

Automatic Stay: Overview

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A Practice Note providing a background on the mechanics of the automatic stay, including its purpose, how it is commenced and terminated, and certain of its prohibitions, limitations, and exceptions. This Note also discusses the grounds for relief from the stay and the types of relief available, the consequences of violation, stay waivers, and strategies creditors can use to minimize the risk that these waivers will be held unenforceable. This Note also provides links to summaries of the local rules for the automatic stay in certain jurisdictions, allowing attorneys to compare rules across different bankruptcy courts.

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Automatic Stay

The [automatic stay](#) (or the stay) is one of the most important protections and powerful tools available to a debtor in bankruptcy. It is provided for in [section 362 of the Bankruptcy Code](#). Triggered immediately on filing of the bankruptcy petition, the stay automatically stops substantially all acts and proceedings against the debtor and its property. It is a nationwide, possibly even worldwide, [injunction](#) barring almost all actions against the debtor and its property, including the exercise of remedies concerning

[collateral](#), enforcement of [prepetition](#) judgments, litigation, collection efforts, and acts to create, [perfect](#), and enforce [liens](#) granted before the date the bankruptcy petition was filed. The automatic stay only applies to prepetition events and does not bar suit against the debtor based on a cause of action arising [postpetition](#).

The automatic stay has a broad scope, applying to all creditors, whether secured or unsecured, and to all the debtor's property, wherever located. It forbids creditors from pursuing both formal and informal actions and remedies against the debtor and its property. It also covers remedies that creditors could exercise outside of the US, to the extent that the court has general or specific [personal jurisdiction](#) over the creditor (see *Sheehan v. Breccia Unlimited Co. (In re Sheehan)*, 48 F.4th 513, 520-26 (7th Cir. 2022)). However, consensual negotiations with the debtor are permitted.

Despite the power of the automatic stay, it is temporary (the court may lift it under certain circumstances) and it is subject to certain exceptions.

This Note discusses:

- The purpose of the automatic stay (see [Purpose of the Automatic Stay](#)).
- What actions are prohibited (see [Prohibited Acts](#)).
- What actions are excepted (see [Limitations and Exceptions](#)).
- The various bases for relief (see [Relief from the Stay](#)).
- The consequences of violation (see [Violations of the Stay](#)).

Purpose of the Automatic Stay

The primary purpose of the automatic stay is to assist and protect the debtor's interests. The automatic stay provides breathing room from the immediate pressure and demands of creditors, and allows the debtor an opportunity to address business issues and negotiate a [plan of reorganization](#) without interference from creditors.

The automatic stay also protects the interests of creditors as a whole. It prevents depletion of the [bankruptcy estate](#) by creditors who, to the detriment of other creditors, race to the courthouse or use "self-help" remedies to enforce their rights. In this way the automatic stay enables the orderly administration of the bankruptcy estate and promotes the equality of [distribution](#).

Commencement and Termination

The filing of a bankruptcy petition triggers the automatic stay and it becomes effective without a court order and without notice to creditors.

The automatic stay is terminated automatically in two situations:

- As to particular property, the stay is automatically terminated when this property is no longer [property of the estate](#) (see [Practice Note, Property of the Estate: Overview](#)). For example, if the property is transferred or the [trustee](#) abandons

the property (unless it reverts to the debtor), it stops being property of the estate and a creditor is no longer barred from enforcing its lien on that property ([§ 362\(c\)\(1\), Bankruptcy Code](#)).

- Generally, the stay automatically terminates on the earliest of:
 - The case being closed or dismissed.
 - The time a [discharge](#) is granted or denied.

([§ 362\(c\)\(2\), Bankruptcy Code](#).)

Prohibited Acts

The automatic stay expressly prohibits certain actions ([§ 362\(a\), Bankruptcy Code](#)). Virtually all creditor collection activities are included. The automatic stay bans the following eight broad categories of acts:

- Filing or continuing to litigate a previously filed judicial, administrative, or other proceeding against the debtor to collect a prepetition [claim](#) ([§ 362\(a\)\(1\), Bankruptcy Code](#)), including the filing of a cross appeal in a suit that was pending at the time of the bankruptcy filing (see [Vitamins Online, Inc. v. Heartwise, Inc.](#), 71 F.4th 1222, 1234-35 (10th Cir. 2023)), subject to the following limitations:
 - the prosecution of causes of action that arise after the bankruptcy is filed are not stayed, such as an action for failure to pay postpetition rent;
 - only proceedings **against** the debtor are stayed. For example, an appeal where the debtor was the plaintiff would not be stayed (see [Proceedings Brought by the Debtor](#));
 - most courts do not stay proceedings on prepetition claims that are brought in the bankruptcy court (see [Snively v. Miller \(In re Miller\)](#), 397 F.3d 726, 730 (9th Cir. 2005); [Armco Inc. v. N. Atl. Ins. Co. Ltd. \(In re Bird\)](#), 229 B.R. 90, 95 (S.D.N.Y. 1999) and see ["Home Court" Rule](#)). However, a minority of courts hold that suits in the bankruptcy court can violate the automatic stay if the claim is one that the creditor could have brought before bankruptcy and does not arise under the Bankruptcy Code (see [In re Roman Cath. Church of the Archdiocese of Santa Fe](#), 627 B.R. 916, 920-22 (Bankr. D. N.M. 2021) (see [Practice Note, Bankruptcy: Splits of Authority Tracker: Automatic Stay, Injunctive Relief, and Avoidance Actions: "Home Court" Rule](#)); and
 - requesting and obtaining continuances of a prepetition lawsuit against a debtor do not violate the automatic stay (see [Perryman v. Dal Poggetto \(In re Perryman\)](#), 631 B.R. 899, 903-04 (B.A.P. 9th Cir. 2021)).

The US Court of Appeals for the Second Circuit recently set a "bright-line rule" that if the debtor is a named party in a prepetition proceeding or action, the automatic stay applies to stop further proceedings under [section 362\(a\)\(1\) of the Bankruptcy Code](#), even if the debtor's interest in the underlying property is merely possessory (see [Bayview Loan Servicing LLC v. Fogarty \(In re Fogarty\)](#), 39 F.4th 62, 76 (2d Cir. 2022) and [Legal Update, Morrison Foerster: Recent Second Circuit Decision Holds that Conducting a Foreclosure Sale Upon a Property After a Tenant Files for Bankruptcy Violated the Automatic Stay](#)).

- Enforcing a prepetition judgment against the debtor or property of the estate (§ 362(a)(2), [Bankruptcy Code](#); see *In re Fogarty*, 39 F.4th at 76).
- Obtaining possession or control over estate property, regardless of whether the underlying claim arose before or after the filing of the bankruptcy petition (§ 362(a)(3), [Bankruptcy Code](#)). This includes:
 - possessing or controlling tangible property (such as land, buildings, and machinery) and intangible property rights (such as rights acquired under a [license](#) agreement);
 - the mere act to obtain possession or exercise control over estate property, even if it is not successful (see *In re Klein*, 669 B.R. 877, 882-83 (Bankr. C.D. Cal. 2025)); and
 - depriving the debtor of its contractual rights to use property of the estate (see *Klemkowski v. CitiMortgage, Inc. (In re Klemkowski)*, 664 B.R. 681, 696-98 (Bankr. D. Md. 2024) (holding that a [mortgage](#) servicer who banned the debtor's use of an online payment platform violated the automatic stay)).

