

When Your Customer Files Bankruptcy: Common Questions & Answers

By Dennis J. LeVine, Esq

Last year, more than 1.6 million bankruptcy cases were filed in the United States. Almost all of these cases were filed by individuals who had auto loans. When a customer files bankruptcy and owes money to a lender secured by a lien on a car, the lien holder faces important questions in a bankruptcy case. For example:

1. I just found out my customer filed bankruptcy — what do I do now?

When a customer files bankruptcy, an automatic stay goes into effect. The automatic stay means that creditors can no longer pursue collection of past due accounts, or repossess collateral, without obtaining relief from the Bankruptcy Court. **STOP ALL COLLECTION ACTION IMMEDIATELY.** You should contact a bankruptcy attorney to discuss your rights. Have the following information (which is contained in the bankruptcy notice) for your attorney:

- Name of the debtor
- Case Number
- Which chapter filed (7, 11 or 13)
- City where case was filed

2. Can I contact the debtor after he files bankruptcy?

Creditors **should not** contact the debtor in any way after they have filed bankruptcy. Creditors should not send out monthly statements or send out demand letters.

3. What if the debtor sends a payment after he filed bankruptcy – can I keep it?

Yes. Where collateral secures a loan, the debtor should be making payments after he files bankruptcy in the event he intends to keep the collateral. Creditors should always accept post-bankruptcy payments made by the debtor.

4. When I repossess the debtor's car BEFORE he files bankruptcy, can I keep it?

Yes. Under Florida law, once a car is repossessed, the secured creditor becomes the "owner" of the car. Therefore, when a secured creditor repossesses its collateral **before** the

customer files bankruptcy, the creditor is not legally required to return the car to the debtor.

5. What if I repossess the debtor's car AFTER he files bankruptcy, but I did not know a bankruptcy case had been filed?

Once the debtor files bankruptcy, the car becomes property of the Bankruptcy Estate. Therefore, with few exceptions, a creditor who repossesses the debtor's car post-bankruptcy must return the car to the debtor. The fact that the secured creditor did not know about the bankruptcy filing (even where the debtor failed to list the secured creditor) is not relevant on this issue. Typically, no conditions can be placed upon the return of the vehicle, although it is customary that proof of insurance be first provided by the customer. The fact that the debtor is in default on the loan is not a reason to refuse to return a vehicle repossessed post-bankruptcy.

6. How can I require the debtor to make payments after he files bankruptcy?

Secured creditors are entitled to "adequate protection" under the Bankruptcy Code. Typically, adequate protection means periodic payments made by the debtor. After filing bankruptcy, however, many debtors fail to make payments to their secured creditors. When this happens, the secured creditor should retain counsel to file a motion with the Bankruptcy Court asking for relief from the automatic stay. When this motion is filed in a Chapter 7 case, stay relief will be granted without a hearing in almost every case. When this motion is filed in a Chapter 13 case, the debtor typically will agree to begin making periodic payments. An Order is entered by the Court (commonly known as an Adequate Protection Order) setting out the terms of these payments. The Adequate Protection Order will contain a default provision, such that after a default in the payment terms (which is not cured), the creditor can submit an affidavit of default, and the Court will enter an Order lifting the automatic stay. An Order lifting the stay gives the creditor the right to repossess its collateral.

7. Can the debtor strip my lien in a bankruptcy case (i.e. value the collateral and pay back the value when it is less than the amount owed on the contract)?

Only in limited situations. In Chapter 7, the debtor has the right to redeem collateral from a lien by making a lump sum payment of the value of the collateral to the creditor. For cases filed prior to October 17, 2005, the valuation standard is wholesale value. For cases filed on or after October 17, 2005, the valuation standard is retail value. In Chapter 13 cases filed on or after October 17, 2005, a debtor can "strip" the lien on a car loan only where the car loan was incurred **more than 910 days** prior to the bankruptcy filing. In the event the loan was obtained within 910 days of the bankruptcy filing; however, the Chapter 13 debtor must pay the full balance due (either by making regular contract payments, or paying the balance over the life of the Chapter 13 Plan), along with interest at a rate proposed by the debtor or set by the Court.


8. What are the important deadlines in a bankruptcy case?

Bankruptcy cases are full of deadlines. Creditors must act promptly when notified of a bankruptcy case. Contact an experienced bankruptcy attorney to learn the implications of the various statutory deadlines.

9. Can I pursue a co-borrower who has not filed bankruptcy?

It depends on which chapter of bankruptcy the debtor filed. In Chapter 7, a non-debtor co-borrower **is not** protected by the automatic stay. In a Chapter 13 case, however, a non-debtor co-borrower has the protection of the automatic stay (known as the "co-debtor stay"). The co-debtor stay in a Chapter 13 case is limited, and relief from the co-debtor stay can be obtained by filing a motion with the Court.

10. How long does the automatic stay continue in effect?

The automatic stay continues in effect until the earlier of the following: the case is dismissed, the debtor receives a discharge (and the collateral is no longer property of the Estate), or the case is closed. In a typical Chapter 7 case, the stay terminates approximately four months after the case is filed. In a Chapter 13 case, however, the automatic stay may continue in effect for the term of the Chapter 13 Plan (up to five years), since a discharge is entered after the debtor completes all the Plan payments. 

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If You Want to Grow Your Business, Hire a Consultant

Finding a good one can be easier than you think

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As a 30-year veteran of the used car business, Rick O'Neill has also served on the FIADA Board of Directors and understands the needs of the Florida businessman. Through Brickhouse Consulting, he can pass along experience and knowledge, allowing you to benefit from the lessons he has learned. For example, he can teach you how to buy smarter at the auction, potentially saving you \$300 on every car, upwards of \$150,000 annually..

Auctions aren't his only area of expertise. Consider these topics as well:

- Raising working capital
- Working your location
- Inventory
- Employees
- Sales/Taking trades
- Marketing/Advertising
- Financing/Accounting

- Collections
- Selecting the right vendors

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