

FREQUENTLY ASKED QUESTIONS KANSAS BANKRUPTCY

Q. What is a bankruptcy?

A “bankruptcy” is a federal court procedure that helps a tenant(s) get rid of their debts and, in limited circumstances, repay their creditors. Bankruptcies can be categorized into two types - "liquidations" (Chapter 7) and "reorganizations" (Chapter 13).

Q. How do I know if my tenant filed bankruptcy?

All creditors will receive a Notice of Bankruptcy Filing in the mail to the address provided to the US Bankruptcy Court by the tenant(s). The Law Office of Anderson & Associates is a registered user of the PACER (Public Access to Court Electronic Records) bankruptcy system and can quickly do a search for your tenant’s name online.

Q. What is the CM/ECF system?

The “CM/ECF” (Case Management/Electronic Case Files) system is the case management and electronic court filing system for public use in the United States Federal Bankruptcy Court in Kansas.

Q. What is a Chapter 7 bankruptcy?

A “Chapter 7” bankruptcy falls in the liquidation category. This means that some of a tenant’s non-exempt property may be seized and sold to pay off some or all of their debts. In this type of bankruptcy proceeding, unsecured debts (such as rent) will be discharged (forgiven by the Court and never repaid to the creditor/Landlord).

Q. What is exempt property?

“Exempt property” is property that cannot be sold in order to pay off the tenant’s debts. This property is defined by federal law and includes things like the tenant’s furniture, car, jewelry, and clothes.

Q. What is a secured debt?

A “secured debt” is a debt that is guaranteed by collateral. A car loan or a mortgage on a home is a secured debt.

Q. What is an unsecured debt?

An “unsecured debt” is a debt that is not guaranteed by collateral. Rent, late fees, utility charges, and court costs are unsecured debts.

Q. What is a Chapter 13 bankruptcy?

A “Chapter 13” bankruptcy falls in the reorganization category and is commonly referred to as a “wage earner” bankruptcy. Only a tenant(s) with a reliable source of income who submits to a plan to repay their debts within three (3) to five (5) years is eligible to file this type of bankruptcy. The amount that the tenant(s) will need to repay to their creditors is based upon their income, how much debt they owe, and how much the unsecured creditors would have received if they had filed bankruptcy under Chapter 7

instead of Chapter 13. Please note that all secured creditors will be paid before unsecured creditors (i.e. Landlords).

Q. What is a Chapter 11 bankruptcy?

A “Chapter 11” bankruptcy is normally used by struggling businesses as a way to get their affairs in order and pay off their debts. Chapter 11 bankruptcies are much more expensive and time consuming when compared to Chapter 7 and 13 bankruptcies and are rarely seen in residential Landlord tenant law.

Q. What is the automatic stay?

Once a tenant(s) has filed bankruptcy, any action by a creditor/Landlord to collect a debt and/or evict a tenant(s) is stayed, which means all actions must stop immediately! The automatic stay goes into effect as soon as a tenant(s) (a/k/a debtor) files for bankruptcy.

Q. What is a violation of the automatic stay?

Practically speaking, the automatic stay prevents a creditor/Landlord from commencing an eviction action, continuing an unfinished eviction lawsuit, or attempting to collect past due rent. A violation can include actions as small as writing a demand letter or having a conversation with your tenant(s) regarding their past due balance.

Q. Why do I need relief when my lease says otherwise?

Commonly, rental agreements contain clauses that terminate or modify the lease in the event that a tenant(s) becomes insolvent or files a bankruptcy petition. Although creditors/Landlords usually insist on such language, bankruptcy laws deem these provisions unenforceable.

Q. What can happen if I violate the automatic stay?

A creditor/Landlord faces liability in the form of sanctions for a tenant’s damages if he violates the automatic stay. A Judge may impose fines or award a tenant(s) a judgment for attorney’s fees, damages, and costs. It is also possible for a tenant(s) to recover money from their creditor/Landlord for emotional distress and lost wages due to time spent resolving a violation.

