

What are the immediate things to do when a customer files bankruptcy?

The early days of a bankruptcy case can be chaotic. Motions may be filed which significantly impact your rights and you will be given very little time within which to object.

Upon learning of your customer's bankruptcy filing, you should gather all relevant paper and electronic documentation, including any documentation needed to prepare a proof of claim as well as any documentation potentially needed to defend against an avoidance action. This will typically include all customer files, correspondence and account information going back at least a year or two. Because bankruptcy cases can last for several years and most electronic data is kept only for a limited period of time, it is important to gather and retain that information as soon as you learn of your customer's bankruptcy filing.

Typically the first communication you receive telling you of your customer's bankruptcy filing is the Notice of Bankruptcy Case, Meeting of Creditors and Deadlines sent to you by the bankruptcy court. This initial notice includes important information and should be retained in your files. If your customer is an individual, the notice will include their social security number. This will be the only time this information will be provided to you so it is important to retain this initial notice in a secure place and provide a copy of it to your counsel.

The bankruptcy filing automatically creates a stay against efforts to collect pre-petition debts, exercise control over, or take possession of bankruptcy estate property. The "automatic stay" provides a debtor a breathing spell, one of the central protections to a debtor in bankruptcy.

The automatic stay prevents a broad range of actions by creditors, whether litigation or self-help, during the course of a bankruptcy case. Prohibited actions include the commencing or continuing any judicial or administrative proceeding against the debtor or its property to recover a claim arising before the bankruptcy filing, any enforcement against the debtor or the debtor's property of a pre-petition judgment, most efforts to create, perfect, or enforce a lien against the debtor's property if the lien secures a claim arising before the bankruptcy filing, or the setoff of any debt owing to debtor that arose before the bankruptcy filing. The automatic stay also bars collection calls, delinquency notices and similar types of pressure. When in doubt, assume the stay applies as violating the automatic stay may result in sanctions.

Copies of the initial notice should be routed to the appropriate departments in your company (legal, accounting, sales, etc.) as well as collection agents and counsel handling foreclosure or eviction proceedings. Because delinquency notices are often computer generated, to avoid the risk of being sanctioned, it is important to have procedures in place to stop the mailing of late notices.

Your accounting department must distinguish between pre-petition and post-petition debt. It is often advisable to have a procedure for closing a customer's account as of the date of the bankruptcy filing and opening a new account for any post-petition activity. This minimizes the chance of violating the automatic stay.

Because initial notices are often sent to your lock box address, to avoid having your rights adversely impacted, it is critical to establish with your lock box staff a procedure for quickly forwarding these initial notices to you. Upon receiving the initial notice from your lock box staff, immediately file a change of address with bankruptcy court so there is no delay in receiving subsequent notifications from the debtor or the bankruptcy court.

Be sure to calendar all important deadlines, i.e., first meeting of creditors, meeting of creditors' committee, deadline for filing proof of claim, etc. Failure to timely file a proof of claim usually impacts your ability to share in any distribution.

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