

Recurring Automatic Stay Issues in Consumer Bankruptcy: Section 362(c)

I. The Automatic Stay under §362

A. §362(c)(3)

(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period 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; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors, if--

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded--

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor.

1. The text of §362 (c)(3)(A) (“the stay...shall terminate with respect to the debtor”) has created a split in the courts who have different interpretations of the extent of stay termination.
2. The majority rule states that the stay terminates only as to the Debtor and remains in full force as to the property of the estate.
 - a. In re Jumpp, 356 B.R. 789 (BAP 1st Cir 2006). The BAP held that the language was unambiguous and the plain language of the statute controlled. “Congress could have removed the stay in its entirety, as it did under 362(c)(4).” Id. at 795. The fact it did not indicates that Congress intended the stay not as to the debtor to remain in place.
 - b. In re Jones, 339 B.R. 360 (Bankr. E.D.N.C. 2006). This Court also thought that the section was unambiguous where it mattered. “Section 362(c)(3)(A) as a whole is not free from ambiguity, but the words ‘with respect to the debtor’ are entirely plain...How could that be any clearer?” Id. at 363.
 - c. In re Tubman, 364 B.R. 574 (Bankr. D. Md. 2007). Untimely motion to extend the stay denied, but motion to declare stay remaining in place as to property of the estate granted. The Court noted that the phrase “with respect to the debtor” is “repeated four times in a tight space.” Id. at 582. “The careful parsing reflected in the plain meaning of [the] section...is simply further evidence of Congressional wisdom.” Id. at 583.
3. The minority rule states that Congress intended a scheme where the stay would be limited according to the number of cases pending within the prior year. The stay terminates in its entirety after 30 days unless it is extended.
 - a. In re Curry, 362 B.R. 394 (Bkrcty. N.D. Ill. 2007). The statute lacks a plain meaning. The “majority view do[es] not give proper weight [to the phrase “with respect to a debt or property securing such debt].” Id. at 400. And “to the debtor” phrase served to define the debtor affected by the provision (as opposed to a joint debtor who has only one case. Id.
 - b. In re Jupiter, 344 B.R. 754 (Bankr. D.S.C. 2006). The Court determined that the “statutory scheme of 362 (c) is intended to, and in fact, terminates the automatic stay with respect to the property of the estate.” Id. at 759, citing In re Coleman, which states that the Court must be guided by the broader context of the statute as a whole. In re Coleman, 426 F.3d 719, 725 (4th Cir. 2005).
4. Can the stay be reimposed after it has terminated under §362(c)(3), either completely or as only as to the debtor?
 - a. It may be possible to impose a stay after the automatic stay has terminated by use of the Court’s “necessary or appropriate” powers contained in 11 USC §105(a).
 1. In re Whitaker, 341 B.R. 336 (Bkrcty. S.D.Ga., 2006). Court imposed a stay under 105(a) after the automatic stay under §362(c)(3) expired. The Court could not impose a 362(c)(4) stay as debtors had one case pending within the year. The debtors meet their burden for injunctive relief (debtors proposed a 100% plan, among other facts).
 2. In re Williams, 346 B.R. 361 (Bkrcty. E.D. Pa., 2006). While it is possible to reimpose a stay under 105(a) that has already terminated, “the debtor must meet the traditional standards for injunctive relief.” Id. at 371. The Court held that since the stay was still in place as to property of the estate, the debtor could not show

irreparable harm as to himself or his non-estate property (of which there was none).
Id. at 372.

3. In re Garrett, 357 B.R. 128 (Bktrcy. C.D. Ill. 2006). The fact that the debtors chose not to file their motion to extend until 11 days after the case was filed and it was set for hearing after 30 days into the case was reason not to reimpose the stay under §105(a) as the debtors would not be able to show the case was filed in good faith.
- b. The provisions of the debtor’s plan may impose a stay upon creditors after the automatic stay terminated under §362(c)(3) (or a pre-confirmation stay modification).
1. In the Matter of Garrett, 185 B.R. 620 (Bktrcy. N.D. Ala. 1993). The creditor obtained modification of the stay and the case was subsequently confirmed. The stay modification “does not change the binding effect of an order of confirmation,... unless the plan expressly preserves the terms of the lift stay order.” Id. at 623.
 2. In re Kurtzahn, 342 B.R. 581(Bktrcy.D.Minn., 2006). Confirmation of a plan which provided that the debtor would cure the arrears and maintain payments to a creditor would have “assured the Debtor of a continuing right to possession as long as she remained current and in compliance with the terms of the plan,” but for the debtor’s failure to appear in state court and oppose the entry of a judgment in state court granting immediate possession. The valid state court judgment, and not the stay modification order, allowed the creditor to collect the debt.
 3. In re Cline, 386 B.R. 344 (Bktrcy. N.D. Ala. 2008). The stay was modified with an effective date six months in the future. Before the effective date of the order, the debtors’ plan was confirmed. Debtors alleged creditor had violated the stay that was imposed by the confirmed plan. The Court stated that it was “not convinced that Congress intended for these same repeat debtors to have another opportunity for de facto stay protection under section §1327(a) after they failed to retain or receive stay protection under sections §362(c)(3) and(4).” Id. at 352.

