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BANKRUPTCY - THE AUTOMATIC STAY

The filing of a bankruptcy creates an “automatic stay”, or an injunction, that prevents all creditors from any attempt to collect debts. These would include informal attempts through correspondence and communication as well as formal attempts.

Severe violations of this injunction may result in action by a bankruptcy trustee or the debtor seeking damages for contempt of court. Incidental contact with the debtor, however, usually does not create any problem.

Any creditor and debtor is entitled to negotiate a Reaffirmation Agreement, by which the debtor would agree to pay the debt in spite of the bankruptcy. Contacts with the debtor for this particular purpose are permitted. This Agreement must be in writing, approved by the debtor’s attorney, and submitted to the Court before the case is closed, or the final discharge. It would be proper to contact the debtor to propose or discuss the terms of the Reaffirmation Agreement.

It is common for a debtor to assure certain creditors he is going to pay them in spite of the bankruptcy. These assurances in the absence of the written Reaffirmation Agreement filed with the court are not enforceable, however.

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