

I JUST RECEIVED A MOTION FOR RELIEF FROM STAY IN MY CHAPTER 13 CASE

WHAT SHOULD I DO?

When you filed your bankruptcy case, the Bankruptcy Court automatically issues an Order that commands that creditors stop any further collection efforts or efforts to repossess or foreclose upon their collateral. This is commonly referred to as the “Automatic Stay” Order. This protects you from further collection efforts while your bankruptcy case is pending. Then, once you receive your “Discharge” Order, that Court Order commanding that creditors cease collecting on the debt becomes permanent.

Occasionally a creditor believes that it should have the right to continue efforts to collect a debt despite your bankruptcy filing. Whenever you have a loan that is secured by collateral that you are keeping and continuing to pay (for example: auto loan / mortgage), if you fail to make those payments the creditor will not be able to collect money from you to pay the debt, but they will be allowed to recommence efforts to repossess or foreclose their collateral. However, before they can do so, they must request permission from the Court by filing a “Motion for Relief” from the Automatic Stay Order. If you truly are behind on your auto or mortgage payments, the Court WILL grant them that request.

If you are keeping your secured collateral (usually a car or home), remember that your Chapter 13 plan may have required you to pay BOTH the Chapter 13 payment AND your regular auto or mortgage loan payment amount starting the month after your case was filed. If the regular payments are not being made after your case is filed, the creditor will want their collateral back. Note that the Motion for Relief does not obligate the creditor to take the collateral back ... it only gives them permission to do so if they desire.

Be sure to read the Motion. It will tell you how far your lender believes you have fallen behind since your case was filed. Occasionally, they are wrong in their calculations. If the motion is incorrect, please let us know immediately. If it is correct and you have not fallen too far behind, we may be able to work out an arrangement giving you a few months (usually 2 to 4) to pay an additional amount each month (on top of your regular monthly payment) that will allow the amount you have fallen behind to be caught up in that number of months. For example, if you have fallen \$3,000 behind on your post-filing payments, they will likely want around \$750 additional (on top of your regular monthly payment) each month for four months to catch up. However, they will not agree to such an arrangement if you are unable to immediately recommence making the regular required monthly payment. In addition, the lender will be adding late fees and an additional fee for their attorney fees in filing this motion. The lender will also require you to sign a stipulation (agreement) giving it the right to immediate relief from stay and to pursue foreclosure should you default again in the future on these catch-up payments or your regularly due monthly payments. Remember that there is nothing that requires the mortgage company to work with us if you are truly behind.

Note that the Motion provides a date by which you can object, if desired. If you believe that the mortgage company is incorrect, we can file a Response to the Motion and have a court hearing, however, pursuant to your fee agreement with this office, you will have to pay additional attorney fees of \$500 before we will file such a motion. Normally, no response is required. Typically, the lender is correct and filing a response won't help. The only thing that can help is seeing if they'll allow you a reasonable arrangement to catch up. But if you want to work something out, contact us WELL BEFORE the indicated objection date.

If you simply cannot afford to continue on with the auto or home payments (and certainly cannot pay an additional amount each month to catch up on the amount you've fallen behind), you may want to consider surrendering the house or car back to the lender. If so, be sure to let us know that as well. In that case, we will want to modify your plan to indicate that the collateral is being surrendered. This is necessary to "include" that loan in your eventual discharge so that you will not owe any deficiency amounts to that lender (amounts that they don't get paid out of the foreclosure or repossession auction sale). If we do not modify your plan to officially surrender that collateral to the lender, you will owe any deficiency regardless of whether you complete your plan or not.