B. The Automatic Stay relating to §362(c)(4)

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(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;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

(i) as to all creditors if--

- (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
- (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
- (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

1. This section has not engendered the same discussion regarding plain language as §362(c)(3), and the cases focus more on the standards of good faith and clear and convincing evidence.
2. Good faith is not defined and courts tend to list factors relating to good or “not good” faith to determine if the case was filed in good or “not good” faith.
 - a. In re Ferguson, 376 B.R. 109, (118 Bankr.E.D.Pa.2007). Courts generally require that a “chapter 13 debtor prove (usually be clear and convincing evidence) that there has been a substantial change in the debtor’s financial or personal circumstances since the dismissal of the previous case and that the current case will likely result in the confirmation of a chapter 13 plan that will be fully performed.” Id. at 119-120. The Court observed that there were 14 different, overlapping factors used by courts around the country to determine good faith. Id. at 123. “Reasonable likelihood of success” and an investigation of “both subjective and objective components of good faith.” Id. at 124. In this case, the stay was imposed.
 - b. In re Nelson, 391B.R. 437 (9th Cir. BAP Cal. 2008). The statute is plain that creditors may proceed with their legitimate collection efforts when the automatic stay is not imposed by the filing of a third bankruptcy case within one year and the foreclosure sale held after the filing of the case was valid.
 - c. In re Schroeder, 356 B.R. 812, Bankr.M.D.Fla.2006). The debtors did not move to impose the stay within 30 days per §362(c)(4)(B), but a stay was imposed via “an injunction” (presumedly under §105(a)).

C. Hypothetical situations

1. Will Smith and Jada Smith f/k/a Pickett file a joint Ch 13 case on 8/1/08. Their prior cases are as follows: Will filed a Ch 7 case on 2/20/07 and the case closed without a discharge on 7/8/07. On 8/11/07, Will filed a motion to reopen the case to file his debtor education certificate. This was granted and he obtained a discharge

on 8/30/07 and the case was closed again on 9/2/07. Jada Pickett filed a Ch 13 case on 7/9/07, which was confirmed 10/13/07. During the pendency of this case, Will and Jada married on 1/31/08. Jada's case was dismissed on 7/15/08 for material default.

What is the status of the stay on the date of filing and why?

2. John and Jane Smith file a Ch 13 case on 9/15/08. Their prior cases are as follows: a joint Ch 13 case filed on 2/6/05 which was confirmed on 5/3/05 and dismissed for material default on 9/7/07. On 12/1/07, they filed a Ch 13 case which was confirmed on 2/26/08 and dismissed on 6/30/08. On 9/15/08, 2 separate cases were filed. On 9/16/08, the higher numbered case filed on 9/15/08 was automatically dismissed on the clerk's own motion as having been filed in error.

What is the status of the stay on the date of filing and why?

3. Betsy Smith filed a Ch 13 case on 4/2/08. She is married to Roger Smith. Their prior cases are as follows: Roger filed a Ch 13 case on 8/8/05, which was dismissed for unreasonable delay on 11/16/05. Betsy filed a Ch 7 case on 10/16/05 and obtained a discharge on 5/08/06. The case closed on 5/11/06. Roger filed a Ch 13 case on 2/3/06 which was confirmed on 3/15/06 and dismissed for material default on 8/6/07. Roger filed a ch 13 on 8/14/07, which was confirmed on 10/15/07 and dismissed for material default on 5/12/08.
4. Jefferson Smith is the principal of Grimace LLC, as well as 15 other LLCs. Grimace LLC filed a Ch 11 case on 7/29/08. Grimace-Unit LLC filed a Ch 11 case on 8/31/07, which was jointly administered with the Ch 11 cases of Grimace-Part LLC, Lamb LLC, and 4580 W 10th Ave LLC. This jointly administered case was dismissed on 4/17/08. Grimace LLC's prior Ch 11 was filed on 12/30/07 and dismissed on 6/16/08. What is the status of the status of the stay on the date of filing and why?

