

New Limits to Automatic Stay

If you owe debt to creditors, they may be harassing you over the phone or through mail. An automatic stay would alleviate this cause of stress. The automatic stay is a federal court order that stops all collection proceedings against you. On the day that you file for bankruptcy, creditors have to stop their foreclosure proceedings. Creditors also must stop any pending lawsuits against you and stop garnishing your wages.

However, the new bankruptcy law places new limits to the level of protection the automatic stay provides in certain situations. The following is a list of circumstances that will lead a court to limit or cancel your automatic stay.

Second Time Filing for a Chapter 7 or Chapter 13 Bankruptcy

If you unsuccessfully filed for either a Chapter 7 or Chapter 13 bankruptcy within the past year, the courts automatically assume that your second bankruptcy is in bad faith. The courts will then limit the application of the automatic stay to 30 days when you file for bankruptcy again. You can try to extend the automatic stay by proving to the court that you have filed in "good faith."

If your previous bankruptcy was dismissed for failure to provide required documents without an excuse, the courts could say that your new bankruptcy is in bad faith. This is also true if your financial situation has not changed enough to allow a financial discharge or completion of a bankruptcy plan.

Note that the courts will not limit your automatic stay to 30 days if you were forced into filing a Chapter 13 bankruptcy after failing the Chapter 7 means test.

Third or Fourth Time Filing for a Chapter 7 or Chapter 13 Bankruptcy

If you have had two or more bankruptcy cases within the last one year and you file for bankruptcy again, the courts will not grant you an automatic stay at all. In order for you to benefit from an automatic stay, you will have to prove to the courts that your new bankruptcy is in good faith and must make an application with the court to impose

the stay on your creditors. Thus, if you wait until the eve of a foreclosure sale, it could be too late.

Failure to Provide a Statement of Intent within 30 Days

If you owe debt on a secured property, such as a car or home, you will have to state what you plan to do with the debt. This is called a statement of intent. If you do not file a statement of intent within 30 days, the courts will take away your automatic stay with regard to the secured creditors. However, the trustee could ask the courts to extend your automatic stay if your secured property is valuable to your estate and your creditor would be adequately protected.

Conclusion

One advantage to filing for bankruptcy is the automatic stay. It will stop your creditors from punishing you for not paying your debts. If you would like to learn more about your options, give Amicus Curia a call at (360)427-3599