



## What Is the “Automatic Stay” In Bankruptcy?

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The filing of a bankruptcy petition acts as an immediate stay of any act against the debtor to collect a debt. It is called an “automatic stay” because no action, other than the filing of the petition, is necessary in order for the stay to go into effect. Although there are many exceptions to the automatic stay, creditors generally are forbidden from contacting the debtor to demand payment, filing a lawsuit to obtain a judgment on a debt, filing a lien against the debtor’s property if a judgment has already been obtained, or seizing property of the debtor to satisfy a debt.

For example, the filing of the bankruptcy case prohibits the foreclosure sale of a home, repossession of a vehicle, levy of a bank account, or even a phone call to the debtor attempting to collect a debt. If a creditor ignores the stay and continues with collection action, the debtor may file a motion in bankruptcy court for violation of the automatic stay. The creditor may be found liable for monetary damages and attorney’s fees to the debtor, and other penalties may be imposed by the bankruptcy judge for the violation.

The automatic stay is one of the most powerful remedies available in any court, and obtaining the stay is often the reason for filing the bankruptcy case. If a debtor is facing foreclosure, repossession of a vehicle, has been served with a lawsuit, or is being harassed by creditors, the immediate effect of the automatic stay protects the debtor so that he or she will have an opportunity to restructure or eliminate their debt without losing property.

Some of the exceptions to the automatic stay include family law matters, such as paternity suits, custody and visitation actions, child support proceedings, divorce, or actions regarding domestic violence.

Criminal proceedings are also unaffected by the automatic stay.

If you are a creditor, it is very important that you consult a lawyer before taking any action to collect a debt once you are aware that a bankruptcy case has been filed. If you are a debtor considering the filing of a bankruptcy case, you should obtain the advice of an experienced bankruptcy attorney who can advise you how the automatic stay may help you deal with your creditors and protect your property.