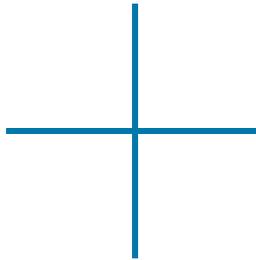




CITY BAR
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BANKRUPTCY: RESIDENTIAL EVICTIONS

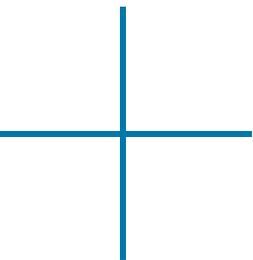


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www.citybarjusticecenter.org

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Introduction

The purpose of this pamphlet is to give general bankruptcy information to New York residential tenants who are facing evictions from their homes and are considering filing for personal bankruptcy. The pamphlet outlines the process for obtaining a stay against the evictions and helps tenants determine whether bankruptcy is the right option for them. While it is possible to file for bankruptcy pro se (“on your own”) it is not a step that should be taken without serious consideration and proper advice and legal assistance.

Eviction

When a tenant falls behind on rent, the landlord can sue the tenant for non-payment of rent in housing court. If the landlord is successful, the landlord can obtain a judgment both for the rent due (money judgment) and to recover possession of the residential unit by evicting the tenant (eviction judgment). If the tenant does not pay the judgment, the landlord may proceed with the eviction by requesting a warrant from the court for a city marshal to enforce the eviction order. For more information on landlord tenant law, please consult with a private attorney or a neighborhood legal services office. See resources at the end.

Bankruptcy

Generally, bankruptcy is a legal process that allows people burdened with debt to resolve their consumer debt issues by filing for bankruptcy relief. There are two types of consumer bankruptcies available to individuals. A Chapter 7 bankruptcy allows a debtor to discharge the debtor’s legal obligation to pay most or all of the debtor’s consumer debts. In this type of bankruptcy, if the debtor has certain assets, the property can be liquidated and the proceeds distributed to the debtor’s creditors. The other type of bankruptcy available is a Chapter 13, which allows a debtor with regular and sufficient income to adjust the debtor’s debts into a repayment plan to let the debtor repay all or part of the debts over a period of 3 to 5 years. A debtor filing a Chapter 13 can save assets that would otherwise be liquidated and distributed to the debtor’s creditors in a Chapter 7 proceeding.



Automatic Stay

The filing of a bankruptcy petition generally triggers an automatic stay. The automatic stay is the debtor's biggest protection against creditors. The stay stops collection practices by creditors such as the commencement or continuation of civil lawsuits to collect on a debt, wage garnishments, seizures of property, and foreclosure proceedings. In some cases, the automatic stay can stop evictions from a residential unit. The automatic stay usually remains in effect during the entire bankruptcy proceeding.

Stopping an Eviction

A debtor who is being evicted from a residential unit and is considering filing for personal bankruptcy should be aware that there are some limitations to having an automatic stay in bankruptcy. The automatic stay provision of the bankruptcy code does not apply to eviction proceedings in which the landlord has obtained an eviction judgment prior to the filing of the bankruptcy case. However, the bankruptcy law does afford a debtor an opportunity to obtain an automatic stay against an eviction if the debtor complies with certain requirements under the bankruptcy code.

Under bankruptcy law, a debtor whose landlord has obtained a judgment of eviction for non-payment of rent, will be able to get a 30-day automatic stay against the eviction by completing the following steps:

- 1 Complete and file the Voluntary Petition for Individuals Filing for Bankruptcy also known as Official Form 101.
- 2 The debtor also must file Official Form 101A entitled Initial Statement About an Eviction Judgment Against You.



3 The debtor must provide the name and address of the landlord and attach a copy of an eviction judgment.

The debtor must certify that non-bankruptcy law in debtor's State allows him or her to cure the monetary judgment. In New York, tenants being evicted for non-payment of rent are given the opportunity to "cure" (pay) the entire money judgment before an eviction takes place. This certification is done on the Official Form 101A by checking certain boxes.

4

In addition, the debtor must pay 30 days of rent to the Clerk of the Bankruptcy Court. In turn, the Bankruptcy Clerk will forward the payment to the debtor's landlord.

5

Finally, the debtor must serve a copy of the Official Forms 101 and 101A to the landlord.

6

The debtor must complete all these steps in order to obtain an automatic stay to stop the eviction for 30 days.

If the debtor wishes to stay in the rental unit beyond the 30 day period, the debtor must pay the entire money judgment owed to the landlord and complete and file with the Bankruptcy Court, a Statement About Payment of an Eviction Judgment Against You also known as Official Form 101B. This must be done within 30 days of the filing of Official Forms 101 and 101A. A copy of Official Form 101B must be served on the landlord. If the debtor completes these additional requirements, the debtor will be allowed to remain in the rental unit.



