

Fighting bankruptcy claims  
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The Record

Q. One of my customers just filed for bankruptcy. The bankruptcy trustee is demanding I return all payments received from that customer during the 90-day period prior to the bankruptcy filing as "preferential transfers." What does this mean and what are my options?

Section 547 of the U.S. Bankruptcy Code authorizes a trustee to avoid and recover any payments: (i) made by a bankruptcy debtor on account of an antecedent debt, (ii) while the debtor was insolvent, (iii) during the 90-day period preceding the bankruptcy filing (but if the payment recipient is an "insider" of the debtor, this period is extended to one year), and (iv) that enabled the creditor to receive more than it would have in a hypothetical liquidation of the debtor's assets. This section of the code also provides some available defenses to a preference claim, including:

\* Contemporaneous Exchange for New Value — A trustee may not avoid a transfer that was intended by the debtor and creditor to be, and, in fact, was, a substantially contemporaneous exchange for new value. This defense typically applies to goods sold with "cash on delivery" or "cash before delivery" payment terms.

\* Ordinary Course of Business — Payments made in the ordinary course of business of the debtor and creditor are not subject to avoidance as preferential transfers. This subjective defense requires a comparison of all payments made during the

preference period against the debtor's overall relationship and payment history with the creditor.

\* Subsequent New Value — A creditor may offset the value of any goods or services provided subsequent to the receipt of a preferential payment against the transfer in question.

To obtain a more detailed explanation of preference claims and defenses, you should consult a bankruptcy attorney.

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