

Will Filing for Bankruptcy Stop the Creditor Calls? What is the Automatic Stay?

When you file for either Chapter 7 or Chapter 13 bankruptcy the “automatic stay” prevents any creditor from doing anything to enforce a claim against a debtor during the bankruptcy case. The automatic stay stops any lawsuit filed against you by a creditor, collection agency, or other government entity.

There are many benefits to the automatic stay. One such benefit is that the automatic stay stops garnishments. It also prevents creditors from taking money in your bank accounts or putting a lien on your property. While a creditor is allowed to garnish up to 25% of your wages, filing Chapter 7 or Chapter 13 bankruptcy will stop most wage garnishment orders. If an ordinary creditor garnishes your wages or levies your bank account after filing for Chapter 7 or Chapter 13 bankruptcy, you will be entitled to a refund.

Another benefit of the automatic stay is that if your home is about to go into foreclosure, filing bankruptcy automatically stops the proceedings. If you are behind on your mortgage, Chapter 7 bankruptcy will only buy you some time before the primary mortgage holder can foreclose. I have seen some debtors have to move as soon as a month and a half after filing, while other debtors have remained in their homes for over a year. Filing Chapter 13 bankruptcy will not only stop the foreclosure proceedings, but will allow you to catch up on your mortgage by including your arrears in your Chapter 13 repayment plan. If you are facing an impending foreclosure you should consult an experienced Tucson bankruptcy lawyer in determining whether you can save your home in Chapter 13 bankruptcy or whether surrendering your home in Chapter 7 is the better solution.

If you are behind on rent, the automatic stay may buy you a few days or even weeks before you are ultimately evicted. However, if the landlord has a judgment for possession prior to you filing for bankruptcy, the automatic stay will have no effect. If you are behind on rent when you file for bankruptcy, the landlord can file a motion to lift the automatic stay, which will most likely be granted, and will allow the landlord to proceed with eviction proceedings.

If you are facing an emergency situation due to a utility disconnection, the automatic stay will prevent disconnection for at least 20 days. This may be helpful if you fear your electricity will be shut off. Finally, the automatic stay prevents government agencies from collecting on public benefits that were overpaid. Normally if you are overpaid public benefits a government agency can garnish your wages.

If you are faced with any sort of collection effort or creditor harassment, you should meet with a Tucson bankruptcy lawyer who analyze whether the automatic stay will help your situation.