

What is the Co-debtor (or Co-signer) stay?

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Often debts (loans) have more than one person obligated to repay the creditor (on the hook). These can be loans where the debt is jointly owed by two joint account holders. There are also debts where one person is the primary account holder and receives the money, and another voluntarily becomes obligated despite not receiving any of the money. In these situations the secondary account holder (or co-signer) has agreed to be liable to the creditor in order to allow the primary account holder to get the loan. The most well known situation is a parent who co-signs for an adult child.

The “co-debtor stay” (or “co-signer stay”) arises when one of the debtors files for bankruptcy under chapter 13. It stops the creditor from any collection activity towards the co-debtor and continues until the bankruptcy is either closed or converted. It was created so that a debtor does not feel indirect pressure from a creditor through their efforts to collect from the co-debtor, who is usually a friend or relative.

However, the co-debtor stay does not apply to all situations. For one, the co-debtor must be an individual, and not a business entity like a corporation. Also, it only applies to “consumer debt” as defined under the bankruptcy code and interpreted by the courts. There may also be some variation from jurisdiction to jurisdiction on how the co-debtor stay is believed to apply. The co-debtor stay is a powerful tool for the consumer, but if you want to rely on the co-debtor stay, it would be wise to consult an experienced bankruptcy attorney.

Under chapter 7 bankruptcy, this type of protection of the co-debtor is not available. In fact, when one debtor files for bankruptcy under chapter 7, it may even make the creditor more aggressively pursue the co-debtor. This is one benefit to filing a chapter 13. However, there are a multitude of reasons to consider when deciding what chapter of bankruptcy to file under. It pays to seek counsel to help make that decision.

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