# What Is a Motion to Lift Stay?

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The "automatic stay" that goes into effect when a bankruptcy case is filed prohibits creditors from taking action to collect debts from the bankruptcy debtor. However, in some situations, creditors can file a motion to lift the stay, allowing them to proceed with collection efforts just as they would have if the bankruptcy case had never been filed.

In order to succeed, a creditor must show good cause for the request to lift the stay. The most common scenario in which this arises in a bankruptcy case is when a debtor does not make mortgage payments after the case is filed. A debtor is required to make mortgage payments on time after the bankruptcy case is filed, and if the debtor does not do so, the mortgage holder is entitled to file a motion to lift stay. At the hearing on the motion, the mortgage holder must prove that there is good cause for lifting the stay, and normally the fact that a debtor is not making mortgage payments will constitute good cause.

Often, however, the debtor and mortgage holder come to an agreement to make extra payments, normally over a six-month period, to bring the mortgage up to date. In addition, the debtor must also make the normal monthly payments that come due during that time. However, if those extra payments are not made and/or the normal monthly payments are not made, the stay may lift automatically so that the mortgage holder can proceed to foreclose on the property.

Another situation in which a creditor may file a motion to lift stay is when the debtor fails to keep collateral properly insured. This usually involves insurance on a vehicle. If the debtor obtains insurance before the time of hearing, the stay will normally remain in place and the debtor will be able to keep the vehicle.

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The ability by the creditor to file a motion to lift stay when a debtor fails to fulfill his or her duties ensures that the bankruptcy process is fair to all parties to the case, and that the debtor cannot infringe upon the rights of the creditor to be properly compensated and protected.

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