interests of all beneficiaries (i.e., all classes of creditors, including those holding secured, administrative, priority unsecured and non-priority unsecured claims, as well as the debtor's interests in exemptions and any possible surplus property).

**Duties of the Trustee**

The overarching duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors. The trustee's specific statutory duties, as set forth in Section 704 of the United States Bankruptcy Code, include the following:

1. To collect and reduce to money the property of the estate and close the estate as expeditiously as compatible with the best interests of the parties in interest;
2. To be accountable for all property received;
3. To ensure that the debtor performs his or her intention as to retaining or surrendering property of the estate that secures consumer debt;
4. To investigate the financial affairs of the debtor;
5. If a purpose would be served, to examine proofs of claims and object to any that are improper;
6. If advisable, to oppose the discharge of the debtor;
7. Unless the court orders otherwise, to furnish information concerning the estate and the estate's administration as requested by a party in interest;
8. If the debtor's business is authorized to continue operating, to file with the court appropriate
reports and summaries, including a statement of receipts and disbursements; and
9. To file a final account of the administration of the estate with the United States Trustee and
the court.

Powers of the Trustee

The trustee in a Chapter 7 liquidation case is authorized to employ accountants, attorneys,
apraisers, auctioneers and other professionals to assist in carrying out his or her duties.
Additionally, the trustee may use, sell or lease property of the bankruptcy estate, subject to a notice
requirement. However, there is no notice required for a trustee to enter into transactions in the
ordinary course of business if he or she is authorized to operate the debtor's business. The trustee is
also authorized to obtain unsecured or secured credit in connection with the operation of a business
and assume or reject executory contracts or unexpired leases of the debtor.

A trustee is vested with significant powers to aid in carrying out his or her fiduciary obligations to the
bankruptcy estate. Among them is the ability to move to dismiss a bankruptcy case for cause,
including unreasonable delay by the debtor that is prejudicial to creditors; non-payment of any fees or
charges required under certain provisions of the Bankruptcy Code; and failure of the debtor to file
certain information required under the Bankruptcy Code. The trustee may prosecute an objection to a
discharge granted to an individual debtor. He or she may also object to proofs of claim filed by
creditors in a bankruptcy case. The disallowance of a proof of claim or a reduction in its allowed
amount has a significant impact on what creditors ultimately receive when the trustee distributes the
funds on hand in a bankruptcy estate.

The most significant of the trustee's powers are generally referred to as avoidance powers, and they
are often the subject of litigation in the Bankruptcy Court. Known as the "strong arm clause," Section
544(a) of the Bankruptcy Code gives the trustee the rights and powers of a judicial lien creditor or a
purchaser of real estate, whether or not there is an actual judicial lien creditor or purchaser who may
be able to exercise the same rights. Section 544(b) allows the trustee to bring actions that an
unsecured creditor could bring (including state law fraudulent conveyance actions), while Section 545
permits the trustee to avoid the fixing of certain statutory liens. Section 547-Preferences authorizes a
trustee to avoid certain transfers of property, including payments made by the debtor to creditors,
within 90 days prior to the commencement of a bankruptcy case (subject to certain conditions).
Section 548 authorizes a trustee to avoid fraudulent transfers or obligations made with actual intent to
hinder, delay or defraud a past or future creditor. Transfers of property made by a debtor for less than
a reasonably equivalent consideration are also vulnerable if the debtor was or thereby became
insolvent, was engaged in business with an unreasonably small amount of capital or intentionally
incurred debts that would be beyond the debtor's ability to repay. Finally, Section 549 authorizes the
trustee to avoid transfers of property of the bankruptcy estate that occur after a bankruptcy case has
commenced.

The Upshot for Creditors

The trustee's ability to recover property or funds by exercising these avoidance powers can be
extremely lucrative and provides a significant benefit to the creditors of a bankruptcy estate.
Therefore, you should pay careful attention to any communication from a bankruptcy trustee that
references avoidance powers and consult with legal counsel about how to respond. Failure to do so
could result in a creditor being subjected to litigation.
Source URL: https://www.natlawreview.com/article/powers-and-duties-chapter-7-bankruptcy-trustee