

What is the automatic stay in bankruptcy?

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When someone files for bankruptcy the automatic stay arises. 11 U.S.C. § 362(a). It is just what the name says. It is automatic, which means no further acts are needed for its arising. Sunshine Dev., Inc. v. FDIC, 33 F.3d 106, 113 (1st Cir. 1994). And it is a stay, which means a temporary stop, (but not a permanent stop, that may come from another code section), to various acts to collect from the debtor or the debtor's property. Actions taken in violation of the automatic stay are void. In re Soares, 107 F.3d 969, 976 (1st Cir. 1997); In re Best Payphones, Inc., 279 B.R. 92 (Bankr. S.D.N.Y. 2002). The automatic stay is powerful. Violation of it after notice of the bankruptcy filing can result in actual damages being awarded against the bad actor, including attorney's fees and costs. 11 U.S.C. §362(k). If the acts are "willful" the court is empowered to award punitive damages. Id. The automatic stay also gives the debtor some breathing room. Most importantly, it allows the bankruptcy process to work and properly administer any distribution, if any. Without it, the bankruptcy process simply wouldn't work. However there are exceptions to the automatic stay. 11 U.S.C. §362(b). A study of the exceptions to the automatic stay could merit a college course in and of itself and exceeds the scope of this post. But, a non-exhaustive list of the exclusions, *and generally*, are: criminal charges, most domestic support issues, paternity claims, tax intercepts, tax determinations and audits, and many official State actions. Id.

Because the stakes are high, for both debtors who could be mistaken that the automatic stay applies when it does not, and for creditors that may think that it does not apply when in fact it does, it pays to obtain a professional opinion, especially for particular situations. If you have any questions on the scope or particular applicability of the automatic stay in bankruptcy, please feel free to give this office a call.

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