

What is a Trustee? What is a Bankruptcy Trustee? Do I Need a Lawyer if I Have a Trustee?

I have recently noticed that the concept of a bankruptcy trustee is foreign to many of my clients. This makes sense, given that most have zero prior experience with the bankruptcy court system. In a nutshell, a trustee is the court appointed official who administers the debtor's bankruptcy estate.

A **Chapter 7 trustee** liquidates non exempt property and distributes it according to the scheme of priorities in the Code; the trustee also considers whether there are preferences or fraudulent transfers that can be recovered from which creditors can be paid. The trustee may bring a motion to dismiss the case as an abuse of the bankruptcy system or to deny the debtor a discharge if the trustee finds evidence of fraud, perjury, or ineligibility.

A **Chapter 13 trustee** reviews the debtor's plan and collects and distributes payments made by the Chapter 13 debtor. They are responsible for the management of your funds throughout the duration of your plan, which remember can be 3-5 years in duration.

An important point to clarify is the relationship that you will have with the trustee. If you hire a bankruptcy lawyer to prepare and file your petition, you will likely have limited contact with your case trustee. Prior to your 341 hearing, you will likely be asked by the trustee for a series of documents similar to those you provided to your attorney (which is why I ask clients to make three copies of all documents required in bankruptcy: 1 for me, 1 for the trustee and 1 backup). At the 341 hearing, you are required to appear before your trustee to answer a series of questions regarding your case. Other than these instances, your interactions with the bankruptcy trustee will be minimal.

So why do you need a bankruptcy lawyer if the court appoints a trustee to my case? This misconception has the potential to get debtors into a boat-load of trouble. A bankruptcy trustee is appointed by the court to manage your bankruptcy case, not to prepare your petition and not to look out for your best interests.

If it makes it easier, you can think of the bankruptcy trustee as working for your creditors. Their job is to distribute any available assets to your creditors (and remember they get paid a percentage of the bankruptcy estate so it is in their best interest for you to pay as much as possible under the bankruptcy code), it is your attorney's job to make sure your assets are not available for distribution.

I hope this post has cleared up a common question for you. And remember, bankruptcy lawyers tend to speak a foreign language- don't hesitate to pester your attorney (or me if you do not have a Phoenix bankruptcy lawyer) with any question you need clarified. As always, I am an experienced bankruptcy lawyer available for free bankruptcy consultations in Phoenix, Tucson and Casa Grande.