

SOME CASES ARE TROUBLED BEFORE THEY ARE FILED.

PROBLEM: REPEAT FILERS

You should run a national PACER search on the debtor as part of your intake procedure. If the debtor has had one or more case **dismissed** in the one year before filing the stay is limited or nonexistent.

Pursuant to § 362(c)(3) if the debtor has had one case dismissed [other than a Chapter 7 dismissed under § 707(b)] within the one year prior to filing, the automatic stay terminates after 30 days. The court may extend the stay pursuant to § 362(c)(3)(B) after notice and with a hearing completed within 30 days of filing. The debtor must demonstrate that the new case was filed in good faith as to the creditors to be stayed.

Pursuant to § 362(c)(4) if the debtor has had two or more cases dismissed [other than a Chapter 7 dismissed under § 707(b)] within the one year prior to filing the stay under § 362(a) shall not go into effect. Pursuant to § 362(c)(4)(B) if, within 30 days after the filing of the later case, a party in interest requests, the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

For purposes of §362(c)(4)(B), a case is presumptively filed not in good faith

File all schedules, statements and the plan before filing the motion to extend or impose the stay. Make sure that every flaw in the prior case(s) is corrected in the new filing.

Present the first post-petition mortgage payment and the first plan payment with the motion.

File the motion as soon as possible. You only have 30 days to have the hearing **concluded** if you seek to extend the stay and you only have 30 days to have the initial hearing on a motion to impose the stay.

Your motion must clearly describe the changes in the debtor's circumstances. The motion and the schedules must be internally consistent. **The seven day notice requirement cannot be shortened.**

Repeat filers are likely to be required to submit to a payroll order to get the stay extended, serial filers (three or more cases) are likely to face a request for dismissal with a bar to refile if they cannot get their plan confirmed.

PROBLEM: DEBTOR MAY HAVE TOO MUCH DEBT TO FILE CHAPTER 13, DEBT LIMITS AND ELIGIBILITY UNDER §109(e)

Secured Debt Limit \$1,184,200

Unsecured Debt Limit \$ 394,725

These amounts changed on April 1, 2016 and every three years thereafter.

Total unsecured debt is calculated by combining the unsecured amount from Schedule D with the total debt scheduled on Schedules E and F.

The unsecured amount on Schedule D is comprised of the amount shown as under secured on the first mortgage plus the entire amount owed on any wholly unsecured junior mortgage plus the under secured portion of any debt secured by personal property of the debtor. If the debtor is keeping their home it may be advisable to list the unsecured portion as zero if the balance owed is greater than the value of the real property.

While eligibility is generally based on the amounts in the debtors' schedules, the court may look at claims or other evidence. For example, if a debt is scheduled as "unknown" or "\$1.00", the court may look to the claim.

Information provided in the debtors' schedules constitutes an admission by the debtors. In re Bohrer, 266 B.R. 200 (Bankr. N.D. Cal 2001). Eligibility can be determined by the amounts listed in the debtor's schedules. In re Hansen, 316 B.R. 505, 508 (Bankr. N.D.Ill 2004), citing In re Scovis, 249 F.3d 975, 982 (9th Cir. 2001).

Contingent debts do not count toward the debt limit. A debt "is contingent if it does not become an obligation until the occurrence of a future event, but is noncontingent when all of the events giving rise to liability for the debt occurred prior to the debtor's filing for bankruptcy." Mazzeo v. United States (In re Mazzeo), 131 F.3d 295, 303 (2d Cir. 1997); see also In re Knight, 55 F.3d 231 236 (7th Cir. 1995).

Unliquidated debts do not count toward the debt limit. A debt is liquidated when the amount "has been ascertained or can be readily calculated." Knight 55 F.3d at 235. The amount can be calculated readily when it is fixed or is "otherwise ascertainable by reference to an agreement or by a simple computation." In re Nicholes, 184 B.R. 82, 89 (B.A.P. 9th Cir. 1995).

Disputed debts are counted towards eligibility. In re Knight, 55 F.3d 231 (7th Cir. 1995), In re Waller, 2001 WL 197844 (N.D.Ill.), In re McGovern, 122 B.R. 712 (Bkrtcy N.D.Ind. 1989), In re Sylvester, 19 B.R. 671 (B.A.P. 9th Cir. 1982).

PROBLEM: DEBTOR HAS NOT FILED TAX RETURNS

Give proper notice to the IRS and the Illinois Department of Revenue.

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Illinois Department of Revenue
PO Box 64338
Chicago, IL 60664-0338

If the debtor has not filed their current year taxes before the case is filed it is advisable that they file the return electronically before they file their bankruptcy case.

If the debtor files the missing returns at an IRS Service Center they can receive a copy of their return that is stamped by the IRS as filed. This will satisfy the Trustee that the return was filed and can be provided to the IRS Insolvency Department to speed the process of an amended return.

The Trustee cannot recommend confirmation of the debtor's plan if the IRS claim on file does not show that all returns are filed, see §1308.

IRS Service Centers

City	Street Address	Days/Hours of Service	Telephone*
Chicago	230 S. Dearborn St. Chicago, IL 60604	Monday-Friday - 8:30 a.m.-4:30 p.m.	(312) 566-4912
Downers Grove	2001 Butterfield Rd. Downers Grove, IL 60515	Monday-Friday - 8:30 a.m.-4:30 p.m.	(630) 493-5291
Orland Park	14479 S. John Humphrey Drive, Orland Park, IL 60462	Monday-Friday - 8:30 a.m. - 4:30 p.m.	(708) 873-8310
Schiller Park	5100 River Road Schiller Park, IL 60176	Monday-Friday - 8:30 a.m.-4:30 p.m.	(847) 671-7541