Q. What is a Motion for Relief from the Automatic Stay?

In order to begin an eviction or continue an eviction and/or collect a debt against a tenant(s) who filed bankruptcy, a creditor/Landlord must ask a Federal Bankruptcy Judge to remove the automatic stay, called a Motion for Relief from the Automatic Stay. A creditor/Landlord may also file a stipulation for relief from the automatic stay if the tenant(s), tenant’s attorney and an Assistant United States Trustee agree.

Q. My tenant filed bankruptcy after I obtained an eviction judgment but before the sheriff removed the tenant, do I still need to file a Motion for Relief?

The “judgment exception” allows a Landlord to continue eviction proceedings post-petition, so long as the Landlord obtained a judgment for possession before the filing of the debtor’s bankruptcy. However, despite this exception, some sheriffs will not permit the Landlord to remove the tenant’s personal possessions from the rental property in fear that the personal property is protected by the automatic stay. It is the best practice to file a Motion for Relief in order to avoid potential liability.

Q. What information do you need from me?

Please complete The Law Office of Anderson & Associates Bankruptcy Information Form and email it to Jamie Walker at jamie@mokslaw.com. Attach a copy of any notices you have received from the tenant(s) regarding their bankruptcy, a copy of the lease agreement and a current payment ledger.

Q. What is a lease agreement?

A “lease agreement” is a contract between a Landlord and a tenant(s) that states what the tenant(s) will pay monthly for rent and for how long. It also outlines the obligations and responsibilities of the Landlord and the tenant(s). If you do not have an executed lease agreement, please contact Jamie Walker at jamie@mokslaw.com to discuss your arrangements with the tenant(s).

Q. What is a payment ledger?

A “payment ledger” is a financial tool used to track revenue and expenses related to a rental property. A ledger typically contains columns for the date that a payment is due, the amount due each month, the amounts paid and the outstanding balance. See a [Sample Payment Ledger](http://www.mokslaw.com) at www.mokslaw.com.

Q. What is required when filing a Motion for Relief from the Automatic Stay?

1. Filing fee of \$181.00;
2. A Motion For Relief from the Automatic Stay (a/k/a “Motion for Relief”);
3. A Notice of Motion and Opportunity to Object;
4. A brief, not more than 20 pages, in support of the Motion for Relief;
5. A Certificate of Service;
6. A Certificate of No Response (if applicable); and
7. A proposed Exhibit and Witness List (if applicable);
8. A proposed Order Granting the Motion for Relief.

Q. Where will you file my Motion for Relief?

A Motion for Relief must be filed in the Federal District Courthouse where the tenant(s) filed bankruptcy and where the rental property is located.

Q. What notice is required prior to filing my Motion for Relief?

No notice is required prior to filing a Motion for Relief.

Q. How long does the relief process take?

The United States Code provides a strict timeline that Courts must follow when ruling on Motions for Relief. The stay automatically lifts thirty (30) days after the Motion for Relief is filed, unless the Court, after notice and a preliminary hearing, orders that the stay be continued pending a trial to take place within thirty (30) days after that preliminary hearing, unless the parties agree otherwise, or the Court finds “compelling circumstances” to justify keeping the automatic stay in place longer. An Order for Relief becomes final after fourteen (14) days after it has been granted.

Q. How much does it cost to file a Motion for Relief?

Prior to filing a Motion For Relief, The Law Offices of Anderson & Associates will invoice you for the Court's filing fee and a \$250.00 attorney's fee. If the case is contested and requires a trial, an attorney at The Law Office of Anderson & Associates will bill you an additional \$250.00 attorney's fee. Please refer to the Bankruptcy Fee Schedule.

Q. Why do I need a lawyer to file a Motion for Relief?

If your rental property is owned in the name of a business entity, you are required by law to be represented by a lawyer. If you own your rental property in your individual name, you may be able to represent yourself without a lawyer. Title 11 of the United States Code contains highly detailed laws and rules. In addition, because a person's home is at stake, many Judges will set the bar very high when it comes to ruling in the creditor's/Landlord's favor. Creditors/Landlords are fundamentally no different than any other type of business owner – they aim to make their businesses profitable while avoiding liability. Hiring The Law Office of Anderson & Associates to help you achieve these goals is a smart business move.

