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The Automatic Stay: Stopping Creditors with Bankruptcy

Once you file for bankruptcy, an automatic stay kicks in and protects you from your creditors and bill collectors.

A miraculous little thing called the automatic stay kicks in when you file for bankruptcy. The automatic stay stops any lawsuit that is filed against you by a creditor, collection agency, government entity or other person seeking money from you. The automatic stay is a powerful tool that you should seriously consider if you are in trouble. For example, if you are behind on child support payments, about to be evicted from your home, or if the utility companies have been threatening to turn off your service, then the automatic stay can be a lifesaver.

What the Automatic Stay Can Do For You

There are several things that the automatic stay can do for you and your financial situation. These include:

- **Stopping your utilities from being disconnected.** Sometimes when you are behind on a utility bill, the utility company will threaten to turn off your telephone, gas, electric or water service. The automatic stay will often prevent the utility company from turning off your service for at least 20 days. Even though your utility bill is probably not high enough to justify filing for bankruptcy by itself, it may influence your decision to not have your gas and electricity if it's the middle of winter.
- **Stopping foreclosure proceedings.** If the bank or the financial institution that holds your mortgage is starting foreclosure proceedings, the automatic stay will stop the foreclosure in its tracks. However, even if it is temporarily stopped, your bank will most likely find a way to continue the foreclosure proceedings once the automatic stay is lifted. If keeping your house is one of your primary goals, you should consider filing for Chapter 13 bankruptcy instead of Chapter 7.
- **Stopping evictions.** The automatic stay may be able to stall an eviction proceeding if your landlord is trying to evict you. However, because of recent changes to the laws regarding the automatic stay, if your landlord already has a court issued wrongful possession judgment against you, the automatic stay will not stop your landlord from evicting you. Also, even if your landlord has not started eviction proceedings against you, the automatic stay may only buy you a few days or weeks in your current home. Generally, courts will side with landlords if the landlord can show that you are misusing the property, endangering it, or selling or using controlled substances on the property. In addition, even if you have been a model tenant, courts will generally side with the landlord if he or she asks the court for permission to evict you.
- **Stopping a government agency from taking back overpayments of public benefits.** If you were receiving public benefits before you filed for bankruptcy, the automatic stay will stop the agency from collecting any benefits that were overpaid to you until the automatic stay is lifted. Normally, the agency would collect the overpayment from you either by billing you or deducting from your future benefit checks. However, if you become ineligible to receive public benefits during your bankruptcy, the automatic stay will not stop the agency from collecting the overpayments from you.
- **Stopping wage garnishment.** Once you file for bankruptcy, the automatic stay stops all wage garnishments until the automatic stay is lifted. If you have multiple garnishments against your wages, then you may want to consider filing for bankruptcy as it would allow you to take home your entire salary.

What the Automatic Stay Can't Do For You

There are some situations and circumstances where the automatic stay won't help you. These include:

- **Some tax proceedings.** The automatic stay will not help you if the IRS wants to audit you or issue a tax deficiency against you. Also, the automatic stay will not prevent the IRS from demanding that you file a tax return, or from issuing you a tax assessment or demanding payment for taxes that are owed. However, if you are protected by the automatic stay, the IRS cannot issue a tax lien against your income or property.

- **Child support.** The automatic stay will not stop a lawsuit against you that attempts to establish paternity. In addition, it will not stop a lawsuit that tries to establish, modify or collect child support payments.
- **Criminal proceedings.** If you are involved in a criminal proceeding that involves both a debt and criminal portion, the automatic stay will only stop the debt portion of the proceeding. So, if you were convicted of petty theft and were ordered by a judge to make repayments and also conduct a certain number of hours of community service, the automatic stay will only stop the repayment portion of your sentence. You will still be required to complete your community service hours.
- **Loans from your pension.** If you took a loan against your pension, the automatic stay will not prevent your wages from being garnished in order to repay the loan to your pension.
- **Filing for bankruptcy multiple times.** If you filed for bankruptcy after you filed for bankruptcy in the previous year, then the automatic stay associated with your current filing will terminate after 30 days unless you, your trustee, the United States Trustee or a creditor asks for the automatic stay to continue and shows that your current bankruptcy filing was filed in good faith. However, if a creditor has filed a motion to lift the automatic stay in your previous bankruptcy matter, you will have to overcome a presumption that your current bankruptcy filing was filed in bad faith.

Creditors Can Still Get Around the Automatic Stay

In most situations, a creditor may be able to get around the automatic stay by asking the court to "lift the injunction" (removing the automatic stay). To do so, the creditor normally has to show that the automatic stay is not serving its intended purpose. For example, if you filed for bankruptcy the day before you were about to be evicted from your apartment, your landlord could probably go to the court and get the stay lifted by showing you have no way to pay the rent that you owe.

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