However, one court held that competitors do not violate the automatic stay by aggressively targeting the debtor's customers with advertising, even if that advertising is false and misleading, as customers themselves are not property of the estate (see *Windstream Holdings, Inc. v. Charter Commc'ns Inc. (In re Windstream Holdings, Inc.)*, 634 F. Supp.3d 99, 109-10 (S.D.N.Y. 2022), *aff'd*, *Off. Comm. of Unsecured Creditors of Windstream Holdings, Inc. v. Charter Commc'ns Operating, LLC (In re Windstream Holdings, Inc.)*, 105 F.4th 488, 497-99 (2d Cir. 2024)).

- Creating, perfecting, or enforcing a lien against property of the estate (§ 362(a)(4), [Bankruptcy Code](#)). See [Perfection of Security Interests](#) for limited exceptions to this prohibition under the stay.
- Creating, perfecting, or enforcing a lien against property of the debtor to the extent that the lien secures a prepetition claim (§ 362(a)(5), [Bankruptcy Code](#)). Property of the debtor is broader than property of the estate (for example, property of the debtor includes abandoned property, [exempt property](#), and property acquired postpetition).
- Any act to collect, recover, or assess a claim against the debtor that arose prepetition (§ 362(a)(6), [Bankruptcy Code](#)). For example, one court strictly enforced the stay against a mortgage servicer who improperly listed a prepetition debt in the portion of the monthly statement showing the next postpetition payment (see *Orlansky v. Quicken Loans LLC (In re Orlansky)*, 2023 WL 2947616, at *3-5 (B.A.P. 9th Cir. Apr. 14, 2023)).
- The [setoff](#) of mutual prepetition debts arising from different transactions (§ 362(a)(7), [Bankruptcy Code](#)). This means a prepetition debt owing to the debtor cannot be [netted](#) against a claim asserted against the debtor if they arise from **different** transactions (see [Practice Note, Creditors' Setoff Rights in Bankruptcy](#)). In contrast, [recoupment](#), or netting mutual debts arising out of the **same** transaction, is not stayed (see [Recoupment](#)).
- US Tax Court proceedings concerning the debtor's tax liability for a taxable period determined by the bankruptcy court (§ 362(a)(8), [Bankruptcy Code](#)). These proceedings are stayed because the bankruptcy court has the power to adjudicate relevant tax liability issues.

To take any of the above actions, the creditor must ask the court for relief from the stay (see [Relief from the Stay](#)). For examples of how the automatic stay prohibits lender actions, see [Box, How Lenders are Affected by the Automatic Stay](#).

Inaction

In *City of Chicago v. Fulton*, the US Supreme Court held that merely holding estate property after the [petition date](#), without more, does not violate the stay, because a stay violation requires an affirmative act that would "disturb the status quo of estate property" as of the petition date. The Court vacated and remanded the Seventh Circuit's contrary decision. However, the Court expressly limited its holding to [section 363\(a\)\(3\) of the Bankruptcy Code](#), which prohibits any act to obtain possession of, or exercise control over, estate property, and did not address whether inaction could violate other stay provisions, including [sections 362\(a\)\(4\), \(6\), and \(7\) of the Bankruptcy Code](#). (*City of Chi. v. Fulton*, 592 U.S. 154 (2021) and see [Legal Update, City of Chicago v. Fulton: Mere Retention of Property Does Not Violate the Automatic Stay](#)).

Before *Fulton*, courts had disagreed about whether a failure to act (as opposed to an affirmative act) can violate the automatic stay (see [Practice Note, Bankruptcy: Splits of Authority Tracker: Automatic Stay, Injunctive Relief, and Avoidance Actions: Automatic Stay – Failure to Act \(Split Resolved Jan. 14, 2021\)](#)). The issue commonly arose when a creditor refused to turn over property that it lawfully repossessed prepetition before the debtor's turnover demand. For example, the Seventh Circuit held that such a refusal was an act to "exercise control" over estate property and therefore violated the stay (see [In re Fulton](#), 926 F.3d 916, 923-27 (7th Cir. 2019)).

Following the US Supreme Court's decision in *In re Fulton*:

- On remand, the Seventh Circuit remanded to the bankruptcy court to determine whether the creditor violated [sections 362\(a\)\(4\)](#) (enforcing a lien against property) or [section 362\(a\)\(6\)](#) (acting to recover a claim), despite the US Supreme Court's decision that the creditor did not violate [section 362\(a\)\(3\)](#) (see [In re Fulton](#), 843 F. App'x 799, 800 (7th Cir. 2021)).
- At least one court refused to dismiss a complaint expanding the scope of *Fulton* to other subsections of [section 362\(a\)](#) and held that *Fulton* "left open the possibility that inaction combined with other facts might nonetheless violate the automatic stay" ([Barrera-Perez v. City of Chi. \(In re Cordova\)](#), 635 B.R. 321, 343 (Bankr. N.D. Ill. 2021)).
- At least two courts held that creditors retaining a valid prepetition [attachment](#) of a debtor's bank account did not violate the automatic stay because the creditors did not pursue [garnishment](#) proceedings postpetition and therefore they only maintained the status quo (see [Stuart v. City of Scottsdale \(In re Stuart\)](#), 632 B.R. 531, 538-44 (B.A.P. 9th Cir. 2021), *aff'd*, 2023 WL 5011739 (9th Cir. Aug. 7, 2023); [Margavitch v. Southlake Holdings, LLC \(In re Margavitch\)](#), 2021 WL 4597760, at *5-8 (Bankr. M.D. Pa. Oct. 6, 2021)).

Limitations and Exceptions

While the scope of the automatic stay is extremely broad, it is limited by judicial and statutory exceptions. The judicial limitations have evolved over time and represent judges' interpretations of the statute. The statutory exceptions reflect policy decisions where Congress has determined that the rights of certain parties prevail over the need to protect the debtor from its creditors.

Judicially Crafted Limitations

Non-Debtors

The stay does not extend to third parties, such as a debtor's guarantors, [affiliates](#), co-debtors, [officers](#) and principals, co-defendants, and [partners](#). It generally only applies to the debtor and its property (see *Tchrs. Ins. & Annuity Ass'n v. Butler*, 803 F.2d 61, 65 (2d Cir. 1986); *Nev. Power Co. v. Calpine Corp. (In re Calpine Corp.)*, 365 B.R. 401, 408 (S.D.N.Y. 2007); *Diocese of Rochester v. AB 100 Doe (In re Diocese of Rochester)*, 2022 WL 1638966, at *4-5 (Bankr. W.D.N.Y. May 23, 2022)). As a result, a creditor may pursue its claims against the debtor's guarantors and co-debtors to the extent that they are non-debtors in the bankruptcy. However, the extension of the automatic stay to non-debtors is "extraordinary relief" (see *In re SDNY 19 Mad Park, LLC*, 2014 WL 4473873 (Bankr. S.D.N.Y. Sept. 11, 2014)).

