

Filing an Adversary Complaint

A Guide for Filers Not Represented by an Attorney

I. An Adversary Proceeding is Required

- A. To recover money or property or for turnover of money or property;
- B. To determine the validity, priority, or extent of lien or other interest in property;
- C. To obtain approval to sale both the interest of the estate and of a co-owner of property;
- D. To object to or revoke a discharge;
- E. To revoke an order of confirmation of a plan;
- F. To determine the dischargeability of a debt;
- G. To obtain an injunction;
- H. To subordinate an allowed claim or interest;
- I. To obtain a declaratory judgment (a judgment explaining disputed law) relating to any of the foregoing; or
- J. To determine a claim or cause of action removed from a state court pursuant to 28 U.S.C. Section 1452.

II. Starting an Adversary Proceeding

An adversary proceeding is commenced by the filing of a complaint. A complaint is a written formal statement in which the party initiating the adversary, the plaintiff, presents the facts as he or she believes them to be and demands the relief to which he or she believes he or she is entitled against the defendant, the person or entity the action is brought against. Each complaint is unique and there is no specific form provided by the court.

The bankruptcy case must be open at the time the complaint is filed. If the bankruptcy case is closed, it will need to be reopened before the complaint is filed. To reopen the bankruptcy case, you need to file a motion to reopen. There may be a reopening fee due. If the reopening is for the debtor or other party to file a complaint to determine whether or not a particular debt was discharged or for the debtor to file an action to enforce the discharge, there is no reopening fee. If the reopening is to file a complaint for any other reason, there is a reopening fee due of \$260.00 for a Chapter 7 case and \$235.00 for a Chapter 13 case. The reopening fee is in addition to the adversary filing fee if due as described below.

III. Filing Fees for an Adversary Complaint

The fee for an adversary complaint is \$293. Parties exempt from paying the filing fee are:

- A. Any U.S. Government agency.
- B. A Chapter 7 or Chapter 13 debtor.
- C. A Chapter 11 individual debtor, or attorney representing debtor, only when filing a Complaint for Dischargeability of a Debt.
- D. A Chapter 7 trustee - the fee is due at the time of filing the complaint unless the trustee files a certification that insufficient estate funds are available. The fee is then deferred until funds become available.
- E. A Chapter 12 or Chapter 13 trustee - the fee is paid from the estate upon confirmation of the plan.
- F. A Chapter 11 trustee - the fee is due at the time of filing the complaint unless a motion and order to defer payment is filed with the complaint.
- G. A creditor owed child support by the debtor or such creditor's representative - the fee is not due provided the creditor or representative files Form 281 - Appearance of Child Support Creditor or Representative (a copy of which is included).

IV. What is Required for Filing an Adversary Complaint?

- A. Filing fee of \$293 (except when the filing fee is not required or is deferred).
- B. An original and one copy of the adversary complaint.
- C. An Adversary Proceeding Cover Sheet (recommended, but not required)
- D. Summons in an Adversary Proceeding. The clerk's office will issue the summons.

V. Issuing the Summons

The clerk's office will issue the summons and mail it to the pro se (party not represented by an attorney) plaintiff.

VI. Service of Summons and Complaint

IF YOU HAVE NAMED THE UNITED STATES/OR A FEDERAL AGENCY AS A DEFENDANT, YOU ARE REQUIRED TO SERVE THE U.S. ATTORNEY AND THE ATTORNEY GENERAL OF THE UNITED STATES WITH A COPY OF THE COMPLAINT AND THE SUMMONS.

The summons and complaint may be served anywhere in the United States. For service in a foreign country, see Bankruptcy Rule 7004.

A. Service may be made by:

1. Personal Service - By person not less than 18 years of age and not a party to the complaint.
2. First Class Mail - Service may be made on defendants within the United States by first class U.S. mail postage pre-paid, except as stated below. Service by first class mail is also subject to the following specific requirements as stated.

a. Mail service on an Insured Depository Institution (banks and other financial institutions whose deposits are federally insured) must be by certified mail addressed to a particular officer of the institution.

b. If serving the bankruptcy debtor by mail, the summons and complaint must be mailed to the address stated on the bankruptcy petition or to such other address as the debtor may designate in a writing filed with the bankruptcy court. If the debtor is represented by an attorney, service must also be made on the attorney at the attorney's post-office address.

c. Service on an Agency of the United States must be made to all three of the following addresses.

(1) Civil Process Clerk US Attorney, District of Arizona 40 N Central Ave Phoenix AZ 85004

(2) Attorney General of the United States Dept of Justice, Room B-103 950 Pennsylvania Ave NW Washington DC 20530-0001

(3) US Agency Name Street Address/PO Box City State Zip Code

d. Service on the United States Trustee by mail must be mailed to the following address.

