

The Bankruptcy Process, Toni Braxton, & The Automatic Stay

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As I wrote about in an earlier blog post singer Toni Braxton filed for Chapter 7 bankruptcy a short while ago. The Wall Street Journal is reporting that one of her creditors, US Bank, is attempting to lift the automatic stay so that they can foreclose on her home (<http://tinyurl.com/2egrerp>). In light of this, I thought this would be a good opportunity to discuss what the automatic stay is and how it operates in your bankruptcy case.

The automatic stay is one of the most powerful tools in bankruptcy. The Bankruptcy Code (at 11 U.S.C. § 362(a)) provides that upon the filing of a bankruptcy case that an Order will be entered by the bankruptcy court automatically that bars the continuation of any collection efforts against you or your property. This means that from the moment you file your bankruptcy case that your creditors cannot sue you, garnish wages or bank accounts, send you letters or even call you on the phone (no more calls!!!). The automatic stay gives you some breathing room and a chance to recoup so that you can move forward in your financial life.

While the automatic stay is applicable immediately, in certain scenarios it may only last a short time, be lifted at the request of a creditor, or not apply at all. I will go over these exceptions below:

Limited Applicability of the Automatic Stay

The automatic stay generally last throughout your bankruptcy case – usually until it is discharged. However, if you have had a prior bankruptcy case within the last 12 months, the automatic stay will only last for 30 days from the day you file your second bankruptcy case. You can get this extended by filing a motion with the court and attending a hearing before your judge, but if you don't, the stay lifts (or stops being applicable) 30 days after your bankruptcy case is filed.

If you have had two prior bankruptcy filings in the last 12 months then there is no automatic stay when the third bankruptcy case is filed unless you get the bankruptcy court to impose one. While it may seem bizarre that a person would have more than one bankruptcy filing in a year, it usually happens when a person files for bankruptcy and then has a case dismissed but not discharged. Many times the person must then file another case.

The Motion to Lift the Automatic Stay

The automatic stay applies to all of your property. Often I file bankruptcy cases shortly before foreclosure sales as the automatic stay will stop the foreclosure sale on your home. However, with secured creditors such as banks who have loaned you money for a car or a home, if you do not make your car payment or your house payment during your bankruptcy the bank

will likely file a motion with the bankruptcy court asking it to lift or remove the automatic stay so that they can repossess the car or foreclose on your home. In order to keep the automatic stay in place to protect these assets it is vital that you maintain your payments in bankruptcy. I am seeing banks becoming much more aggressive recently and filing these motions very soon after the bankruptcy case is filed.

Attorney John Skiba offers a free consultation regarding bankruptcy where your specific situation can be discussed. He can be reached at (480) 464-1111.