Creditors should be aware that there are certain situations where a non-debtor may be protected:

- Courts have extended the automatic stay to non-debtors when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate (see *Residential Cap., LLC v. Fed. Hous. Fin. Agency (In re Residential Cap., LLC)*, 529 F. App'x 69 (2d Cir. 2013) and [Legal Update, In re Residential Capital: Second Circuit Holds Actions Against Non-debtors May be Stayed if Action Has an Immediate Adverse Economic Consequence for Debtor's Estate](#)). This relief requires a showing of special circumstances and that an action against a non-debtor party threatens the debtor's [reorganization](#) efforts. Examples include a claim against a non-debtor for an obligation guaranteed by the debtor, a claim against the debtor's insurer, and actions where there is an identity of interest between the debtor and the non-debtor defendant such that the debtor may be considered the real defendant (see *Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287-88 (2d Cir. 2003); *Gucci Am., Inc. v. Duty Free Apparel, Ltd.*, 328 F. Supp.2d 439, 441-42 (S.D.N.Y. 2004)). Similarly, the US Bankruptcy Court for the Southern District of New York extended the automatic stay to bar a creditor's actions against a third party which duplicated the trustee's [fraudulent transfer](#) claims against the same party, ruling that those claims were property of the estate (see *Fox v. Picard (In re Madoff)*, 848 F.Supp.2d 469, 478-85 (S.D.N.Y. 2012)).
- In some circumstances, a court may invoke its equitable powers to protect any third party which it deems important to the success of the debtor's reorganization (see *Union Trust Phila., LLC v. Singer Equip. Co., Inc. (In re Union Tr. Phila., LLC)*, 460 B.R. 644, 657-58 (E.D. Pa. 2011)) or to enjoin litigation against non-debtors if doing so is "likely to enhance the prospects for a successful resolution of the disputes attending [the] bankruptcy" (*Caesars Ent. Operating Co., Inc. v. BOKF, N.A. (In re Caesars Ent. Operating Co., Inc.)*, 808 F.3d 1186, 1188 (7th Cir. 2015)). A court has equitable powers to issue orders "necessary or appropriate to carry out the provisions of this title" (§ 105, [Bankruptcy Code](#)). Courts may invoke this power to prohibit creditor action against third parties, known as a "[section 105 injunction](#)." Unlike the automatic stay injunction, it is not automatically triggered. This relief requires a hearing on notice to [interested parties](#) and must satisfy the typical equitable standard for issuance of injunctions (see *In re Calpine*, 365 B.R. at 409-14). For example, the US Bankruptcy Court for the Southern District of New York issued a [section 105](#) injunction where a creditor's action against a third party threatened the trustee's ability to reach a settlement on its fraudulent transfer claims against the same party (see *In re Madoff*, 848 F.Supp.2d at 485-87).

For more information on extending the automatic stay to non-debtors, see [Practice Note, Extending the Automatic Stay to Nondebtors](#). For a sample complaint to extend the automatic stay to actions against non-debtors, see [Standard Document, Bankruptcy: Adversary Proceeding Complaint for Injunctive Relief](#).

Letters of Credit

Courts have interpreted the automatic stay to allow a [beneficiary](#) to draw down on a [letter of credit](#) issued on the account of a debtor (see *Elegant Merch., Inc. v. Republic Nat'l Bank (In re Elegant Merch., Inc.)*, 41 B.R. 398 (Bankr. S.D.N.Y. 1984); *In re M.J. Sales & Distrib. Co., Inc.*, 25 B.R. 608, 615 (Bankr. S.D.N.Y. 1982)). This is because:

- Drawing on a letter of credit:
 - does not create, perfect, or enforce a lien on the debtor's property. Presumably the lender would have already perfected its liens on the debtor's property securing the letter of credit before the bankruptcy filing. These [perfected liens](#) remain valid in the bankruptcy whether or not the beneficiary draws down on the letter of credit.
 - would not divest the debtor of estate property, because the bank honors a letter of credit by paying the beneficiary of the letter with its own funds, not with the debtor's assets.
- Enjoining payment of letters of credit would frustrate their primary commercial purpose, which is the intended substitution of the known and secured credit of a bank for the unknown and risky credit of the other party to the transaction.

Once drawn down by the beneficiary, the lender issuing the letter of credit would immediately have a [secured claim](#) against the debtor for reimbursement. However, any attempt by the lender to enforce its claim is subject to the automatic stay. The lender's only recourse is to file a claim against the debtor under normal claim settling procedures (see [Practice Note, Filing a Proof of Claim in a Chapter 11 Bankruptcy Case](#)).

For more information on letters of credit generally, see [Practice Notes, Letters of Credit in Financing Transactions: Overview](#) and [Lending: Overview: Letter of Credit Sub-Facility](#).

For more information on letters of credit in bankruptcy, see [Practice Note, Treatment of Letters of Credit in Bankruptcy](#).

Administrative Freeze on Bank Account

The US Supreme Court further limited the scope of the automatic stay to allow a bank to impose a temporary administrative freeze on the account of a debtor who owes the bank money. The court reasoned that a bank's mere placing of an administrative hold, pending resolution of its claim, on the debtor's account up to an amount the bank claimed was subject to setoff was not itself a prohibited act of setoff (see [Prohibited Acts](#)), and did not violate the automatic stay (see *Citizens Bank of Md. v. Strumpf*, 516 U.S. 16 (1995) and [Practice Note, Creditors' Setoff Rights in Bankruptcy: Administrative Freeze](#)).

Proceedings Brought by the Debtor

Most courts have held that the stay does not apply to proceedings originally brought by the debtor, including all subsequent appeals in those proceedings, regardless of which party brings the appeal (see *Freeman v. Comm'r*, 799 F.2d 1091, 1092-93 (5th Cir. 1986); *Baack v. Horizon Womens Care Pro. LLC (In re Horizon Womens Care Pro. LLC)*, 506 B.R. 553, 556-57 (Bankr. D. Colo. 2014)). Conversely, these courts have interpreted the stay to apply only to actions originally brought **against** the debtor, including all subsequent appeals in those proceedings, regardless of whether the debtor is the [appellant](#) or the [appellee](#) (see *TW Telecom Holdings Inc. v. Carolina Internet Ltd.*, 661 F.3d 495 (10th Cir. 2011) and [Legal Update, TW Telecom Holdings v. Carolina Internet: 10th Circuit Stays Debtor's Appeal in Action Originally Brought by Creditor](#); *Ass'n of St. Croix Condo. Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 449 (3d Cir. 1982)). Most recently, the US Bankruptcy Appellate Panel for the Ninth Circuit clarified that a nonbankruptcy court's postpetition order does not violate the stay when a creditor is defending against claims

brought by a debtor prepetition (see *Censo, LLC v. NewRez, LLC (In re Censo, LLC)*, 638 B.R. 416, 424-25 (B.A.P. 9th Cir. 2022), *aff'd*, 2023 WL 6866294 (9th Cir. Oct. 18, 2023)).

Similarly, some courts have held that sales or transfers of property the debtor initiates are not subject to the automatic stay (see *Burkart v. Coleman (In re Tippett)*, 542 F.3d 684, 691-92 (9th Cir. 2008)).

