



Bankruptcy and Things to Fear When You Get That Dreaded Notice of A Bankruptcy Filing

Tennessee State Court
Clerks Association



Mary D. Miller, Esq.

I. Who May File

- Resident of United States or has a domicile
- Has a business or property in the United States



II. Types of Bankruptcy

A. Chapter 7

- Liquidation
- Business (Corporation [includes a Business Trust] Limited Liability Company, Partnership, Individual) or Consumer
- Trustee

B. Chapter 9

➤ Municipality



C. Chapter 11

- Reorganization
- Can be an individual or a business (Corporation [includes a business trust], Limited Liability Company, Partnership)
- Clean Title for Sales of Property and Businesses
- Does not necessarily have a trustee – Subchapter 5 does



Chapter 11 Cont'd

- Subchapter 5
 - Has Different Rules
 - Has a Trustee
 - Have to Elect to Proceed Under this Section
 - Debt Limit \$2,725,625.00 (Was \$7,500,000.00 During Covid – May Be Increased to \$7,500,000.00 Again)



D. Chapter 12

- Reorganization
- Family Farmers or Family Fishermen (With Regular Income)
- Can Be an Individual or a Business (Corporation [includes a Business Trust] Limited Liability Company, Partnership)
- Has a Trustee

E. Chapter 13

- Reorganization
- Individual – But can have business operations
- Trustee
- 3-5 Years
- Debt Limits
 - \$465,275.00 Unsecured
 - \$1,395,875.00 Secured

III. Practical Matters

A. Practice Is Not Necessarily Uniform

- 1. Different Law in Different Circuit Courts of Appeal
- 2. Local Rules
 - Local Rules of the United States Bankruptcy Court for the Eastern District of Tennessee
 - http://www.tneb.uscourts.gov/sites/default/files/TNEB_Local_Rules.pdf
 - Local Rules of Court for the United States Bankruptcy Court for the Western District of Tennessee
 - <http://www.tnwb.uscourts.gov/PDFs/BK/LocalRules.4.3.17.pdf>



III. Practical Matters Cont'd

- Local Rules of Court for the United States Bankruptcy Court for the Middle District of Tennessee

- [https://www.tnmb.uscourts.gov/sites/tnmb/files/tfr/LOCAL RULES OF COURT Amendments Form C 11-28-2017.pdf](https://www.tnmb.uscourts.gov/sites/tnmb/files/tfr/LOCAL_RULES_OF_COURT_Amendments_Form_C_11-28-2017.pdf)

B. Electronic Filing

C. Pacer

D. Financial Privacy – Redaction of Personal Information



IV. Why Does It Matter To You—Automatic Stay

Automatic Stay

➤ 11 U.S.C. § 362

➤ **§362. Automatic stay**

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;



IV. Automatic Stay Cont'd

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.



IV. Automatic Stay Cont'd

- Link to 11 U.S.C. § 362(a)
- <https://uscode.house.gov/view.xhtml?hl=false&edition=2020&req=granuleid%3AU.S.C-1999-title11-section362&num=0>
- City of Chicago v. Fulton, 141 S. Ct. 585(2021)

V. Exceptions to Automatic Stay

➤ Criminal Action

➤ 11 U.S.C. § 362(b)(1)

b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay-

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;



V. Exceptions to Automatic Stay Cont'd

- Paternity, Domestic Support, Child Custody/Visitation, Divorce (Sort of), Domestic Violence, Licenses 11 U.S.C. § 362(b)(2)
 - 11 U.S.C. § 362(b)(1)
 - (2) under subsection (a)-
 - (A) of the commencement or continuation of a civil action or proceeding-
 - (i) for the establishment of paternity;
 - (ii) for the establishment or modification of an order for domestic support obligations;
 - (iii) concerning child custody or visitation;
 - (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
 - (v) regarding domestic violence;



V. Exceptions to Automatic Stay Cont'd

➤ 11 U.S.C. § 362(b)(2)

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;



V. Exceptions to Automatic Stay Cont'd

➤ Taxes

➤ 11 U.S.C. § 362(b)(1)

(9) under subsection (a), of-

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property proceeds are transferred out of the estate to, or otherwise revested in, the debtor).



V. Exceptions to Automatic Stay Cont'd

➤ Presenting a Check (or a Note)

➤ 11 U.S.C. § 362(b)(11)

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

➤ Lien for Property Taxes

➤ 11 U.S.C. § 362(b)(18)

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad alorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;



V. Exceptions to Automatic Stay Cont'd

➤ Evictions Where Judgment Obtained Before Bankruptcy

➤ 11 U.S.C. § 362(b)(22)

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the

lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

➤ Evictions – Endangerment of Property or Illegal Use of Drugs

➤ 11 U.S.C. § 362(b)(21)

(21) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a

certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

➤ Link to 11 U.S.C. § 362(b)

➤ <https://uscode.house.gov/view.xhtml?hl=false&edition=2020&req=granuleid%3AUSC-1999-title11-section362&num=0>



VI. When Does the Automatic Stay End?

- By Operation of Law
 - 11 U.S.C. §362(c)(1)
 - Property
 - Property No Longer Property of Estate
 - <https://uscode.house.gov/view.xhtml?hl=false&edition=2020&req=granuleid%3AUSC-1999-title11-section362&num=0>



VI. When Does the Automatic Stay End? Cont'd

➤ By Operation of Law

➤ Against Any Other Acts or Person 11 U.S.C. §362(c)(2)

➤ Case is Closed

➤ Case is Dismissed

➤ Time a discharge is granted or denied

➤ Chapter 7 (Only Individual)

➤ Chapter 9, 11, 12 or 13

➤ [https://uscode.house.gov/view.xhtml?hl=false&edition=2020
&req=granuleid%3AUSC-1999-title11-section362&num=0](https://uscode.house.gov/view.xhtml?hl=false&edition=2020&req=granuleid%3AUSC-1999-title11-section362&num=0)

➤ By Motion 11 U.S.C. §362(d)



VII. Sovereign Immunity

