

Legal Guide: Lessons from the Trenches — Protecting the Automatic Stay in Repeat Bankruptcy Filings Under 11 U.S.C. §362

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Overview of the Automatic Stay

The automatic stay is a powerful legal protection provided under federal bankruptcy law that immediately halts most creditor actions against the debtor or the debtor's property upon the filing of a bankruptcy petition. Codified in 11 U.S.C. §362, the stay becomes effective by operation of law and generally prohibits collection calls, lawsuits, wage garnishments, foreclosures, repossessions, and other attempts to enforce or collect on debts.

Our firm has observed, through years of practice, that the automatic stay often serves as a critical legal shield in moments of acute financial crisis. In prior cases, we have identified situations where wage garnishments or foreclosure auctions were imminent, and timely filing of a bankruptcy petition invoked the automatic stay to preserve the debtor's immediate financial stability.

The stay provides debtors breathing room from creditors, allowing them time to reorganize, propose a repayment plan, or pursue a discharge of debts through the bankruptcy process. It also ensures orderly administration of the bankruptcy estate and protects the interests of all creditors by preventing a race to the courthouse.

Limitations on the Automatic Stay in Repeat Filings

Congress added restrictions to the automatic stay in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) to deter serial filings and perceived abuse of the bankruptcy system. These restrictions are set forth in 11 U.S.C. §362(c)(3) and §362(c)(4).

- **One Prior Case Dismissed (Within 1 Year):** If a debtor had **one previous bankruptcy case dismissed** within the one-year period prior to filing the new bankruptcy case, **the automatic stay only lasts for 30 days** unless the debtor successfully obtains a court order extending the stay. In past engagements, our office identified the short duration of the automatic stay as a procedural hurdle and responded by preparing and filing motions to extend the stay immediately after case commencement, ensuring our clients retained protections essential to reorganization.

- **Two or More Prior Cases Dismissed (Within 1 Year):** If a debtor had **two or more bankruptcy cases dismissed** within the one-year period prior to filing the current case, **the automatic stay does not go into effect at all** unless the debtor files a motion and obtains a court order imposing the stay. In one such instance, our firm evaluated the circumstances surrounding two prior dismissals, developed a comprehensive evidentiary record demonstrating changed financial conditions and procedural good faith, and succeeded in securing court approval to impose the stay.

These rules apply regardless of whether the prior case was dismissed voluntarily or involuntarily.

Chapter 20 Context and Asset Protection Goals

In some cases, a debtor files a Chapter 13 case following receipt of a Chapter 7 discharge. This is commonly referred to as a "Chapter 20." The Chapter 13 filing is often not aimed at receiving another discharge but is instead filed to protect real or personal property from foreclosure or repossession by utilizing the automatic stay and the ability to cure arrears over time through a repayment plan.

Our office has advised clients in such circumstances where a Chapter 7 discharge had eliminated unsecured debts, and a follow-on Chapter 13 was proposed solely to address secured arrears. In a notable example, we reviewed the debtor's mortgage default status and determined that preservation of the automatic stay was central to the Chapter 13 strategy. We promptly filed a motion to extend the stay, articulated the legal basis and factual justification, and obtained a favorable ruling to preserve the debtor's home and implement a viable repayment plan.

In this context, the continuation or imposition of the automatic stay is often critical to preserve the debtor's home, vehicle, or other essential assets and to facilitate a feasible reorganization strategy.

Step-by-Step: How to Protect or Extend the Automatic Stay

Step 1: Identify Prior Bankruptcy Case(s)

- Review PACER or internal case records to identify any prior bankruptcy case(s) filed within 12 months of the new filing.
- Note whether the prior case(s) were dismissed or discharged.

Step 2: Determine Applicable Stay Rule

- If one case was dismissed: §362(c)(3) applies.
- If two or more cases were dismissed: §362(c)(4) applies.
- If a prior Chapter 7 was discharged and the current filing is Chapter 13: likely not a dismissal, but still anticipate creditor objections.

Step 3: File Motion to Extend or Impose Stay Promptly

- File a **Motion to Extend the Automatic Stay** (for one prior case dismissed) under §362(c)(3).
- File a **Motion to Impose the Automatic Stay** (for two or more prior dismissals) under §362(c)(4).
- File these motions **immediately upon filing the new case** or within the first **7 days**.

Pro Tip: Immediate action is required upon filing the bankruptcy case to preserve or impose the stay — do not delay or wait until the Section 341(a) hearing. Early filing of the motion and compliance with notice and hearing requirements is essential to maintaining protection against creditor actions.

Step 4: Provide Proper Notice and Set a Hearing

- Serve the motion on all creditors and the trustee per local rules.
- Set the motion for hearing within **30 days of petition date** (for extension under §362(c)(3)).

Step 5: Establish "Good Faith" by Clear and Convincing Evidence

- The court will evaluate whether the new case was filed in **good faith**.
- Common evidence includes:
 - Change in circumstances (new employment, loan modification pending, etc.).
 - Explanation of dismissal in prior case (inadvertent, due to illness, etc.).
 - Feasibility of current plan.
 - Prompt and accurate filing of schedules and statements.

In support of such motions, our firm routinely prepares detailed declarations and documentary exhibits outlining the debtor's financial status, justification for prior case outcomes, and strategic purpose of the current filing. Courts have generally responded favorably when presented with thorough and credible good faith showings.

Step 6: Attend the Hearing and Present Evidence

- Be prepared to present testimony or declarations in support of good faith.
- Explain the necessity of the stay to protect the debtor's property and permit reorganization.

Step 7: Comply with Any Local Rules or Requirements

- Each jurisdiction may have local rules or guidelines for motions under §362.
- Confirm filing deadlines, required forms, and evidentiary standards.

Conclusion

Protecting the automatic stay in a successive bankruptcy filing is essential to preserving the rights and property of debtors who are acting in good faith to address their financial difficulties. With proper timing, notice, and evidence, debtors can often successfully extend or reimpose the stay and proceed with their reorganization goals.

In our experience, carefully analyzing case history and filing conditions, preparing early motions with evidentiary support, and articulating clear rationale at hearing have led to consistently favorable outcomes in preserving the stay for clients facing time-sensitive threats such as foreclosure and repossession.

Always consult a qualified bankruptcy attorney to determine the applicable legal standard and to prepare persuasive motions that comply with local court rules and procedures.

Michael Salanick is a California bankruptcy attorney with over 20 years of experience representing both creditors and debtors in Chapter 7, 11, and 13 matters. His firm provides uniquely curated client-specific strategic representation across the state in complex consumer and commercial insolvency disputes.

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