# Creditor Trusts

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**An important tool for unsecured creditors in a Chapter 11 bankruptcy proceeding is a Creditor Trust ("Trust"). Such a Trust can be used in conjunction with a Sec. 363 sale process, a wind down and liquidation, or where a debtor's business emerges with a plan of reorganization ("Plan"). However, the focus here will be on the use of a Creditor Trust where the reorganized business emerges from bankruptcy, a stronger, more competitive enterprise.**

In a true Chapter 11 reorganization, a Creditor Trust allows the debtor to emerge from the bankruptcy process, focus on improving the business, and eliminate the bankruptcy related reporting requirements and trustee expenses. Using such a Trust post-confirmation provides a cost-effective means for the unsecured creditors to ensure the debtor adheres to the Plan. Payments are made to the Trust, and ultimately the unsecured creditors, in a timely manner according to the terms of the Plan. If the debtor defaults on the terms of the Plan and there is a properly documented Creditor Trust Agreement in place, the Creditor Trustee will have the authority to take control of the business and sell it as a going concern, or liquidate the assets in an orderly fashion to maximize the return to the unsecured creditors.

The debtors and the Creditor Trustee form a Creditor Trust pursuant to the Plan. The assets of the debtor are pledged to the Trust and the Creditor Trustee is usually empowered to administer the Trust assets and take action on behalf of the Trust in order to maximize the return to the beneficiaries of the Trust, the unsecured creditors. The Creditor Trustee, acting under the authority of the Creditor Trust Agreement, may have the authority to: hold title to the business assets including voting power, assume management control of the business, oversee and direct the issuance of distributions according to the Plan, oversee and direct the prosecution or defense of claims, and retain professionals if necessary. In some cases, the Creditor Trustee is charged with providing guidance to the debtor during the trust existence to ensure the Plan is successful and the turnaround of the business is sustainable.

The Creditor Trustee's authority is dictated in the language of the Creditor Trust Agreement and the Disclosure Statement filed with the bankruptcy court prior to the hearing on the feasibility of the Plan and confirmation. A carefully crafted Creditor Trust Agreement will give the Creditor Trustee the power he/she needs to oversee the operations of the reorganized debtor without further authorization from the Bankruptcy Court, ensure the Plan governs the process, and safeguard the unsecured creditors' interests under the Plan.

In a Chapter 11 bankruptcy setting, Creditor Trusts are valuable as they assist the debtor to formulate and confirm a Plan that is agreeable to the unsecured creditor's committee. Insight into the value of a Creditor Trust and utilization of the power entrusted in the Creditor Trustee can result in the successful recovery for the unsecured creditors with the emergence of a sustainable, reorganized business.