Filing

Where a debtor is behind on rent for an apartment the debtor currently resides in and the landlord has not obtained an eviction judgment prior to the debtor filing for bankruptcy, the automatic stay will stop the landlord from evicting the debtor. However, the landlord may request that the Bankruptcy Court lift (remove) the automatic stay as to the landlord only. This will frequently be done by a landlord where the debtor remains in the apartment without paying the current rent. If the debtor is not paying rent after the bankruptcy is filed, the Bankruptcy Court will usually grant such relief to the landlord.

The removal of the automatic stay does not give the landlord permission to commence actions to collect the rent arrears due by debtor. Instead, the approval of the Bankruptcy Court to remove the automatic stay against the landlord only allows the landlord to commence or continue eviction proceedings in housing court under a hold-over proceeding. In a hold-over proceeding, the landlord can seek a non-monetary eviction judgment to recover possession of the rental unit by having the debtor move out. The rent arrears incurred before the debtor filed for bankruptcy may be discharged in a Chapter 7 bankruptcy. A debtor might be able to remain in the rental unit by filing a Chapter 13 bankruptcy and proposing to pay the rent arrears, in addition to the current rent due, in a repayment plan over a 3 to 5 year period. If the landlord does not object to the plan and the Bankruptcy Court approves it, the automatic stay against an eviction will remain in effect during the bankruptcy case as long as the debtor makes payments on the plan and on the current rent.

Properly filing for bankruptcy and submitting the correct forms, especially for debtors who are facing eviction proceedings, takes careful preparation and knowledge of the law. The bankruptcy laws are complex and debtors who fail to comply with the requirements of the law or do not file all required paperwork and supporting documents risk eviction from their residential homes.



Residential Eviction Proceedings

Landlord makes demand for
past due rent



Landlord files a Notice of Petition and
Petition in Housing Court



Money judgment and eviction judgment
are issued



Warrant for city marshal to enforce eviction

If you need an attorney to help you in a residential
eviction case, please consult www.lawhelpny.org



The Bankruptcy Automatic Stay

- Eliminates wage garnishments
- Stops debt collection practices
- Stops foreclosure of homes
- In some cases, stops evictions

Limits to the Bankruptcy Automatic Stay

Landlord has obtained an eviction judgment prior to debtor filing bankruptcy

OR

Bankruptcy Court approves landlord's request to remove stay because debtor owes rent and still resides in the residence


No Bankruptcy Automatic Stay



Getting a 30 Day Automatic Stay Where the Landlord Has an Eviction Judgment Prior to Bankruptcy Filing

File

File the Voluntary Petition (Official Form 101) and the Initial Statement About an Eviction Judgment Against You (Official Form 101A).

Certify

Certify, by checking the box that states that under applicable non-bankruptcy law, debtor would be allowed to cure the money judgment.

Deposit

Deposit 30 days of rent with the Clerk of the Bankruptcy Court.

Serve

Serve the landlord with a copy of Official Forms 101 and 101A.



Staying in the Residence After Initial 30 Day Automatic Stay by Paying Full Money Judgment Amount



Within 30 days of filing Official Forms 101 and 101A, debtor pays landlord the entire money judgment stated in the judgment of eviction.



File Statement About Payment of an Eviction Judgment Against You (Official Form 101B).



Debtor will be able to stay in the rental unit.



Resources

For general information on Consumer Bankruptcy:

Personal Bankruptcy: Is it Right For You?

<http://bit.ly/CBPGuide2016>

To Find Legal Help with Bankruptcy in New York City:

Consumer Bankruptcy Project of the City Bar Justice Center:

Contact: Legal Hotline, Monday through Friday 9:00 a.m. – 5:00 p.m.

(212) 626-7383 | www.citybarjusticecenter.org.

Legal Referral Service of the New York City Bar (“LRS”):

Contact: Legal Referral Service LRS Hotline, Monday through Friday 8:30 a.m. – 5:30 P.M

(212) 626-7373 (English) or (212) 626-7374 (Spanish)

Website: www.ilawyer.org

LawHelpNY: Website: <https://www.lawhelpny.org/>

To Find Legal Help with Eviction Proceedings in New York City:

Civil Court Help Center, NYC Housing Court

Help Centers in Manhattan, the Bronx, Brooklyn and Queens are open

Mondays through Fridays from 9:30 A.M. until 5:00 P.M. to assist

litigants in landlord-tenant cases.

<https://www.nycourts.gov/courts/nyc/housing/resourcecenter.shtml>

Legal Hotline of the City Bar Justice Center

Contact: Legal Hotline, Monday through Friday 9:00 a.m. – 5:00 p.m. (212) 626-7383.

LawHelpNY: Website: <https://www.lawhelpny.org/>

To Obtain the Official Bankruptcy Forms (United States Courts):

Voluntary Petition for Individuals Filing Bankruptcy (Form 101):

<http://www.uscourts.gov/forms/individual-debtors/voluntary-petition-individuals-filing-bankruptcy>

Initial Statement About Eviction Judgment (Form 101A):

<http://www.uscourts.gov/forms/bankruptcy-forms/initial-statement-about-eviction-judgment-against-you-individuals>

Initial Statement About Payment of Eviction Judgment (Form 101B):

<http://www.uscourts.gov/forms/bankruptcy-forms/statement-about-payment-eviction-judgment-against-you-individuals>