Recoupment

Courts have determined that the stay does not apply to recoupment actions, which are actions to net mutual claims arising out of the same transaction (see *Reiter v. Cooper*, 507 U.S. 258, 265 n.2 (1993); *Westinghouse Credit Corp. v. D'Urso*, 278 F.3d 138, 147 (2d Cir. 2002); *N.Y. State Elec. & Gas Corp. v. McMahon (In re McMahon)*, 129 F.3d 93, 96 (2d Cir. 1997)).

For more information on recoupment, see [Practice Note, Creditors' Recoupment Rights in Bankruptcy](#).

Statute of Limitations and Expiration of Contracts

Most courts have held that the automatic stay does not apply to suspend time limitations to begin certain actions (although [section 108 of the Bankruptcy Code](#) may otherwise stop the running of certain time limits) (for example, see *Aslanidis v. US Lines, Inc.*, 7 F.3d 1067, 1074-75 (2d Cir. 1993); *US Lines, Inc. v. US Lines Reorganization Tr.*, 262 B.R. 223, 235-36 (Bankr. S.D.N.Y. 2001)).

The stay does not prevent termination of a contract which expires by its own terms after commencement of a bankruptcy case (for example, see *In re Margulis*, 323 B.R. 130, 133 (Bankr. S.D.N.Y. 2005); *In re Policy Realty Corp.*, 242 B.R. 121, 126 (Bankr. S.D.N.Y. 1999)).

Corporate Governance

Courts have determined that the automatic stay does not affect a debtor's corporate governance obligations, such as holding a stockholders' meeting, unless it can be shown that the call for the meeting amounted to "clear abuse" (a determination which depends on whether the debtor's rehabilitation will be seriously threatened or merely delayed) (see *Johns-Manville Corp. v. Equity Sec. Holders Comm. (In re Johns-Manville Corp.)*, 801 F.2d 60, 64 (2d Cir. 1986); *In re SS Body Armor I*, 527 B.R. 597, 604-07 (Bankr. D. Del. 2015); *Fogel v. US Energy Sys., Inc.*, 2008 WL 151857 (Del. Ch. Jan. 15, 2008)). Most recently, a court held that amending the articles of incorporation of a closely-held corporation in which the debtor is a minority shareholder to authorize new shares does not violate the automatic stay (see *In re Harrison*, 643 B.R. 399, 401-03 (Bankr. E.D.N.C. 2022)).

Ministerial Acts

Courts have held that the automatic stay does not apply to bar ministerial acts that involve no deliberation or discretion, such as the entry of a judgment by a court clerk (see *McCarthy v. N. Bay Plumbing, Inc. (In re Pettit)*, 217 F.3d 1072, 1080 (9th Cir. 2000); *Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527-28 (2d Cir. 1994)).

Fraudulently Transferred Property

The US Court of Appeals for the Fifth Circuit has held that the automatic stay applies to unrecovered fraudulently transferred property because this property is part of the estate (see *Am. Nat'l Bank of Austin v. MortgageAmerica Corp. (In re MortgageAmerica Corp.)*, 714 F.2d 1266, 1275 (5th Cir. 1983)).

However, the US Courts of Appeals for the Second and Tenth Circuits have held that the automatic stay does not apply to unrecovered property that is the subject of a fraudulent transfer claim because this property does not become part of the estate until it is recovered under [section 541\(a\)\(3\) of the Bankruptcy Code](#) (see *Rajala v. Gardner*, 709 F.3d 1031, 1037-38 (10th Cir. 2013); *Fed. Deposit Ins. Corp. v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125, 130-31 (2d Cir. 1992) (holding that while unrecovered property is not estate property, the automatic stay applies under [section 362\(a\)\(1\)](#) as an action to recover a claim against the debtor)).

For more information on this split of authority, see [Practice Note, Bankruptcy: Splits of Authority Tracker: Automatic Stay, Injunctive Relief, and Avoidance Actions: Fraudulently Transferred Property](#).

"Home Court" Rule

The "home court" rule permits a party to file an [adversary proceeding](#) against a debtor in the "home" bankruptcy court. Courts reason that "[s]uch suits against the debtor can be considered the functional equivalent of filing a [proof of claim](#) against the bankruptcy estate" and "[i]f this exception did not exist, courts would be left with the absurd result of having to modify the automatic stay to allow a creditor to move to lift the stay in the first place" (*In re Bird*, 229 B.R. at 95; see also *Sharf v. BC Liquidating, LLC*, 2015 WL 5093097, at *4-5 (E.D.N.Y. Aug. 28, 2015); *Nat'l City Bank of Minneapolis v. Lapidus (In re Transcolor Corp.)*, 296 B.R. 343, 358 (Bankr. D. Md. 2003); *Lighthouse Bluffs, Corp. v. Atreus Enters., Ltd. (In re Atreus Enters., Ltd.)*, 120 B.R. 341, 346 (Bankr. S.D.N.Y. 1990)).

However, a minority of courts do not permit the exception. For more information on this split of authority, see [Practice Note, Bankruptcy: Splits of Authority Tracker: Automatic Stay, Injunctive Relief, and Avoidance Actions: "Home Court" Rule](#).

Statutory Exceptions

There are 28 policy-based exceptions to the automatic stay ([§ 362\(b\), Bankruptcy Code](#)). Some of these exceptions only apply in distinct situations and are rarely invoked. For example, any action by an accreditation agency regarding the licensing of the debtor as an educational institution is not subject to the stay. Other exceptions to the stay tend to arise more often in individual bankruptcies, such as criminal proceedings against the debtor and the withholding of income for domestic support obligations (see [Practice Note, Automatic Stay: Individual Debtor's Rights Under Section 362 of the Bankruptcy Code](#)).

The most commonly invoked exception is any action by a governmental unit to enforce its "police and regulatory power" ([§ 362\(b\)\(4\), Bankruptcy Code](#)). This refers to acts to protect the public health, safety, or welfare, such as preventing fraud, protecting the environment, or protecting the consumer. These public policy-driven actions are excepted from the stay, but actions protecting pecuniary interests, such as seeking to collect a debt owed to the government, are not excepted. The government is not given special status as a creditor. For more information on this exception, see [Practice Note, Understanding the Police and Regulatory Exception to the Automatic Stay](#).

Perfection of Security Interests

From a [secured creditor's](#) perspective, the most relevant exception concerns perfection of [security interests](#) under [relation-back statutes](#) ([§ 362\(b\)\(3\), Bankruptcy Code](#)). Acts to perfect, or to maintain or continue the perfection of a security interest, to the extent permitted in the [Bankruptcy Code](#), are excepted from the automatic stay. They are permitted by the Bankruptcy Code in two situations:

- The stay does not prohibit the perfection, maintenance, or continuation of perfection of an interest in property if applicable non-bankruptcy law recognizes the effectiveness of retroactive perfection (§ 546(b), [Bankruptcy Code](#)). For example, the [Uniform Commercial Code](#) (UCC) provides for the retroactive perfection of a [purchase-money security interest](#) (PMSI) (UCC § 9-324(a)). This means that under state law, the general rule is that an unperfected purchase-money security interest is effective against an entity that acquires rights in this property before the interest is perfected, if perfection occurs within the grace period fixed by the statute (20 days) (§ 546(b)(1)(A), [Bankruptcy Code](#)). The filing of a [UCC-3 continuation statement](#) is also excepted from the automatic stay (if it occurs within the time fixed by applicable non-bankruptcy law) (§ 546(b)(1)(B), [Bankruptcy Code](#) and see [Practice Note, UCC: Preparing and Filing Financing Statements: UCC-3 Continuations](#)).
- The Bankruptcy Code contains a similar concept (§ 547(e)(2)(A), [Bankruptcy Code](#)). It provides that the automatic stay does not prohibit perfection of an interest in property (and perfection of purchase-money security interests under [section 547\(c\)\(3\)\(B\) of the Bankruptcy Code](#)) if it occurs within a 30-day grace period.

