

If You Want to Keep It, You Have To Pay For It

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When you file bankruptcy you can rightly expect that you will eliminate most of your credit card-type debts. However, every now and again I have a client come in who believes that if a person files for bankruptcy, that they can then keep their home or their car but are no longer required to make the payments because the debt has been “discharged” by the court. This is not correct. Even in bankruptcy, you can’t get something for nothing.

Your debts will be divided into essentially two categories: secured, and unsecured. Your secured debts are things like your home mortgage loan, your car loan, or any loan that you have that is secured by property or collateral of some sort. These types of debts must be paid if you intend to keep the collateral that is securing the loan. For instance, if you want to keep your house, you must continue (or start) making the monthly payment as it comes due. If you want to keep your car, you must continue to make your monthly payment. Failing to do so will result in the secured creditor seeking permission from the court to come and take your house or repossess your car.

Regardless of the chapter of bankruptcy that you file, upon the filing of your case an automatic order is issued by the court that stops (or “stays”) any collection efforts against you and your things. Basically, your creditors cannot sue you, garnishment your wages, send you demand letter, or even call you on the phone (hallelujah!).

The process of obtaining the court’s permission to take the property is done through a written motion, usually entitled a Motion for Relief From the Automatic Stay. Once this document is filed you have a very limited amount of time (23 days in Arizona) by which to bring the house payments current, come to an agreement with the creditor as to how the payments will become current, or agree to surrender the property.

This article was prompted by my attendance at a hearing this morning before one of the local bankruptcy judges. He stated that it was time to “spread the word” that if people who file bankruptcy are not maintaining their house payments or car payments after filing for bankruptcy that there will be little sympathy from the court. In the hearing today I witnessed the judge lift/remove this protective order and permit the foreclosure of homes because the person in bankruptcy had continually neglected to make their house payments after filing for bankruptcy. In order for your case to be successful, you must continue to make the payments on any property you want to retain while you are going through the bankruptcy process. General rule, if you want to keep it, you have to pay for it!