

Bankruptcy Stay No Longer Automatic

By Scott M. Clark, Attorney

The news anchors have reported it. Late night comedians have commented on it. Even commercials for certain law firms have advertised regarding it. "It" is the Bankruptcy Reform Bill, signed into law by President Bush in April.

Bankruptcy filings have always had a direct impact upon owners of rental property. If a renter filed for bankruptcy at any time during a forcible/special detainer action, the law entitled the individual to a stay upon the course of the litigation. The Bankruptcy Code, specifically 11 U.S.C. 701 et. seq., will face significant changes in a matter of mere months.

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A major focus of the bill is the curtailing of Chapter 7 filings with new restrictions imposed upon that chapter. While this will provide a hurdle to a resident who seeks to use the Bankruptcy Court to escape an eviction, this is not the most relevant clause to landlords and owners. Tucked away in the deeper provisions of the Bankruptcy Reform Bill is language extremely important to landlords and owners.

Section 311 (a) of S.256 adds two important paragraphs to 11 U.S.C. 362(b):

- (22) *subject to subsection (1), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;*
- (23) *subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;*

The relief from the automatic stay applies in one of two ways. Under (23), which concerns matters such as violations of a crime-free addendum, the stay is automatically lifted 15 days after the landlord files an application with the Bankruptcy Court. Under (22), the matter is a bit more difficult, but by no means as restrictive as before. It provides that a resident must provide certification to the court that he or she was entitled to cure the non-payment and such a cure was possible. A landlord has the right to object, and a hearing will be set on the matter within 10 days. If the landlord, prevails at the hearing, the stay is immediately lifted.

The net result of the changes is that the automatic stay is not quite so "automatic" for the renters who have filed for bankruptcy. A brief Internet search for details on these changes will disclose many commentators who are outraged that it is now easier to evict renters for the non-payment of rent.

What they fail to heed, or choose to otherwise ignore, is that the landlord or owner, who has many expenses and financial obligations to meet, is now able to keep his or her own financial house more easily in order. The non-payment of rent has always been a concern, but now residents who face eviction for criminal behavior, health and safety violations, and uncured and repeated lease violations are not able to hide under the aegis of the Bankruptcy Court. Monetary judgments may remain hard to collect against the bankrupt renter, but possession is no longer as hard to re-acquire as it was before. Once the landlord re-acquires

possession of the unit or property, he or she can then rent it to someone actually able to pay the rent.

Scott M. Clark, Attorney at Law, can be reached at 602-957-7877. Reprinted with permission from Arizona Multihousing Association.