

What happens if my first bankruptcy filing was dismissed and I file for bankruptcy again?

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The answer is that there are ramifications if the first case was dismissed within a year of the second filing.

Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) and most of its provisions became effective in October 2005. This law was a sweeping change to the bankruptcy code. Section 362(c)(3)(A) was one of the provisions of BAPCPA which was meant to curb a perceived abuse from repeat filings. It limited the automatic stay, the benefit of bankruptcy to the debtor that prohibits most collection activity once a case is filed, to only 30 days when a person files a second case within one year of the dismissal of the first case.

There has been some disagreement over the extent of the effect of section 362(c)(3)(A). The majority has concluded that the stay ends with respect to the debtor and property of the debtor, but continues with respect to property of the estate. *In re Jump*, 356 B.R. 789, 791 (1st Cir. B.A.P. 2006). The minority of courts have concluded the automatic stay ends completely (that means with respect to the debtor, the debtor’s property, and property of the estate) 30 days after the case is filed.

If you find yourself asking what all of this means and continue to wonder what the protection you will obtain from filing your second case (which would be most people) we suggest that you engage an experienced bankruptcy practitioner who may be able to provide more guidance. This could include explaining the three portions of the automatic stay’s protection and how it applies to your concerns and assets. It could also include having a better idea on how the judge assigned to your future case may rule on the issue. It could also include discussing what could be done to try to extend the automatic stay despite the repeat filing.

If you are contemplating bankruptcy and have filed a case that was dismissed within the past year, you may want to know more about the actual extent of the benefit of the automatic stay, if any, when you file. Please give us a call if you would like to learn more about this issue and how it may apply to your particular situation.

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