Q. What is a Notice of Motion and Opportunity to Object?

A "Notice of Motion and Opportunity to Object" is a required bankruptcy form outlining the details of the Motion For Relief and stating that any party wishing to file an objection must do so in writing and serve a copy on The Law Offices of Anderson & Associates within fourteen (14) days of receiving a copy of the motion.

Q. After you file my Motion For Relief, I was told you have to serve the other party. What does that mean?

The Law Offices of Anderson & Associates is responsible for serving a copy of the Motion, Notice, Order and Brief to all the parties involved - tenant(s), tenant's attorney, the Assistant United States Trustee, and any other party known to claim an interest in the property, rents, issues, profits or proceeds.

Service may be done in a variety of ways; however, the easiest method is to upload copies within the federal CM/ECF email system and mail the Motion, Notice, Order and Brief by first class postage prepaid mail to the party's residence or the place where the party regularly conducts business. Service is complete upon mailing.

After service has been made, an attorney at The Law Office of Anderson & Associates will file a Certificate of Service with the Court. The Certificate of Service must state the following facts: the date the documents were served, the names of the documents that were served, the names and addresses of the parties served and how service was completed.

Q. What happens if no objection is filed?

If the tenant(s) fails to file a written objection to the Motion for Relief, an attorney at The Law Office of Anderson & Associates will prepare a Certificate of No Response and upload a proposed Order Granting the Motion For Relief via the CM/ECF system.

Q. Once the proposed Order Granting the Motion for Relief is signed by a Judge, who informs the tenant?

The Law Offices of Anderson & Associates is responsible for serving the Order Granting the Motion for Relief on the tenant(s) and the tenant's attorney. Service can be made via the CM/ECF email system or mail.

Q. What happens if someone objects to the Motion for Relief?

Once an objection to the Motion for Relief is filed, procedures for setting a preliminary hearing and trial date differ depending upon the Judge. The docket clerk at The Law Offices of Anderson & Associates will send you an email outlining the date, time and number of the courtroom for the hearing and trial date, if your appearance is necessary.

Q. Do I need to appear at the preliminary hearing date?

You do not need to appear at the preliminary hearing date. An attorney at The Law Office of Anderson & Associates will appear on your behalf and request the Judge enter an Order Granting the Motion for Relief in your favor or schedule the Motion for Relief for a trial.

Q. Do I have to attend the trial?

Yes. Your testimony is necessary in order for an attorney at The Law Office of Anderson & Associates to win your case.

Q. What should I wear to the trial?

It definitely does matter what you wear to Court. The Judge will notice how you present yourself to the Court. You want to demonstrate that (a) you respect the courtroom and (b) that you are taking the matter seriously. We recommend conservative dress which includes something you would wear to church, work, or a nice social function. You will not be permitted to bring your cell phone into the Federal Courthouse so please be sure to leave it in a safe location in your car.

Q. Can someone else go to the trial instead of me?

You do not have an automatic right to have a friend or family member act on your behalf in Court; however, your property manager or someone you appoint to manage your business can appear on your behalf if they have knowledge of the case.

Q. What happens at the trial if I do not show up?

If you fail to appear for the bankruptcy trial, the Motion for Relief will most likely be denied.

Q. What happens at the trial if my tenant does not show up?

If the tenant(s) fails to appear for the bankruptcy trial, the Judge will most likely enter the Order for Relief in your favor.

Q. What documents do I need to bring to the trial?

Please bring the following documents to Court with you:

1. The original executed lease (a copy is acceptable if you cannot locate the original);
2. A current payment / rental ledger;
3. A copy of the termination notice sent to your tenant(s) (if applicable);
4. A copy of the reservation of rights letter (if applicable); and
5. The tenant(s) rental file.

*You MUST provide copies of these documents to an attorney at The Law Office of Anderson & Associates no later than seven (7) days prior to your trial. It is very important that your Witness and Exhibit List is timely filed and we are prepared for the trial. If these documents are not received within this time frame, your case may be significantly delayed.

