

Creditor Bankruptcy
Debtor Bankruptcy

Estate Planning
and Probate

Real Estate

Business Law
and Commercial
Transactions

Civil Litigation

Collections and
Foreclosures

The Bankruptcy Automatic Stay in Serial Filings

By Beverly L. Edwards, Esq.

The automatic stay in bankruptcy is one of the basic protections for debtors who file bankruptcy. The automatic stay grants the debtor a reprieve from actions by creditors and others. However, the automatic stay is not only for the benefit of the debtor in a bankruptcy case. The automatic stay also prevents creditors from receiving more than their fair share of the bankruptcy estate. The automatic stay, therefore, is designed to allow for the orderly reorganization of the debtor (in a Chapter 11, 12 or 13 case) or liquidation of the debtor's assets (in a Chapter 7 case).

Congress made significant changes to the scope of the automatic stay under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "2005 Amendments"), particularly limiting its applicability when the debtor is involved in multiple bankruptcy filings.

Single case in prior year

If the individual debtor has been in a Chapter 7, 11 or 13 case within one year of the filing of the new Bankruptcy case, and that prior case was dismissed, then the automatic stay terminates on the 30th day after the filing of the second Bankruptcy case. 11 U.S.C. §362(c)(3). If the debtor (or another party in interest) wants to extend the automatic stay beyond the 30 day period, the debtor may file a motion to continue the automatic stay provided the time frames and standards under the Bankruptcy Code are met. First, the motion must be filed, notice provided and a hearing must be completed within the 30

day time period. Second, the debtor must prove that the new case was filed in good faith.

A case is presumed to have been filed in bad faith if the prior case was dismissed because the debtor failed to file required documents without a substantial excuse, the debtor failed to provide adequate protection payments ordered by the Court, or the debtor failed to perform under the terms of a confirmed plan. There is also a presumption that the new case has been filed in bad faith if there has not been such a substantial change in the financial or personal affairs of the debtor as to allow the debtor to conclude the new case – either through fully performing a Chapter 11 or 13 Plan or completing a Chapter 7 case to obtain a discharge.

All of the presumptions set out in the Bankruptcy Code can be refuted by the debtor in the debtor's motion to extend the automatic stay beyond the 30 day period.

Two or more cases in prior year

If the debtor was in two or more bankruptcy cases within a one-year period before the new bankruptcy filing, and those previous cases were dismissed, the automatic stay does not go into effect at all upon the filing of the new (i.e. third) Bankruptcy case. 11 U.S.C. §362(c)(4). If the debtor wishes to institute the automatic stay in the new Bankruptcy case, the debtor may file a motion with the court within 30 days after the filing of the new case and request that the court





Edwards & Taylor, LLC

2851 S. Parker Road, Suite 1200 | Aurora, CO 80014
303-750-2303 | www.et-law.com

**EDWARDS &
TAYLOR, LLC**
ATTORNEYS AT LAW

order the automatic stay to take effect as to any or all creditors. The debtor must prove that the new case was filed in good faith.

The same presumptions for a bad faith filing apply as with a single serial filer—the case was dismissed because the debtor failed to provide documents without a substantial excuse, the debtor failed to make adequate protection payments, the debtor has failed

to perform under the terms of a confirmed plan, or if there has not been a substantial change in the financial or personal affairs of the debtor. ❖

Beverly L. Edwards is a member of the law firm of Edwards & Taylor, LLC. She has represented creditors in bankruptcy proceedings for over 20 years. Bev can be reached at 303-750-2303, or by e-mail at bedwards@et-law.com. Please visit the firm's website at www.et-law.com.

The Bankruptcy
Automatic Stay
in Serial Filings