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CONSUMER BANKRUPTCY

Handling an Emergency Filing

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Be Prepared for Emergency Filings. It is bound to happen. You receive a phone call from a potential client who says that his house is being auctioned off at a foreclosure auction tomorrow. Or, a creditor is about to file a judgment lien against your client's property. Or, a creditor is about to immediately enforce a judgment by garnishing wages, restraining a bank account, or padlocking a business. Sometimes the bankruptcy petition must be filed immediately to get the benefit of the automatic stay, but there is insufficient time to prepare the entire petition and supporting schedules. This article will provide some practical information for addressing such an emergency situation.

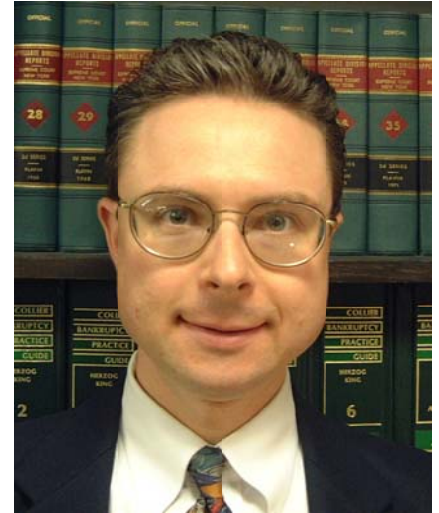
The Automatic Bankruptcy Stay. The bankruptcy stay becomes effective at the time the petition is filed with the Clerk of the Bankruptcy Court. If you file electronically, the time of filing is basically the time you press the final send button on your computer, which time is then indicated in the E.C.F. (Electronic Case Filing) filing receipt. If you file in person at the bankruptcy court, it is

the time that the clerk clocks in your petition with the clerk's time and date stamping machine.

Filing a Skeletal Petition.

The local rules do not require that you file all of the supporting schedules at the time the case is initially filed. Fortunately, you can commence a case by filing just the two-page bankruptcy petition together with a list of creditors and their addresses either in the form of the matrix or by filing the schedules of creditors. You must also pay the filing fee.

The local rules permit you to file the remaining schedules and forms several days thereafter. The Matrix and Social Security Number Statement must be filed within 48 hours. All of the other schedules must be filed within the next 15 days, although the Chapter 7 Statement of Intention (regarding secured assets) and the Statement of Attorney's Time Pursuant to Local Rule 2017-1 can be filed up to the date of the Meeting of Creditors. If you do not file the remaining schedules during these time



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periods, the Court has the right to automatically dismiss the case. If you need additional time, you can bring an application seeking additional time during the 15-day period.

As a practical tip, in emergency situations you may have no choice but to file now and amend later. Note that pursuant to Local Rule 1007-1(b), any schedules filed after the filing

of the petition may need to be accompanied by an affidavit. Any amendments or late-filed schedules must also be served on the Chapter 7 or 13 trustee, as well as the United States Trustee.

Filing the Petition. The Court now requires all attorneys to

file their petitions electronically by E.C.F. If you have computer problems and must file under emergency circumstances, you can still file a petition in person at the clerk's office. If you do, you should try to convert your papers into P.D.F. files and come to the Court with the files on a 3.5 inch floppy disk. If you are unable to do this, the Clerk's office maintains a scanner for public use and they will require you to scan your papers into P.D.F. files there. You should also bring exact change for the filing fee.

If there is a line of people waiting to file petitions, the clerk will permit you to move to the front of the line if you declare that you have a true emergency filing with only minutes to spare. Please note that the time and date stamping machine sitting on top of the Court's "night depository" drop box which is located outside the clerk's office does not provide an official time and date stamp; only the clerk's office can provide an official stamp. Therefore, stamping your petition with this machine will not help. If you have a real emergency situation with very little time to spare, and you are unable to file electronically, you should call the clerk's office for further guidance and to advise them to expect you.

Assess Whether the Situation is Actually A True Emergency. I frequently get calls from potential clients who believe their house is about to be auctioned off in a foreclosure sale. However, many of them mistakenly confuse a motion return date in the foreclosure proceeding with the actual sale date. Before rushing like a madman, take the time to verify that the client's urgency is well-founded.

Avoid Filing for Sole Purpose of Delay. You should remember that even though a

bankruptcy filing will automatically stay any foreclosure sale or judgment execution, the Bankruptcy Code prohibits debtors from filing for the sole purpose of frustrating the legitimate collection rights of creditors. You should only file a petition on behalf of a debtor if it is supported by good faith.

Even under emergency situations, a debtor's attorney is still responsible for diligently ascertaining whether there have been several prior filings which may lead to a conclusion that a new filing is abusive and being done in bad faith. A potential client calling at the last minute may have been in a prior bankruptcy case that was dismissed with a provision that the debtor cannot re-file for a period of 180 days. It is the attorney's responsibility to determine if any prior filings prohibit a subsequent filing.

Notifying Creditors of the Filing. The reason for an emergency filing is because a particular creditor is about to enforce a judgment. Most commonly, this is a foreclosure sale. It is advisable to contact the creditor's attorney once you have been retained to advise them that there will be an emergency filing at the last minute. In addition, you should also fax them a letter containing the filing information and verify that they received it.

Try to Avoid Emergency Filings. Whenever possible, it is most advisable to file the entire petition and all supporting schedules at the commencement of the case. Otherwise, it becomes an additional burden to file the remaining documents on time, and extra attention will certainly be required to keep everything in order. Fortunately, however, there is a mechanism for filing a skeletal petition under emergency

circumstances, but the emergency should be the result of the client calling you at the last minute, rather than caused by your own procrastination.

Editor's Note (revised 2008): Craig D. Robins, Esq., a regular columnist, is a bankruptcy attorney who has represented thousands of consumer and business clients during the past twenty years. He has offices in Medford, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: CraigRobinsLaw.com.