

Bankruptcy

12014.1 BANKRUPTCY FILING ON WRIT OF POSSESSION - REAL PROPERTY CASES

- (a) Bankruptcy Petition filed Before Unlawful Detainer Hearing
 - 1. If a bankruptcy petition was filed before an unlawful detainer hearing, all enforcement actions are stayed until the Civil Bureau receives a relief of stay or a dismissal from the bankruptcy court.
- (b) Bankruptcy Petition filed after Unlawful Detainer Hearing
 - 1. If the bankruptcy petition was filed after the unlawful detainer hearing then we must follow one of the rules listed below:
 - i. When evicting a defendant in a non-residential property, the eviction is stayed.
 - ii. If the lease has expired under the terms of the contract, we will go forward with the eviction after the plaintiff has given us instructions that states the lease has expired and directs us to proceed.
 - iii. When evicting a defendant in a residential property the eviction is stayed, we will continue with the eviction after receiving instructions from the plaintiff that states the eviction can go forward due to stay exceptions from the federal bankruptcy court or the plaintiff gets a relief of stay or the bankruptcy is dismissed.
- (c) Third Party files a Bankruptcy
 - 1. If a third party files a bankruptcy; we will stay the eviction so long as the property address is listed in the bankruptcy filing.
 - 2. We will continue with the eviction after receiving one of the following:
 - i. A relief of stay
 - ii. Additional instructions from the plaintiff stating the automatic bankruptcy stay does not apply in their particular case.
 - A. The instructions should quote the applicable USC code section.
 - iii. Absent a USC code section it is recommended that county counsel review the instructions before proceeding.
- (d) Bankruptcy before Judgment date
 - 1. After receiving a bankruptcy filing from the defendant in an unlawful detainer hearing we will first check the date of the bankruptcy petition and compare it with the date of the judgment on the Writ of Possession.
 - 2. If the date on the bankruptcy petition is before the Judgment date on the Writ of Possession then all enforcement actions are stayed pending a relief of stay or dismissal from the bankruptcy court.

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3. With multiple Bankruptcies, the automatic stay provisions may have an expiration date. After confirming with the issuing Bankruptcy Court that the automatic stay has expired, a relief of stay or dismissal is not required.
- (e) Bankruptcy after Judgment date
1. If the Judgment date on the bankruptcy petition is after the date on the Writ of Possession then we will follow the below procedures:
 - i. After receiving a bankruptcy filing from a defendant in a non-residential property, we will stay the eviction unless we receive written instructions from the landlord or their attorney based on language in 11 USC 362 (b) (10).
 - ii. After receiving a bankruptcy filing from a defendant in a residential property, we will continue the eviction process after we receive instructions from the landlord or their attorney based on language in 11 USC 362 (b) (22).
 - iii. We will also continue the eviction after receiving instructions from the landlord or their attorney based on language in 11 USC 362 (b) (23).
- (f) Bankruptcies on Foreclosure Evictions
1. The automatic stay exceptions listed above do not apply to foreclosure evictions unless there is a landlord tenant relationship between the current legal owner (Plaintiff) and the foreclosed upon former owner (Defendant)."
 2. All bankruptcy filings of a named defendant in a foreclosure will result in a stayed eviction.
 3. The plaintiff must obtain a relief of stay or dismissal from the Bankruptcy Court, unless the stay is voided due to multiple bankruptcies.

Reference

POST ORDER 12-02

12014.2 NOTICES OF THE FILING OF BANKRUPTCIES

Notices of the filing of bankruptcies are to be processed as follows:

- (a) Notification Form
1. The form in which we receive "Notice" of the filing of a petition and thus an automatic "stay" may be a copy of any document issued by the bankruptcy court, a letter signed by the bankrupt or the bankrupt's attorney, or an oral notice.
 2. If we are unable to verify the notice, the plaintiff will be requested to verify the bankruptcy and get relief from the stay.
 3. The Civil Bureau should be presented with a "Certificate of Filing" and/or a "Notice of Stay" as issued by the bankruptcy court.
 4. The "Notice" regardless of form needs to include the:

