

BANKRUPTCY: AUTOMATIC STAYS EXPLAINED

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It should be no surprise that the Great Recession has seen an increasing number of bankruptcies being filed by homeowners who are in collection for delinquent assessments due to massive debt loads, upside-down mortgages and job loss. As managers and directors of community associations, it is important to understand the implications of bankruptcy on an association's right to collect assessments, especially with respect to the automatic stay in bankruptcy. Following is a brief outline of automatic stay basics.

What is the automatic stay in bankruptcy?

- When a debtor/delinquent owner files for bankruptcy, an automatic stay immediately goes into effect (see further explanation below) which "stays" or prohibits any collection actions by creditors. Nothing can be done to collect the money outside of the bankruptcy court. Associations are unable to pursue collection of delinquent assessments outside the bankruptcy court once the automatic stay is imposed and as long as it is in effect unless the association obtains relief from the automatic stay from the bankruptcy court. This includes judicial and non-judicial actions relating to the owner's debt to the association.

When is the automatic stay imposed?

- For the debtor's first bankruptcy petition, the stay is automatic, upon the filing of the bankruptcy petition.
- For the debtor's second bankruptcy filing within 12 months of a previously dismissed case, the stay is automatic for only 30 days after the bankruptcy filing, unless extended by the court upon motion/request (which is often the case).
- For the debtor's third bankruptcy within 12 months, the stay is not automatic; however, the debtor, upon motion, can request that the court impose a stay.

It is very important to stay on top of bankruptcies to remain apprised of the status of the bankruptcy proceedings, as the stay may be lifted or the bankruptcy case dismissed.

Generally, subject to certain exceptions, the automatic stay prohibits:

- Beginning or continuing lawsuits in small claims or superior court.
- Collection calls or correspondence (including letters and emails).
- Repossessions.
- Recording liens.
- Foreclosure sales.
- Garnishment or levies.

- It has been said that disciplinary actions against a homeowner may be prohibited during the automatic stay, including suspension of the owner's membership privileges and rights to use common area recreational facilities.

The automatic stay remains in effect until:

- A bankruptcy court judge lifts the stay at the request of a creditor (via Motion for Relief from the Automatic Stay); or
- The bankruptcy case is dismissed (*i.e.* without discharge for, among other things, failing to file the required paperwork and/or not appearing at creditor's meeting); or
- The debtor is granted a discharge and the bankruptcy case is closed – the legal elimination of debt through a Chapter 7 bankruptcy case, which results in the debt no longer being legally enforceable against the debtor (provided, however, any lien which secures the debt may survive the bankruptcy case); or
- The item of property is no longer property of the bankruptcy estate (*i.e.* sold by the bankruptcy trustee).

If an association files a Motion for Relief from the Automatic Stay and the court grants the association's Motion for Relief from the Automatic Stay, what is the effect?

- Pursuant to the request for relief from the automatic stay granted by the court, the association may be able to pursue non-bankruptcy avenues to collect the debt, such as recordation of a lien, foreclosure and/or a lawsuit against the debtor (concurrent with the bankruptcy).

As bankruptcy is a very complicated area of law, and the automatic stay places restrictions on an association's collection activities, we suggest that an association speak with legal counsel prior to any collection, lien or foreclosure activities related to a homeowner who is, or is believed to be, in bankruptcy, to determine those actions, if any, that can be taken to collect the homeowner's delinquent assessments.