However, if the statute does not allow the lien to relate back to a prepetition period, then the exception does not apply (see [In re Linear Elec. Co., Inc.](#), 852 F.3d 313 (3d Cir. 2017) and [Legal Update, Third Circuit Confirms Construction Lien Violated Automatic Stay](#)).

Relief from the Stay

On January 14, 2020, the US Supreme Court resolved a circuit split and ruled that a bankruptcy court's order unreservedly denying relief from the automatic stay is a final, immediately appealable order under [28 U.S.C. Section 158\(a\)](#) (see [Ritzen Grp. Inc. v. Jackson Masonry, LLC](#), 589 U.S. 35 (2020) and [Practice Note, Bankruptcy: Splits of Authority Tracker: Automatic Stay, Injunctive Relief, and Avoidance Actions: Order Denying Stay Relief - Final or Interlocutory](#)).

More generally, a court may grant relief from the stay on its own motion or on request from a party in interest after notice and a hearing. Requests for stay relief most often come from secured creditors. It is the creditor's responsibility to seek relief from the stay before taking any action against the debtor or its property. A prudent creditor will always do so to avoid the risk of sanctions for stay violations (see [Violations of the Stay](#)).

Although courts may be reluctant to grant relief from the stay early in a bankruptcy case, creditors should still consider seeking early relief because:

- Some courts have held that the right to receive [adequate protection](#) is not triggered until the creditor moves for stay relief (see [In re Cont'l Airlines, Inc.](#), 154 B.R. 176, 180-81 (Bankr. D. Del. 1993)). For more information on this basis for adequate protection, see [Practice Note, Adequate Protection: Overview: Relief from Automatic Stay Denied](#).
- The Bankruptcy Code provides the stay is terminated concerning the party seeking relief 30 days after it made the request for relief, unless the court orders the stay to continue in effect (§ 362(e), [Bankruptcy Code](#)).
- Seeking early relief can create a baseline to establish "cause" justifying relief from the stay (see ["For Cause" Including Lack of Adequate Protection](#)). "Cause" can include many factors, such as undue delay, misconduct, mismanagement, or waste. If the court denies an early request for relief, a later request can emphasize the debtor's lack of progress by using the first motion as a reference point.

Finally, resolving an issue left undecided by *Ritzen*, the US Court of Appeals for the Ninth Circuit later held that denial of a stay-relief motion without prejudice can still be a final, appealable order in appropriate circumstances (see *Harrington v. Mayer (In re Mayer)*, 28 F.4th 67, 71-72 (9th Cir. 2022)).

Types of Relief

The nature of relief available will depend on the facts of each case and if certain grounds for relief are present (see [Grounds for Relief](#)). The type of relief granted, if any, is within the complete discretion of the court. The court may terminate, annul, modify, or condition the stay (§ 362(d), *Bankruptcy Code*).

- **Termination.** The stay is over and the creditor may act against the debtor.
- **Annulment.** The stay is annulled, as if it had never come into existence. Therefore, annulling the stay retroactively validates actions taken when the stay was in effect. Annulment is a rare remedy that is usually available only to innocent creditors who are unaware of the bankruptcy or when there is wrongdoing on the part of the debtor. For example, the court may annul the stay when the debtor did not file the bankruptcy petition in good faith. The court will evaluate the conduct of both the debtor and the creditor in weighing the equities. Courts grant this type of relief sparingly and only in unusual and compelling circumstances.
- **Modification.** The stay is altered so that certain acts may be permitted. Generally, modification must be justified by a showing that continuation of the stay will affirmatively harm the creditor. For example, the stay may be modified to permit repossession of certain property or to allow a trial to proceed in a state court, if prohibiting these acts would prejudice the creditor's rights. Stay modification is required even if the relief is being sought to defend or protect the estate (see *State Farm Ins. Co. v. Carapella (In re Gaime)*, 17 F.4th 1349, 1353 (11th Cir. 2021)).
- **Conditioning.** The termination, modification, or the continuance of the stay is conditioned on any number of circumstances that may be appropriate in each case. For example, modification of the stay may be conditioned on each party complying with a stipulation that, on remand of a case to the state court, they will file a joint motion to consolidate the case with a pending case.

Retroactive Relief from the Automatic Stay

According to the US Supreme Court, nunc pro tunc orders are not permissible (see *Roman Cath. Archdiocese of San Juan, P.R. v. Acevedo Feliciano*, 589 U.S. 57, 65 (2020)). In other words, a *nunc pro tunc* order can only memorialize an action that the court actually took at a previous time but was not officially recorded.

Courts differ on the applicability of the *Acevedo* ban on *nunc pro tunc* orders to orders granting relief from the automatic stay. The US Bankruptcy Court for the Eastern District of New York follows *Acevedo*, finding that a court cannot grant *nunc pro tunc* relief from the automatic stay (see *In re Telles*, 2020 WL 2121254, at *5 (Bankr. E.D.N.Y. Apr. 30, 2020)). However, the US Court of Appeals for the Eleventh Circuit and the US Bankruptcy Appellate Panel for the Ninth Circuit distinguished *Acevedo*, finding that it does not bar bankruptcy courts from annulling the automatic stay *nunc pro tunc* (see *Patel v. Patel (In re Patel)*, 142 F.4th 1313, 1320-22 (11th Cir. 2025); *Merriman v. Fattorini (In re Merriman)*, 616 B.R. 381, 391-95 (B.A.P. 9th Cir. 2020)).

For more information on this split of authority, see [Practice Note, Bankruptcy: Splits of Authority Tracker: Automatic Stay, Injunctive Relief, and Avoidance Actions: Retroactive Relief from the Automatic Stay](#).

Grounds for Relief

There are four grounds for obtaining relief from the automatic stay ([§ 362\(d\), Bankruptcy Code](#)):

"For Cause" Including Lack of Adequate Protection

For secured creditors, this is the most important basis for relief. Secured creditors are entitled to adequate protection against actual or threatened diminution in the value of their collateral during the bankruptcy case ([§ 361, Bankruptcy Code](#) and see [Practice Note, Adequate Protection: Overview](#)). Collateral can be hard assets (property) or soft assets (cash). Diminution in value may be caused by a variety of factors, including [depreciation](#), physical loss or damage, declining [fair market values](#), failure to insure or maintain the property, or the non-payment of taxes. These type of losses are attributable to the stay because it enjoins the creditor from [foreclosing](#) or taking any other action to protect the value of its collateral.

