

How Bankruptcy Stops Your Creditors: The Automatic Stay

After you file for bankruptcy, the automatic stay offers potent legal protection against bill collectors.

When you file for bankruptcy, something called the automatic stay immediately stops any lawsuit filed against you and most actions against your property by a creditor, collection agency, or government entity. Especially if you are at risk of being evicted, being foreclosed on, being found in contempt for failure to pay child support, or losing such basic resources as utility services, welfare, unemployment benefits, or your job (because of a raft of wage garnishments), the automatic stay may provide a powerful reason to file for bankruptcy.

What the Automatic Stay Can Prevent

Here is how the automatic stay affects some common emergencies:

- **Utility disconnections.** If you're behind on a utility bill and the company is threatening to disconnect your water, electric, gas, or telephone service, the automatic stay will prevent the disconnection for at least 20 days. Although the amount of a utility bill itself rarely justifies a bankruptcy filing, preventing electrical service cutoff in January in New England might be justification enough.
- **Foreclosure.** If your home mortgage is being foreclosed on, the automatic stay temporarily stops the proceedings, but the creditor will often be able to proceed with the foreclosure sooner or later. If you are facing foreclosure, Chapter 13 bankruptcy is usually a better remedy than Chapter 7 bankruptcy, if you want to keep your house.
- **Eviction.** If you are being evicted from your home, the automatic stay may provide some help -- but the new bankruptcy law makes it easier for landlords to proceed with evictions. If your landlord already has a judgment of possession against you when you file, the automatic stay won't affect these eviction proceedings; the landlord can continue just as if you hadn't filed for bankruptcy. And if the landlord alleges that you've been endangering the property or using controlled substances there, the automatic stay won't do you much good, either. In other cases, the automatic stay might buy you a few days or weeks, but the landlord will probably ask the court to lift the stay and allow the eviction - and the court will probably agree to do so.
- **Collection of overpayments of public benefits.** If you receive public benefits and were overpaid, normally the agency is entitled to collect the overpayment out of your future checks. The automatic stay prevents this collection. However, if you become ineligible for benefits, the automatic stay doesn't prevent the agency from denying or terminating benefits for that reason.
- **Multiple wage garnishments.** Filing for bankruptcy stops garnishments dead in their tracks. (And not only will you take home a full salary, but you also may be able to discharge the debt in bankruptcy.) Although no more than 25% of your wages may be taken to satisfy court judgments (up to 50% for child support and alimony), many people file for bankruptcy if more than one wage garnishment is threatened.

What the Automatic Stay Cannot Prevent

In a few instances, the automatic stay won't help you.

- **Certain tax proceedings.** The IRS can still audit you, issue a tax deficiency notice, demand a tax return (which often leads to an audit), issue a tax assessment, or demand payment of such an assessment. However, the automatic stay does stop the IRS from issuing a tax lien or seizing your property or income.
- **Support actions.** A lawsuit against you seeking to establish paternity or to establish, modify, or collect child support or alimony isn't stopped by your filing for bankruptcy.
- **Criminal proceedings.** A criminal proceeding that can be broken down into criminal and debt components will be divided, and the criminal component won't be stopped by the automatic stay. For example, if you were convicted of writing a bad check, sentenced to community service, and ordered to pay a fine, your obligation to do community service won't be stopped by your filing for bankruptcy.
- **Loans from a pension.** Despite the automatic stay, money can be withheld from your income to repay a loan from certain types of pensions (including most job-related pensions and IRAs).
- **Multiple filings.** If you had a bankruptcy case pending during the previous year, then the stay will automatically terminate after 30 days unless you, the trustee, the U.S. Trustee, or a creditor asks for the stay to continue and proves that the current case was filed in good faith. If a creditor had a motion to lift the stay pending during the previous case, the court will presume that you acted in bad faith, and you'll have to overcome this presumption to get the protection of the stay in your current case.

How Creditors Can Get Around the Automatic Stay

Usually, a creditor can get around the automatic stay by asking the bankruptcy court to remove ("lift") the stay, if it is not serving its intended purpose. For example, say you file for bankruptcy the day before your house is to be sold in foreclosure. You have no equity in the house, you can't pay your mortgage arrears, and you have no way of keeping the property. The foreclosing creditor is apt to go to court soon after you file for bankruptcy and ask for permission to proceed with the foreclosure -- and that permission is likely to be granted.

For More Information

For more information on the automatic stay and how it might apply in your situation, see *The New Bankruptcy: Will It Work for You?*, by attorney Stephen Elias.

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