

**LoFaro & Reiser, L.L.P.**  
**55 Hudson Street**  
**Hackensack, New Jersey**  
**07601**  
**Tel: (201) 498-0400**  
**Fax: (201) 498-0016**  
**E-Mail: [lr.law@verizon.net](mailto:lr.law@verizon.net)**  
**Web Site:**  
**[www.njlawconnect.com](http://www.njlawconnect.com)**

## **AUTOMATIC STAY UPON FILING OF BANKRUPTCY CASE**

- A. Defined:** The injunction issued automatically upon the filing of a bankruptcy case that prohibits collection actions against the debtor, the debtor's property or the property of the estate.
- B. Relief From Automatic Stay:** Section 362(d) of the Bankruptcy Code sets forth the criteria required for a creditor to obtain relief from the automatic stay.
- 1) For cause, including lack of adequate protection of an interest in property [of the secured party].
  - 2) The debtor does not have an equity in the property.
  - 3) The property is not necessary to the debtor's reorganization.
- C. Common Examples Where Bankruptcy Court Will Terminate Automatic Stay:**
- 1) Pre-petition foreclosure action existed and Debtor not making post-petition loan payments.
  - 2) Debtor fails to maintain insurance on the property or equipment that serves as collateral for the loan.
  - 3) Debtor has no equity in the property or equipment and the property or equipment is not necessary to the Debtor's reorganization.
  - 4) To permit related criminal or governmental proceedings to proceed forward; i.e., SEC cases involving Enron officers/directors.
- D. Common Examples Where Automatic Stay Does Not Apply:**
- 1) Commencement or continuation of an action to establish paternity.
  - 2) Commencement or continuation of an action to establish or modify an order for alimony, maintenance, or support.

- 3) Actions to collection alimony, maintenance or support from property that is not property of the debtor's bankruptcy estate.
- 4) Certain state and federal governmental actions, such as tax audits, tax assessments, state licensing procedures, police and regulatory powers, criminal court proceedings, and local ordinance violations.

**Disclaimer: This article is provided for informational purposes only, and is not intended to provide specific legal advice to any particular situation. This article also is not intended to create any attorney-client relationship between the law firm of LoFaro & Reiser, L.L.P. and any user of this web site.**