If the debtor is unable or unwilling to provide adequate protection to a secured creditor, there is sufficient cause for the court to order relief from the stay ([§ 362\(d\)\(1\), Bankruptcy Code](#)). The creditor can then foreclose on the collateral and realize an amount sufficient to recover the balance due on the debt.

Conversely, if the value of the collateral is not depreciating, or if the loss is not attributable to the stay, then the debtor is not required to furnish adequate protection to the creditor and there is no basis for relief from the stay. For example, a loss is not attributable to the stay if a creditor was enjoined from enforcing its lien by a prepetition order issued by a nonbankruptcy court. The creditor's inability to foreclose in this scenario is totally unrelated to the bankruptcy filing.

Some courts subscribe to the theory that if a creditor is oversecured, the excess value is an ["equity cushion"](#) which is sufficient to protect the creditor without the need for adequate protection (and therefore, no cause to lift the stay). For a discussion of this theory, see [Practice Note, Adequate Protection: Overview: Equity Cushion](#).

Aside from lack of adequate protection, the court has broad discretion to determine what is "cause" for granting relief from the automatic stay. It is dependent on the particular facts of each case. For example, a court may lift the stay for cause to allow a tort plaintiff to proceed in a different forum against the debtor, if the plaintiff agrees that liability would be limited to the extent of the debtor's insurance coverage. Cause for relief from the stay may also exist if the debtor did not file the bankruptcy petition in good faith, or if the debtor fails to maintain, preserve, or insure collateral.

For more information, see [Practice Note, Relief from Automatic Stay Under 11 U.S.C. Section 362\(d\)\(1\) for Cause](#). For a sample [section 362\(d\)\(1\) motion](#), see [Standard Document, Motion for Relief from the Automatic Stay Under 11 U.S.C. Section 362\(d\)\(1\) for Lack of Adequate Protection](#).

Acts Against Property

A secured creditor may obtain relief from the automatic stay for acts against property if both the:

- Debtor does not have equity in the property.
- Property is not necessary to an effective reorganization.

(§ 362(d)(2), Bankruptcy Code.)

- **Debtor has no equity in the property.** The first requirement is satisfied if the total of all [encumbrances](#), or junior liens, exceeds the value of the property. This differs from the equity cushion analysis, which ignores [subordinate](#) liens (see [Practice Note, Adequate Protection: Overview: Equity Cushion](#)). This can be proved with an appraisal, testimony of an appraiser, or with the debtor's own financial information in its filed [schedules](#) (see [Practice Note, Schedules and Statements of Financial Affairs: Overview](#)). The creditor must satisfy this burden.
- **Property not necessary for an effective reorganization.** It is the debtor's burden to prove that the property is necessary for an effective reorganization. To meet the second requirement, the creditor must rebut this assertion by showing that an effective reorganization may occur without the property in issue, or alternatively, that the debtor is unlikely to successfully reorganize within a reasonable time.
 - **Property not necessary.** That the property is crucial for the debtor's mere survival is not enough. It must be essential for an effective reorganization with a reasonable possibility of success within a reasonable time.

For example, [equipment](#) used by the debtor to manufacture [goods](#) to make its [Chapter 11](#) payments could arguably be property necessary to an effective reorganization. As another example, certain real property would be necessary to an effective reorganization for a debtor whose business is managing or leasing real estate. Conversely, for a debtor engaged in the business of drilling oil and gas wells, these wells, while helpful, are arguably not necessary for an effective reorganization, as they are speculative and depleting assets.
 - **No effective reorganization.** The logic is if there can be no effective reorganization, then none of the debtor's property is necessary. The US Supreme Court has suggested that this should be a meaningful test (see [United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.](#), 484 U.S. 365, 375-76 (1988)).

The debtor must show that an effective reorganization is **in prospect** or that there exists a reasonable possibility of a successful reorganization in the near future. The creditor may rebut this assertion in any number of ways, such as by establishing that the debtor cannot effectively reorganize due to market conditions, or has no realistic prospect of obtaining postpetition financing (see [Practice Note, DIP Financing: Overview](#)), or various other reasons related to the debtor's business operations including the deteriorating condition of the debtor's property or the property's inability to generate sufficient [cash flow](#).

As a practical matter, it may be more difficult to obtain relief from the stay on this ground early in the case. Courts require a less detailed showing of the likelihood of a successful reorganization during the first 120 days of a Chapter 11 case, during which time the debtor is given the exclusive right to propose a plan of reorganization (§ 1121(b), Bankruptcy Code and see [Practice Note, Chapter 11 Plan Process: Overview: Filing a Plan](#)). However, even within the first 120 days, courts will grant relief if there is a lack of any realistic prospect of effective reorganization (see [In re 4th St. E. Invs., Inc.](#), 2012 WL 1745500 (Bankr. C.D. Cal. May 15, 2012)).

For more information, see [Practice Note, Relief from Automatic Stay Under 11 U.S.C. Section 362\(d\)\(2\) for Lack of Equity in Property or Property Unnecessary for Effective Reorganization](#). For a sample section 362(d) motion, see [Standard Document, Motion for Relief from Automatic Stay Under 11 U.S.C. Section 362\(d\)\(2\) for Lack of Equity in Property or Property Unnecessary for Effective Reorganization](#).

Single Asset Real Estate

[Single asset real estate](#) cases involve business operations with a single real estate property or project, other than residential real property with less than four residential units, which generates substantially all the gross income of the debtor (§ 101(51B), [Bankruptcy Code](#)). They are usually two-party disputes, and do not resemble a typical Chapter 11 business reorganization case. A secured creditor in such a case may foreclose on its collateral unless one of the following occurs within the first 90 days of the case (or a later date extended by the court for cause):

- The debtor has filed a plan of reorganization that has a reasonable possibility of being [confirmed](#) within a reasonable time.
- The debtor starts paying monthly interest payments to the secured creditor at the non-[default](#) contract rate of interest.

(§ 362(d)(3), [Bankruptcy Code](#).)

For more information on single asset real estate cases, see [Practice Notes, Single Asset Real Estate Cases: Implications and Strategies for Practitioners](#) and [Relief from Automatic Stay Under 11 U.S.C. Section 362\(d\)\(3\) and \(4\): Single Asset Real Estate Case or In Rem Relief](#).

Acts Against Real Estate

Acts against real estate, such as eviction or foreclosure, may not be stayed if the court finds that the case was filed as "part of a scheme to delay, hinder, or defraud creditors" either by multiple bankruptcy filings, or by transferring all or part of an interest in this property without the consent of the secured creditor or the court (§ 362(d)(4), [Bankruptcy Code](#)). The court order granting relief from the stay is recorded in local real property records and is binding for two years in any future case involving the same property, unless the subsequent debtor can show changed circumstances or good cause.

For more information, see [Practice Note, Relief from Automatic Stay Under 11 U.S.C. Section 362\(d\)\(3\) and \(4\): Single Asset Real Estate Case or In Rem Relief](#).

