

Bankruptcy Act Reform and What It Means to Landlords

Landlords will immediately notice a radical change in the operation of the automatic stay. When a bankruptcy petition is filed, a restraining order is immediately issued staying all efforts, direct or indirect, to collect most types of debts. This restraining order is referred to as the “automatic stay.” Once the stay is in effect, that is, at filing, all creditors are prohibited from contacting the debtor for the purpose of dunning, pursuing legal collection proceedings, continuing informal arbitration proceedings, sending letters, and the like, and the greatest irritant to landlords, following through with eviction or dispossession proceedings.

The Good News – No More “Automatic Stay” for the Evictions Process

It is now necessary to initiate an adversary proceeding in the bankruptcy court to obtain leave of the bankruptcy court to evict. Although the purpose of the automatic stay is to protect general creditors by making sure that none of them get more than their fair share by cutting up the bankruptcy estate before the Trustee can gain control of it, the result is that too many cases was to permit the debtor to withhold access to certain property from creditors who had a perfect right to it...such as landlords evicting tenants for nonpayment of rent or for other reasons.

In the best of circumstances, this could result in delay that was both unnecessary for the protection of the general creditors and inequitable to the landlord. In the worse of circumstances, bankruptcy “clinics” in many jurisdictions used the stay, originally intended to protect the general creditors, as a device to keep the debtor in possession of rental property without paying rent for weeks or months. In some cases, serial bankruptcy filings created a procedural nightmare, extending the delay. Many bankruptcy judges tried a variety of fixes for this abuse, but this was done on a district-by-district or even branch-by-branch basis and the results were spotty. **The reform act provides that eviction proceedings are NOT subject to the automatic stay.** However, this is not the case for things like distraint, wage garnishments for back rent, or other rent collection efforts, so the landlord must still look to the bankruptcy proceeding for collection of this money.

More Good News

Tenants Right to Discharge (eliminate) Money Owed Landlord for Rent, Damage and Attorney Fees has been curtailed. If the tenant is gone but owes you money for back rent, attorney’s fees, damage to rental unit, or other sums, his right to discharge his obligations in bankruptcy has been curtailed. Both Chapter 7, liquidations, and Chapter 13 compositions have been affected.