

## **RELIEF IS ON THE WAY: BANKRUPTCY WILL STOP FORECLOSURES, REPOSSESSIONS AND GARNISHMENTS**

By Jeff Schreiber\*

The two most important protections afforded a consumer filing bankruptcy are: 1) the immediate stay of all collection efforts by creditors, and 2) a permanent injunction against any future attempts to collect a discharged debt. These protections are known as the automatic stay and the discharge injunction.

The automatic stay is an injunction that stops harassing telephone calls, lawsuits, foreclosures, garnishments, repossessions and all collection activities, the moment your bankruptcy petition is filed with the bankruptcy court. It places you and your property under the protection of the bankruptcy court.

The injunction takes effect against your creditors without you or your attorney appearing in court, filing a motion or waiting for an order from the bankruptcy court. For consumers who have waited until the last minute to deal with a pending foreclosure or repossession, the rapid relief afforded by filing bankruptcy is the only sure way to stop a foreclosure or repossession. In fact, in such a situation, you can file a two-page skeletal petition with the court and still receive the full protection of the automatic stay.

The automatic stay requires all other courts to stop any proceedings against you. This makes the automatic stay a unique and powerful tool, since courts rarely issue orders directing other courts to stay their docket.

Notice of the automatic stay is mailed by the bankruptcy court using the creditor list you provide. Therefore, it is very important that you list all creditors when filing bankruptcy in order to get the maximum coverage from the automatic stay.

The purpose of the automatic stay is to give you a breathing spell from your creditors. In addition to staying collection efforts by creditors, the stay prevents individual creditors from seizing your assets. This guarantees that you retain the exempted property you need for a fresh start. Thus, all your property and debts are handled by one court in an orderly manner, rather than subjecting you to a feeding frenzy of competing creditors.

You should be aware that some activities are not stopped by the automatic stay. These include continuation of a criminal case, the collection of alimony, maintenance or child support, paternity hearings and certain acts to perfect security interests in property. The automatic stay protects you and your property until you receive a discharge. A secured creditor; that is, a creditor that holds an interest in collateral to secure payment of a debt, must file a motion with the bankruptcy court for relief from the automatic stay before it can take any actions to repossess its collateral. Acts taken by creditors in violation of the automatic stay are void. The bankruptcy court can set aside any judgments or repossessions, order the property returned to you and award you damages including costs and attorneys' fees.

The automatic stay is immediate relief debtors seek. The permanent relief is the discharge injunction. The discharge order is a permanent statutory injunction prohibiting creditors from taking any action to collect a discharged debt. Since the purpose of filing bankruptcy is to obtain relief from the pressure of paying your overwhelming debts, the discharge injunction is your most important protection. The Order is issued by the bankruptcy court at the conclusion of your case, no earlier than 90 days after filing the petition.

The sanction for violating a discharge injunction is civil contempt which is punishable by a fine and payment of attorneys' fees. Attempts to collect a discharged debt may violate other laws such as the Fair Debt Collection Practices Act and state debt collection regulations.

The discharge injunction does not prevent a secured creditor from foreclosing its lien or mortgage and taking back the property. However, the discharge injunction prohibits the secured creditor from any attempt to collect a deficiency debt which results from a foreclosure.

The bankruptcy code excepts certain debts from discharge. These are known as nondischargeable debts and typically include taxes, alimony, child support, student loans and damages for willful injury to others. The discharge injunction does not apply to collection activities involving these debts.

Bankruptcy courts have unique and far-reaching powers to render immediate and permanent protection to financially strapped consumers. If you are faced with foreclosure, repossession or garnishment, do not be afraid to exercise your rights under the federal bankruptcy laws.

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