

# Back to Basics, Continued—the Automatic Stay

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April 21, 2021

*This content was published prior to the combination of Dentons Sirote. Learn more about [Dentons Sirote](#).*

Recently, I mentioned that Bankruptcy’s automatic stay is a cause for one of the biggest or at least most frequent mistakes made in a loan office.

Any collection action taken against the debtor or debtor’s estate property after a bankruptcy filing is void. So, collection calls, and actions such as foreclosure, lien recording, collection lawsuits, garnishments, and repossessions are not permissible. And, notice of the filing of the bankruptcy by the creditor is not even necessary to void a foreclosure or a repossession.

Section 362(a)—the section of the Bankruptcy Code that gives us the automatic stay—becomes applicable and effective the moment an individual files a bankruptcy petition. In general, the automatic stay prevents any and all acts to collect against a debtor relating to pre-filing debts.

Taking action in violation of the automatic stay after receiving notice of a bankruptcy filing, can lead to lawsuits and damage awards, including attorney’s fees and even punitive damages.

Formal notice of the bankruptcy filing is not necessary. Certainly, formal notice from the court is sufficient. But also, a confirming phone call, letter, text message or other form of communication from a customer who has filed (or notice from any other credible source) can be enough. That is, if a creditor has received enough information to suspect that a filing has occurred, then further investigation is warranted.

A creditor is certainly allowed to ask the debtor for details, such as a case number, the name of the debtor’s attorney or other confirming information. However, in the final analysis, it is wise to err on the side of believing a debtor’s assertion—at least in the initial analysis.

I say this because of the unfortunate result of not believing or ignoring the claim of a debtor that he or she has indeed filed for bankruptcy. Violating the automatic stay is an irreversible error that does not generally yield to excuse. Bankruptcy judges are not inclined to forgive such violations. In fact, they are inclined to award damages for such a violation; and approve the debtor’s attorney’s fees as well.

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