

Bankruptcy And Your Bank's Right To Rob You!

What the heck just happened?! Why did the bank just remove all the money that I had in my bank account and clean me out? Why did the bank just rob me is what you might be thinking? Well, the likely answer is because you probably owe the bank some money. The bank was probably exercising its right to a setoff, a right recognized in virtually all states in the United States.

This is what probably happened. You opened up a bank account at your local friendly credit union. Then, at some point, you took out a credit card with that same credit union that offered that unbelievable low rate. Finally, when it was time to finance a car, you once again turned to your credit union. Thereafter, at some point, you fell behind on your car or credit card payments, and so the nice credit union helped itself to the money that you had in your account.

Once you have defaulted on any of your loans the credit union does not need to sue you, they do not have to get court permission, and they certainly do not have to give you advance notice that they are about to help themselves to the money sitting in your account. And to add insult to injury, those outstanding checks that you wrote a few days prior to the bank robbing you (the bank exercising its right to a setoff if you want to get technical), those checks will undoubtedly bounce!

What can you do to prevent this from happening to you? It's simple. The moment that you realize that you will be unable to make payments on a credit card, personal loan, mortgage payment, car loan, whatever, with the bank/credit union where you also have your checking and savings account, remove all money from those accounts and place them with a bank to whom you owe nothing to.

And what if you did not read this blog article and failed to heed my advice? Well, your one saving grace -if by coincidence you were contemplating filing for bankruptcy- is that if the bank exercised its right to a setoff within 90 days prior to your filing for bankruptcy, and you have exemptions available at your disposal, then you may be able to recover the money that the bank took from you.

How about if you have not defaulted on any of your accounts with the bank? Well, in this case you have nothing to worry about, unless that is, you are about to file for bankruptcy. For instance, you want to file for bankruptcy because you have \$20,000 in credit card debt with 5 different banks and none of those credit cards is owned by the credit union where you bank. The only ties that you have to your credit union is your bank account and a car loan for instance, which you have never missed a payment on and are current on the day you decide to file for bankruptcy. It does not matter. The moment that you filed bankruptcy you are deemed to have defaulted on your car loan and the bank has a right to "freeze your account."

And if you thinking -as I am sure you are- what about the automatic stay? You know that powerful invisible shield that automatically activates the moment that you file a

bankruptcy case and brings all attempts to collect money from the debtor to a grinding halt?! Well, in this case, not even that will save you. Don't believe me, then check out the seminal Supreme Court Case of Citizens Bank of Maryland v. Strumpf, decided in 1995 and see what happened to poor Mr. Strumpf. In that case, the Court made it clear, that the bank/credit union right to a setoff was more powerful than the usually invincible automatic stay. Granted, the bank initially could only "freeze the account" and then have to seek the court's permission to actually remove that money from the account, but the end result will be one and the same...they get your money!

So once again, the easy solution, if you are contemplating bankruptcy, is to simply remove your money from the bank/credit union where you also have your mortgage, car loan, etc. and deposit that money elsewhere.

Oh, and finally, if you are wondering, what if my direct deposit check from my employer accidentally lands in the same bank account where I just cleared my money out of prior to filing for bankruptcy? The answer is post petition assets cannot be setoff. That would be an automatic stay violation. The bank cannot just take you post-petition money to satisfy a pre-petition debt. But, just because it can't happen does not mean that it won't happen. Heir on the side of caution and be sure that your pay checks are landing in the new bank account prior to filing for bankruptcy.