Q. What will happen at the trial?

An attorney at The Law Offices of Anderson & Associates will call you to the Judge's bench to testify. You will then take an oath to tell the truth. We will ask you a series of questions based upon your lease agreement, payment ledger and the information contained in your Motion for Relief. Make sure that you are familiar with these documents. Also, make sure that you understand when and where payments were made and applied and how you arrived at the break down of the amounts you are requesting. You will be holding both the lease agreement and payment ledger in your hand while the attorney is asking you questions. Then the tenant(s) or tenant's attorney will be able to ask you questions, to refute our evidence and offer their own evidence as to why the tenant(s) should be permitted to stay in the rental property under the protection of the Court. In the end, the Judge will examine all of the evidence and decide whether the automatic stay should be lifted.

Q. What is a Order for Relief?

An "Order for Relief" is a decision of a Judge regarding the rights and liabilities of the parties contained in the Motion for Relief. An Order for Relief also generally provides the Court's explanation of why it has chosen to make a particular decision.

Q. What is a stipulation?

A "stipulation" is a Court approved agreement to temporarily extend the automatic stay. A stipulation may be used in your case if you and your tenant(s) agree to allow the tenant(s) to move out on a certain date or to remain in possession under a repayment plan.

Q. Should I accept money from the tenant after she filed for bankruptcy?

You are obligated to accept payments of the post-petition rent, late fees and costs.

Q. What is a pre-petition debt?

Rent, late fees, utility charges and court costs that accrued during the period of time before a tenant files bankruptcy is a pre-petition debt and considered an "unsecured" claim. This is the last type of claim to be paid and, if paid at all, is almost certain to be severely discounted.

Q. What is a post-petition debt?

If a tenant stays in the rental property after the bankruptcy is filed, the claim for rent, late fees, utility charges, and court costs for this period of time are post-petition debts. Post-petition claims are paid before other claims in bankruptcy.

Q. I have been awarded Relief, but the tenant is still there. What can I do?

An Order for Relief becomes final after fourteen (14) days. Thereafter, a creditor/Landlord can enforce all of its state law rights and remedies including: sending a demand, commencing an eviction action, continuing an unfinished eviction action, or attempting to collect post-petition rent, late fees, utility charges, and court costs.

Q. What is a proof of claim?

A “proof of claim” is a bankruptcy form that a creditor (a person who is owed money in a bankruptcy case) files in a bankruptcy case that describes the amount of money the debtor owes the creditor and why. A creditor must attach copies of documents supporting his claim. This may include promissory notes, lease agreement, payment ledger, cashed checks, etc.

Q. When should a creditor/Landlord file a proof of claim?

In Chapter 7 cases, creditors are only permitted to file proofs of claim if the Assistant United States Trustee discovers non-exempt assets that may be liquidated. In this case, the Assistant United States Trustee will send out a notice to the creditor/Landlord instructing him to file proofs of claim and the deadline. This is extremely rare in Chapter 7 cases.

Creditors/Landlords may always file proofs of claim in Chapter 13 cases. The deadline to file proofs of claim in Chapter 13 cases is located on the Notice of Chapter 13 Filing which is sent out to all creditors when a debtor opens a case.

Q. How do I file the proof of claim?

An attorney may file a proof of claim electronically via the CM/ECF system. Creditors who are not represented by an attorney must file the proof of claim in paper at the Federal District Courthouse.

What happens after a creditor files the proof of claim?

In Chapter 7 cases, the Assistant United States Trustee will use the proofs of claim to make distributions to creditors based on the amount of money that is recovered from the debtor’s estate.

In Chapter 13 cases, the Assistant United States Trustee may use the information in the proofs of claim to object to the tenant’s repayment plan. The Creditor/Landlord will also be afforded the opportunity to object to the repayment plan.

PLEASE NOTE that filing a proof of claim does not guarantee that you will be paid all, or even part, of the money that is owed to you by the tenant(s).