



Bankruptcy Filings Are Up - How to Protect Your Rights as a Creditor

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The number of individuals filing bankruptcy has increased significantly during the recent economic downturn. The National Bankruptcy Research Center reported a 32% increase in personal bankruptcy filings from 2008 to 2009, and that increase was followed by a 9% swell in personal bankruptcy filings from 2009 to 2010. This increase in bankruptcy filings, which is predicted to continue through 2011, means that you are more likely to receive a notice that a party that owes you money has filed bankruptcy. It is important to understand what steps you should initially take to comply with the "automatic stay" imposed by the bankruptcy code and to protect any funds that are owed to you.

If you receive a notice of bankruptcy filing from a bankruptcy court, then you should immediately stop collection efforts.

When a bankruptcy case is filed, what is referred to as an automatic stay is imposed by the bankruptcy code on all collection efforts against the person or company filing bankruptcy (commonly referred to as the "debtor"). This means that if you are owed money by the debtor for any goods or services you provided before the bankruptcy filing, then no further action should be taken to collect the money owed. Certain exceptions can apply to the automatic stay and it may expire if certain events occur, such as the debtor's case being dismissed without receiving a discharge.

You should generally file a proof of claim in the bankruptcy case.

If you receive notice of a bankruptcy filing, this is likely because the debtor has identified you as a "creditor," meaning that the debtor owes you money. Creditors have a right to file what is referred to as a "proof of claim" with the bankruptcy court. The proof of claim form is typically provided along with the notice of bankruptcy filing or it can be obtained from the bankruptcy court. It is important that this form be completed if a creditor is owed money by the debtor and that it is filed with the bankruptcy court before the filing deadline. By filing a proof of claim, a creditor ensures that he will share in any distributions of the debtor's assets, if any. While oftentimes creditors in bankruptcy cases do not receive payments on the claims, it is possible that a creditor may be able to recover all or a portion of what is owed. The first step to moving toward potential collection in the bankruptcy case is the filing of the proof of claim.

In sum, once the debtor files bankruptcy, a creditor should not contact the debtor requesting or demanding payment for any goods or services provided prior to the bankruptcy filing, and it is generally in a creditor's best interest to file a proof of claim in the bankruptcy case. The bankruptcy laws can be complex so a creditor should contact an attorney with any questions after receiving a notice of bankruptcy filing.