

The Effect of Repeat Filing on the Automatic Bankruptcy Stay

If you have been a debtor in a prior bankruptcy case which was dismissed within the year before your bankruptcy case is filed, the automatic bankruptcy stay will terminate within 30 days of the filing of the new case, unless: 1) you request by motion that the court enter an order extending the stay; 2) the request is filed with the bankruptcy court before the expiration of the 30 days, and 3) you persuade the court that the new case was filed in good faith and the court grants the motion and extends the stay within 30 days after case commencement. It is likely that the court will schedule a hearing on such motion and that the debtor will be required to appear in court. (Please consult Section 362(c)(3) of the Bankruptcy Code for more specific requirements.)

If you have been a debtor in two or more bankruptcy cases dismissed within the last year, no automatic stay goes into effect and no stay will go into effect unless and until: 1) you request by motion that the court enter an order extending the stay; 2) the request is filed with the bankruptcy court within 30 days of the filing of your new case, and 3) you persuade the court that the new case was filed in good faith. It is likely that the court will schedule a hearing on such motion and that the debtor will be required to appear in court. Unless and until you persuade the court to extend the stay, your creditors may proceed against you as if no bankruptcy case was filed. (Please consult Section 362(c)(4) of the Bankruptcy Code for more specific requirements.)

Repeat filing affects your rights and bankruptcy benefits. Thus, it makes sense to file and maintain a sound bankruptcy case the first time by complying with all the filing requirements (such as the requirement of a credit counseling certificate) and in particular the filing deadlines for documents.