United States Trustee 230 N First Ave Suite 204 Phoenix AZ 85003-1706

3. Publication - If a party cannot be served by personal service or first class mail, the court may, on motion of the plaintiff, order at least one publication in such manner and form as the court directs (example: newspaper).

B. Time Limit for Service:

1. Service must be made within ten days following the issuance date of the summons. If the summons is not timely delivered or mailed, a replacement summons (an alias summons) shall be issued upon request of the plaintiff, providing that 120 days have not

passed since the filing of the adversary complaint.

2. If service of the summons and complaint is not made within 120 days after the filing of the complaint, and good cause cannot be shown why service was not made within that period, the adversary complaint may be dismissed.

C. Certificate of Service. You may complete the Certificate of Service form provided at the end of these instructions and then file it as your Certificate of Service . For the service to be valid, the certificate must show that the following requirements were done.

1. The date service was made must be stated. If mailed, the date the copy of the complaint and summons was deposited in the mail is the date to be stated.

2. It must state that a copy of the complaint and summons was served or mailed.

3. If service was made by personal delivery of the summons and complaint, then it must state that the person making service is 18 years or older and is not a party to the case.

4. If service was made by mail, then the names and addresses to which the summons and copy of the complaint were mailed must be stated.

5. If service was made by certified mail, then the certification must be attached to the certificate.

VII. What is the Usual Course of an Adversary Complaint?

A. An adversary complaint is filed by the plaintiff and the clerk's office issues a summons.

B. The summons and complaint are served upon the defendant(s) and their attorneys by the plaintiff.

C. The plaintiff files with the bankruptcy court a Certificate of Service of the summons and complaint.

D. If the defendant files an answer to the complaint, the court will set a status hearing and will notice the hearing to the interested parties.

E. The adversary would then go through its course until the judge renders a decision, judgment, or the parties reach a settlement. The adversary would then be closed.

F. If an answer is not filed, the plaintiff would file the proper paperwork to have a default entered against the defendant(s).

VIII. How do I Have the Court Enter a Default Against the Defendant?

There are no specific forms available. You will prepare your own Application for Default and a separate Default Judgment. The clerk's office is permitted to enter a default only upon being presented with an Application for Default setting forth the facts. These facts normally include the following:

- A. Date the adversary complaint was filed with the court;
- B. Date the summons was signed/issued by the deputy clerk;
- C. Date you served the adversary complaint on the defendant and defendant's attorney;
- D. Date you filed your Certificate of Service with the court;
- E. Statement that no answer has been received within the time limit fixed by the court on the summons; and
- F. Statement that the defendant is not in the military service. If the defendant is or may be in the military service, the defendant is afforded certain protections which must be addressed prior to the Entry of Default.

IX. Clerk's Entry of Default

When an Application for Entry of Default is filed, the adversary case will be reviewed and if appropriate, the clerk's office will prepare and mail the Entry of Default to the interested parties. If the application is deficient, the clerk's office will notify the plaintiff regarding the deficiency.

X. Default Judgment

The judge will review the file and either sign the Default Judgment or set the matter for hearing.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

| | |
|--------------|--|
| In Re | |
| Debtor(s) | |
| | |
| Plaintiff(s) | |
| v. | |
| Defendant(s) | |

Chapter _____
Case No. _____
Adv. No. _____

CERTIFICATE OF SERVICE

I, _____ certify that I am, and at all times during the service of process, was not less than 18 years of age.
(Name)
I further certify that the service of this summons and a copy of the complaint was made on _____ by:
(Date)

- Mail Service: Regular, first class United States mail, postage fully pre-paid, addressed to:

- Personal Service: By leaving the process with the defendant or with an officer or agent of defendant at:

- Residence Service: By leaving the process with the following adult at:

- Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

- Publication: The defendant was served as follows: [Describe briefly]

- State Law: The defendant was served pursuant to the laws of the State of _____ as follows: [Describe briefly]
(Name of State)

If service of process was made by personal service, residential service, or pursuant to state law, I further certify that I am not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

(Date)

(Signature)

(Print Name)

(Business Address)

(City, State, Zip Code)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor(s)

Case No. _____

APPEARANCE OF CHILD SUPPORT CREDITOR* OR REPRESENTATIVE

I certify under penalty of perjury that I am a child support creditor* of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name:

Organization:

Address:

Telephone Number:

X _____

Date

Child Support Creditor* or Authorized Representative

Summary of Child Support Obligation

Amount in arrears:

\$ _____

Amount currently due per week or per month:
on a continuing basis:

\$ _____
(per week) (per month)

If Child Support has been assigned:

Amount of Support which is owed
under assignments:

\$ _____

Amount owed primary child support
creditor (balance not assigned):

\$ _____

Attach an itemized statement of account. Do not disclose the name of a minor child. See 11 U.S.C. § 112. If a social security number or a taxpayer identification number is included, set out only the last four digits of the number. Judicial Conference Privacy Policy (09/01).

* Child support creditor includes both creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a)(26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.