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- i. Title of the bankruptcy court.
 - ii. Bankruptcy case number.
 - iii. Name of the bankrupt.
5. Unless the "Notice" is in the form of an official bankruptcy court document, we will verify the filing by telephoning the bankruptcy court; Orange County's number is 714-338-5401 voice mail, 714-338-5300 live contact, or by using WEBPACER at www.cacb.uscourts.gov.
- (b) Summons and Notice of Trial
 1. As soon as possible after a Bankruptcy "Summons and Notice of Trial" is received, forward the documents and a copy of the applicable "Register of Action" to the Justice Center Lieutenant, Civil Sergeant or Civil Supervisor for forwarding to County Counsel.
- (c) Automatic Stay Provisions
 1. The automatic stay provisions do not apply to:
 - i. Domestic cases for collection of alimony, maintenance, or support.
 - ii. The exception does not apply if the filing was a Chapter 13 filing.
 - iii. In Chapter 13 filings, all executions are stayed and a claim must be filed with the Trustee.
 - iv. Non-residential property where the lease expired prior to the Bankruptcy filing.
 - v. Residential property, unless the debtor follows the complex procedure listed in CCOM Section 12014.1 - Bankruptcy Filing on Writ of Possession/ Real Property Cases.
 - vi. CCP 1209 and CCP 1993 [1] (Witness) Civil Bench Warrants and PC 166 Warrants[2].
- (d) Reliable or Verified Notice of Bankruptcy
 1. Immediately following receipt of a reliable or verified "Notice" of bankruptcy we will RETAIN property already under levy and in our custody.
 2. Release all other levies and return monies received after the Bankruptcy filing date to the appropriate party.
 3. We will then serve on the creditor, debtor, and trustee a "turnover notice" advising the parties that the levied property may be transferred to the trustee no earlier than five days after the 341 meeting creditors hearing date.
- (e) Trustee Refusal to Accept Property
 1. If the trustee refuses to accept the property, the property under levy shall be held until:
 - i. Further order of the bankruptcy court.

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- ii. A release is received from the levying creditor's attorney.
 - iii. Assets will then be returned to the defendant unless the bankruptcy court has issued a "Temporary Restraining Order", appointed a trustee in bankruptcy or other court direction.
 - iv. Failure of the levying creditor to advance required storage costs (CAUTION!! require storage fees to be on deposit at least 15 days before we are required to pay them.)
 - v. Expiration of the levy unless the attaching creditor or bankruptcy court has extended the levy.
- (f) Certification Requirement on Relief of Stay Orders
- 1. There is no certification requirement on Relief of Stay Orders issued in eviction proceedings by the Bankruptcy Court.
 - 2. You may rely on signed written instructions from the plaintiff informing you that the automatic stay has been set aside; however, you may proceed with the eviction upon receipt of the written instructions.
 - 3. It is acceptable to require a certified copy of the bankruptcy court's order to release levied property; if however, you believe that the order for release is valid and have sufficient other proof, you may release without a certified copy.

Reference

POST ORDER 11-15

12014.3 AUTOMATIC STAY IN BANKRUPTCY

A federal appellate case (Knaus V. Concordia Lumber Company, 8th Cir. 1989, 889 F2d 773) holds that the automatic stay provided in the bankruptcy proceeding requires the release of property levied upon prior to the filing of a bankruptcy petition. In the past, only property levied upon after the bankruptcy filing was released.

Information Received that Property was Levied Upon Prior to the Filing of a Bankruptcy Petition, we will:

- (a) Hold the property.
 - 1. Notify the creditor immediately and request written instructions.
- (b) If the creditor instructs us in writing to maintain the levy, they must provide factual statements of the reason justifying our retention of possession of the property.
 - 1. Forward the written instruction to County Counsel for evaluation and opinion.
- (c) County Counsel will evaluate the creditor's instructions to see if they provide an adequate reason for refusing to turn the property over to the debtor.

Reference

POST ORDER 11-05

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12014.4 EFFECT OF BANKRUPTCY CHAPTER 13 FILING BY CO-DEBTOR

Title 11 U.S. Code, 1301

- (a) A Chapter 13 stay protects consumer debt from civil action and enforcement even when the debt is co-owned and only one of the owners of the debt files for bankruptcy protection.
 - 1. Although claims of automatic stay under these circumstances are rare, Civil Clerks are advised to contact the plaintiff's attorney for verification before releasing.

References

POST ORDER 06-15

California State Sheriffs' Association Civil Procedures Manual

12014.5 EVICTIONS AND BANKRUPTCY STAYS

- (a) If the bankruptcy is filed at any time before the eviction is completed by the defendants named in the writ, the Deputy must NOT proceed with the eviction unless and until
 - 1. the landlord obtains and presents to the Deputy an order from bankruptcy court granting relief from the stay or dismissal by the bankruptcy court; or
 - 2. the landlord provides written instructions indicating that the stay provisions are void pursuant to one or more of the following United States Code sections: 11 U.S.C. § 362(c) through 11 U.S.C. 362 (g).
- (b) If the plaintiff did a normal eviction we will only accept third party bankruptcy filings if they are accompanied by an Arrieta claim.
- (c) This procedure does not apply to property where the lease expired prior to the bankruptcy filing.

References:

POST ORDER 06-24

California State Sheriffs' Association Civil Procedures Manual

California Code of Civil Procedure [\[1\]](#)

County Counsel Opinion 2005-008