Violations of the Stay

An individual debtor who is injured by a willful violation of the automatic stay may recover actual damages, including costs, attorneys' fees, and, if appropriate, [punitive damages](#) (§ 362(k), [Bankruptcy Code](#)). Even if a debtor has no actual damages from the stay violation, it may still recover attorneys' fees and costs incurred when a creditor violates the stay (see [Healthcare Real Est. Partners, LLC v. Summit Healthcare REIT, Inc. \(In re Healthcare Real Est. Partners, LLC\)](#), 2023 WL 7786065, at *6-7 (Bankr. D. Del. Nov. 14, 2023)). There is no jury trial right under the Seventh Amendment for stay violations (see [Lysyy v. Deutsche Bank Nat'l Tr. Co.](#), 2025 WL 1645203, at *1-2 (W.D. Wash. May 25, 2025)). Further, "the public rights exception to the Seventh Amendment guaranty of a jury trial applies and permits a [b]ankruptcy [c]ourt to impose punitive damages for a violation of the automatic stay" ([In re Minarik](#), 675 B.R. 158, 163 (Bankr. E.D. Pa. 2025)).

Willfulness does not require that the creditor intended to violate the stay, but rather that its acts violating the stay were intentional (see [Cal. Coast Univ. v. Aleckna \(In re Aleckna\)](#), 13 F.4th 337, 342 (3d Cir. 2021); [Univ. Med. Ctr. v. Sullivan \(In re Univ. Med. Ctr.\)](#), 973 F.2d. 1065, 1087 (3d Cir. 1992)). A creditor's good faith belief that its actions complied with the stay does not, on its own, establish a defense to willfulness (see [In re Aleckna](#), 13 F.4th at 342). Nor does ambiguity about the nature of the debtor's interest in the property (see [Hoover v. PHH Mortg. Corp. v. Hoover \(In re Hoover\)](#), 645 B.R. 656, 660 (W.D. Wash. 2022), *aff'd in part, vacated in part*, [PHH Mortg. Corp. v. Quality Loan Serv. Corp. of Wash. \(In re Hoover\)](#), 2023 WL 5814810 (9th Cir. Sept. 8,

2023)). However, a defendant does not willfully violate the stay if the law governing the alleged violation was sufficiently uncertain and the defendant, in good faith, relied on persuasive legal authority to support its position (see *In re Aleckna*, 13 F.4th at 342-44).

A willful stay violation may permit a debtor to recover attorneys' fees incurred in stopping the stay violation and litigating a damages claim for this violation, including defending the damages award on appeal (see *Mantiplay v. Horne (In re Horne)*, 876 F.3d 1076, 1081 (11th Cir. 2017); see also *Skaggs v. Gooch (In re Skaggs)*, 2023 WL 322559, at *7 (Bankr. W.D. Va. Jan. 19, 2023)). The Ninth Circuit held that a debtor is entitled to appellate counsel fees for successfully challenging the bankruptcy court's award of attorney fees and winning larger damages for a willful violation of the stay (see *Easley v. Collection Serv. of Nev.*, 910 F.3d 1286, 1290-93 (9th Cir. 2018)). Further, the Third Circuit held that a claim to recover damages under [section 362\(k\) of the Bankruptcy Code](#) may exist independently of the underlying bankruptcy case, and creates a private right of action that may be maintained without reopening a closed or dismissed bankruptcy case (see *Healthcare Real Est. Partners, LLC v. Summit Healthcare REIT, Inc. (In re Healthcare Real Est. Partners, LLC)*, 941 F.3d 64, 68-72 (3d Cir. 2019) and [Legal Update, Healthcare Real Estate Partners LLC: Bankruptcy Code Section 362 Provides an Independent Private Cause of Action for Automatic Stay Violations](#)).

Some jurisdictions have extended this provision to other entities, such as corporations and [partnerships](#) debtors. New York courts have limited this provision to natural persons only, while Delaware courts have extended it to corporate debtors (see [Practice Note, Bankruptcy: Splits of Authority Tracker: Automatic Stay, Injunctive Relief, and Avoidance Actions: Violations of the Automatic Stay: Damages](#)). Corporate debtors in all jurisdictions may seek contempt proceedings for willful violations of the stay. Courts have used their civil contempt power under [section 105\(a\) of the Bankruptcy Code](#) to hold that even stay violations caused by computer error are willful violations of the stay (see *In re Wedco Mfg., Inc.*, 2014 WL 5573433 (Bankr. D. Wy. Oct. 31, 2014)).

While courts tend to order severe sanctions against willful violators of the stay, they are generally lenient towards those who inadvertently violate the stay in good faith. However, even innocent violations, or those merely technical, run the risk of sanctions and do not absolve creditors from liability under [section 363\(k\)](#) (see *Koeberer v. Cal. Bank of Com. (In re Koeberer)*, 632 B.R. 680, 690 (B.A.P. 9th Cir. 2021)). The court may impose [compensatory damages](#) even if the creditor acted in good faith and on the advice of counsel. At a minimum, actions taken in violation of the stay are void as a matter of law, regardless of whether they are willful or merely technical (see *Valentine v. Holmes (In re Valentine)*, 648 B.R. 324, 332-34 (Bankr. E.D. Cal. 2022)). A court may not impose a monetary penalty unless the stay violation occurred after the creditor received actual notice of the bankruptcy filing ([§ 342\(g\)\(2\), Bankruptcy Code](#)).

There are several ways creditors can avoid running afoul of the automatic stay. The best approach is to negotiate a resolution of the matter before the debtor files for bankruptcy to avoid the issue of the stay completely. If that is not possible, the creditor could attempt to negotiate with the debtor to obtain a stipulated order permitting the creditor to take the desired action despite the stay. For example, the debtor may stipulate that a creditor may have relief from the stay if the creditor agrees to limit its recovery to insurance policy proceeds. As a last resort, a creditor can litigate for relief from the stay, if one or more of the grounds for relief applies (see [Grounds for Relief](#)) or for a declaration that the stay does not apply (see [Limitations and Exceptions](#)).

US Supreme Court's Decision in Taggart

At least one court has rejected a strict liability standard for violating a corporate debtor's automatic stay because it would be inconsistent under the US Supreme Court's decision in *Taggart v. Lorenzen* (139 S. Ct. 1795 (2019)), which rejected a strict liability standard for violating an individual debtor's [discharge injunction](#) in a [Chapter 7](#) case (see *Harker v. Eastport Holdings, LLC (In re GYPC, Inc.)*, 634 B.R. 983, 989-91 (Bankr. S.D. Ohio 2021); see also *Tate v. Fairfax Vill. I Condo. (In re Tate)*, 2020 WL 634293, at *3 n.2 (Bankr. D.C.C. Feb. 10, 2020) (citing *Taggart* in finding a willful stay violation in a [Chapter 13](#) case and imposing sanctions under [section 362\(k\)\(1\) of the Bankruptcy Code](#)); but see *In re Spiech Farms, LLC*, 603 B.R. 395, 408 n.22 (Bankr. W.D. Mich. 2019) (stating in a Chapter 7 case that "[t]his court does not read *Taggart* to change the Sixth Circuit's standard for determining whether a creditor can be held in contempt for violating the automatic stay"))).

