

Adversary or Motion to Avoid Mortgage

To avoid a mortgage, an adversary or motion must be filed unless an agreed order is entered into with the Creditor, at which point an adversary is not needed. (Current Policy).

Due to the District Wide Plan, a Mortgage can be avoided by plan, motion or claims objection. (See Paragraphs 5.1.2; 5.4.1; 5.4.2 or 5.4.4 of the Plan).

If filing a motion (5.1.2; 5.4.1; 5.4.2) the motion should be filed before the 341 Meeting of Creditors. If not, it will generate an objection by the Trustee. The motion is to be heard in conjunction with confirmation. If a response is filed (the confirmation date will act as a status conference for the purpose of setting a hearing date on the motion). An adversary would need to be filed for a 5.4.4 avoidance, but the same rules apply.

Unwritten rule: Avoid using the claims objection option to avoid a mortgage or set value. The notice period is longer (30 days v. 21 days) and the creditor has to file a claim, which may not always occur.