

Payday Loans and Bankruptcy

Are you one of the many Americans caught up in the vicious grip of [payday loans](#)? It seems, these days, that payday loan shops are replacing Starbucks on every corner. It's the new business to be in with this depressed economy. Here's what happens when you obtain payday loans in your run-up to filing for bankruptcy.

If you have presented a post-dated check as 'security' for the loan, when you file for bankruptcy, the payday lender will simply cash the check and hang on to the funds. The lender can do this under [11 U.S.C. Section 362\(b\)\(11\)](#), which provides that the automatic stay does not apply to the presentment of a negotiable instrument and the giving of notice and protesting dishonor of such an instrument.



However, the overconfidence on the part of these payday lenders comes with a price. One decision, [In re Thomas, 311 B.R. 75 \(W.D. Mo. 2004\)](#) provides that a post-petition transfer of funds out of the account by presentment of post-dated payday loan check could be avoided pursuant to 11 U.S.C. Section 549(a). This means that you could bring an action to recover the funds as an unauthorized post-petition transfer. Unfortunately, such actions are more costly than the amount transferred; which is why most debtors decline to bring an action under Section 549.

Ask your [bankruptcy lawyer](#) about their experience with repeat offenses by payday lenders because the creditor's willful violation of the [automatic stay](#) does give rise to actual damages, costs, and attorney fees; even punitive damages in some cases. Don't think that these payday lenders have the upper hand just because they have your check in their hands.