Waivers of the Stay

The automatic stay causes delay and inconvenience to creditors who want to exercise remedies to realize the value of their collateral (see [Practice Note, Lender's Remedies and Enforcement Issues](#)). For example, lenders should consider requesting a waiver of the stay before a bankruptcy is filed in forbearance agreements executed during loan [workout](#) negotiations and in the resulting restructuring agreements (see [Standard Clause, Waiver of Automatic Stay, Standard Document, Forbearance Agreement](#) and [Practice Notes, Forbearance Agreements: Key Issues and Provisions: Waiver of the Automatic Stay](#) and [Out-of-Court Restructurings: Overview](#)). While the Bankruptcy Code does not expressly prohibit prepetition waivers of the stay, they are not self-executing in favor of creditors, nor per se enforceable. Despite language in the waiver providing for the automatic lifting of the stay on the filing of the bankruptcy petition, the creditor must file a motion for relief from the stay, with notice to all creditors and other parties in interest.

For more information on the enforceability of stay waivers in bankruptcy, see [Practice Note, Prepetition Waivers of the Automatic Stay](#).

How Lenders are Affected by the Automatic Stay

In practice, the automatic stay forbids lenders (as well as all other creditors) from taking most actions against the debtor, including:

- Informal collection actions, such as calling the debtor or sending threatening letters to demand payment.
- Sending notices of default under a [credit agreement](#). This is why bankruptcy is an automatic [event of default](#) in most credit agreements (see [Practice Note, Loan Agreement: Events of Default: Bankruptcy and Insolvency Events of Defaults](#)).
- Obtaining liens on property of the estate.
- Perfecting liens by filing or possession, including filing a [financing statement](#) under Article 9 of the UCC to perfect a security interest in estate property (see [Perfection of Security Interests](#) for limited exceptions).
- Foreclosing on collateral to enforce a security interest in estate property. In fact, one bankruptcy court held that a creditor violated the automatic stay when it foreclosed on property in which the debtor had no ownership interest, but was a guarantor of the underlying debt and a named defendant in a foreclosure judgment. The court held that the foreclosure sale was both a continuation of a judicial action against the debtor and the continuation of a judicial action to recover a claim against the debtor, in violation of [section 362\(a\)\(1\) of the Bankruptcy Code](#) (see [In re Ebadi](#), 448 B.R. 308, 314-17 (Bankr. E.D.N.Y. 2011)).
- Repossessing collateral that is property of the estate.
- Selling collateral which was repossessed before the filing of the bankruptcy petition.

- Generally exercising any remedy provided for in a credit agreement (see [Practice Note, Lender's Remedies and Enforcement Issues: Remedies under the Loan Agreement on an Event of Default](#)).

Checklist for Lenders

Before the bankruptcy petition is filed:

- Ensure that [loan documents](#) provide that bankruptcy is an **automatic** event of default (see [Box, How Lenders are Affected by the Automatic Stay](#)).
- Try to negotiate a resolution before the debtor files for bankruptcy.
- If possible, obtain an agreed waiver of stay in workout and out-of-court restructuring agreements (see [Practice Note, Prepetition Waivers of the Automatic Stay: Strategies for Enforcing Stay Waivers](#)).

After the bankruptcy petition is filed:

- Do not take any action (including sending notice of default) that could violate the stay (see [Box, How Lenders are Affected by the Automatic Stay](#)).
- Consider any permitted actions that can be taken, for example:
 - freeze the debtor's bank account (see [Administrative Freeze on Bank Account](#)); and
 - enforce the debt against non-debtor guarantors (see [Non-Debtors](#)).
- Consider whether there are any grounds for relief from the stay, notably for lack of adequate protection or if the debtor has no equity in the encumbered property and there is no realistic prospect of a successful reorganization (see [Grounds for Relief](#)).
- Make any requests for relief from the stay as early as possible in the case (see [Relief from the Stay](#)).

Local Bankruptcy Rules: Automatic Stay

The following chart contains links to summaries of the local rules for the automatic stay in certain jurisdictions, allowing attorneys to compare rules across different bankruptcy courts.

Jurisdiction	Practical Law Local Rules Resource
Arizona	Practice Note, Local Bankruptcy Rules: Arizona: Automatic Stay: Local Rules.
California, Central District	Practice Note, Local Bankruptcy Rules: California (C.D. Cal.): Automatic Stay: Local Rules.
California, Eastern District	Practice Note, Local Bankruptcy Rules: California (E.D. Cal.): Automatic Stay: Local Rules.
California, Northern District	Practice Note, Local Bankruptcy Rules: California (N.D. Cal.): Automatic Stay: Local Rules.
California, Southern District	Practice Note, Local Bankruptcy Rules: California (S.D. Cal.): Automatic Stay: Local Rules.
Connecticut	Practice Note, Local Bankruptcy Rules: Connecticut: Automatic Stay: Local Rules.
Delaware	Practice Note, Local Bankruptcy Rules: Delaware: Automatic Stay: Local Rules.
District of Columbia	Practice Note, Local Bankruptcy Rules: District of Columbia: Automatic Stay: Local Rules.
Florida, Middle District	Practice Note, Local Bankruptcy Rules: Florida (M.D. Fla.): Local Rules
Florida, Southern District	Article, Local Bankruptcy Rules: Florida (S.D. Fla.): Automatic Stay: Local Rules.
Georgia, Northern District	Practice Note, Local Bankruptcy Rules: Georgia (N.D. Ga.): Automatic Stay: Local Rules.
Illinois, Northern District	Practice Note, Local Bankruptcy Rules: Illinois (N.D. Ill.): Automatic Stay: Local Rules.
Maryland	Practice Note, Local Bankruptcy Rules: Maryland: Automatic Stay: Local Rules.
Massachusetts	Article, Local Bankruptcy Rules: Massachusetts: Automatic Stay: Local Rules.
Michigan, Eastern District	Practice Note, Local Bankruptcy Rules: Michigan (E.D. Mich.): Automatic Stay: Local Rules.

Nevada	Practice Note, Local Bankruptcy Rules: Nevada: Automatic Stay: Local Rules.
New Jersey	Practice Note, Local Bankruptcy Rules: New Jersey: Automatic Stay: Local Rules.
New York, Eastern District	Practice Note, Local Bankruptcy Rules: New York (EDNY): Automatic Stay: Local Rules.
New York, Northern District	Practice Note, Local Bankruptcy Rules: New York (NDNY): Automatic Stay: Local Rules.
New York, Southern District	Practice Note, Local Bankruptcy Rules: New York (SDNY): Automatic Stay: Local Rules.
Pennsylvania, Eastern District	Practice Note, Local Bankruptcy Rules: Pennsylvania (E.D. Pa.): Automatic Stay: Local Rules.
Texas, Eastern District	Practice Note, Local Bankruptcy Rules: Texas (E.D. Tex.): Automatic Stay: Local Rules.
Texas, Northern District	Practice Note, Local Bankruptcy Rules: Texas (N.D. Tex.): Automatic Stay: Local Rules.
Texas, Southern District	Practice Note, Local Bankruptcy Rules: Texas (S.D. Tex.): Automatic Stay: Local Rules.
Texas, Western District	Practice Note, Local Bankruptcy Rules: Texas (W.D. Tex.): Automatic Stay: Local Rules.
Virginia, Eastern District	Practice Note, Local Bankruptcy Rules: Virginia (E.D. Va.): Automatic Stay: Local Rules.