D. The Automatic Stay relating to §362(d)(4)

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

1. In re Abdul Muhaimin, 343 B.R. 159 (Bkrcty D. Md.2006), consolidated opinion relating to several cases with *in rem* requests. The Court held that the creditor must show that the filing is a scheme to delay, hinder *and* defraud. The party requesting relief has the burden of proof under (d)(4) because the statute does not provide for a presumption of fraud (as under (c)(4), the presumption of bad faith is provided). The pleadings filed by the creditors failed to allege the elements of fraud. However, request for an *in rem* provision to apply for 180 days under §105(a) was granted.
2. The Joobeen cases. In re Jooben, Slip Copy, 2007 WL 1521230 (Bkrcty. E.D.Pa. 2007). Bankruptcy cases filed by debtor and debtor as trustee for his son were dismissed with a 180 day *in rem* provision as having been filed as “part of a scheme to delay and hinder” creditors. *Id.* at *8. The stay was not terminated for 2 years. The Joobeens were also required to obtain prior leave of court to file a future petition. It was debtor Ali’s third case and the first for his son, the 7-year-old Jian. This produced a number of subsequent opinions.
 - a. 385 B.R. 599 (Bankr. E. D. Pa 2007), affirming dismissal and finding of bad faith, remanding for determination of how long perspective relief would last.
 - b. Slip Copy, 2008 WL 1990782 (Bkrcty. E.D.Pa. 2008). On remand, Bankruptcy Court clarified that in rem provision was for 180 days and that any individual purporting to file a case on behalf of Jian (the 7 year old) would need prior leave of court.
 - c. Slip Copy, 2008 WL 2116958 (E.D.Pa., 2008), affirming the remanded opinion.

E. The Automatic Stay relating to §362 (b)(21)

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

(21) under subsection (a), of any act to enforce any lien against or security interest in real property--
 (A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or
 (B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title.

1. The stay is not imposed against security interests in real property only.
2. The cases discussing this section discuss questions of eligibility and whether the stay arises when the debtor is ineligible. In re Racette, 343 B.R. 200 (Bkrcty.E.D. Wis., 2006). “BAPCPA created a new exception to the automatic stay, §362(b)(21), to clarify that the stay does not apply to the enforcement of a mortgage lien ‘if the debtor is ineligible under section 109(g). If an ineligible debtor's petition did not result in a case, presumably there would be no automatic stay, and no need for this stay exception. This new exception strongly suggests that a case has indeed been commenced by an ineligible debtor.’” *Id.* at 203. *See also*, In re Burch, Bankr. L. Rep. P80, 790 Oct. 23, 2006 (No. 06-10228). *But see*, In re Elmendorf, 345 B.R. 486 (Bkrcty. S.D.N.Y. 2006), stating that striking the petition is still the proper method.

F. Imposition of the co-debtor stay under §1301

1. In re King, 362 B.R. 226 (Bkrcty. D. Md. 2007). Even though the filing of the case did not impose a stay under 362(c)(4), a co-debtor stay arose under 1301 and the foreclosure sale was in violation of that stay.

2. In re Morris, 823 (E.D. Va. 2008). While the collection actions were in violation of the co-debtor stay, a balancing of the equities lead to the Court annulling the co-debtor stay to retroactively validate the foreclosure sale and the property's subsequent resale to a third party.

II. Stays relating to 521

- A. (a)(2) – all debts secured by property of the estate - no longer just *consumer* debts.
 1. Must file “a statement of his intention with respect to the retention or surrender of such property, and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property within 30 days after filing the petition.”
 2. Must perform the stated intention within 30 days after the first meeting of creditors date or as extended by court.
 3. This provision covers both real and personal property. In re Rathbun, 275 B.R. 434 (Bankr. D.R.I. 2001). Mortgage debt is addressed by this provision and debtor must indicate intention.
 3. What is the consequence of failure to perform this requirement? Stay is automatically terminated for personal property only under 362(h)(1)(A). Creditor must still file motion to modify the stay for real property.
- B. (a)(6) –special provision for creditors with allowed claim for the purchase price secured by an interest in personal property
 1. Must either enter into a reaffirmation agreement or redeem the personal property within 45 days after the meeting of creditors. Note, statute reads “after the first meeting of creditors” and not “after the first date set for the meeting of creditors” so a continued meeting may extend the time to perform under this provision.
 2. Compare to 521(a)(2) giving 30 days after first meeting date, no language in (a)(6) authorizing an extension of time to perform.
 3. In re Donald, 343 B.R. 524 (Bankr. E.D.N.C. 2006). This provision is of limited utility in a no asset Chapter 7 case because creditors will not have an “allowed” claim as determined by §502. Also, In re Blakely, 363 B.R. 225 (Bankr. D. Utah 2007). *Contra* In re Rowe, 342 B.R. 341 (Bankr. D. Kan. 2006).
 4. Statute says “for the purchase price” and not purchase money security interest, do payments made prior to bankruptcy filing mean creditor no longer has claim for the full purchase price? Compare Donald to Rowe.
 5. Consequence of failure to perform is automatic termination of stay.
- C. Reaffirmations and 521 – if debtor indicates an intent to reaffirm, need to enter into reaffirmation agreement by deadline set in applicable provision
 1. See above, 521(a)(2) gives 30 days whereas 521(a)(6) gives 45 days.
 2. “Agreement” aspect is eroded. If debtors want to reaffirm at original contract terms, creditor must accept it or stay does not terminate, 362(h)(1)(B).
 3. Rejection of reaffirmation agreement by court has no impact on 362(h), stay remains in place. In re Chim, 381 B.R. 191 (Bankr. D.Md. 2008).
 4. Intent to reaffirm must be in good faith and not mere attempt to technically comply with statute. In re Milby, 389 B.R. 466 (Bankr. W.D. Va. 2008).

5. In re Dienberg, 348 B.R. 482 (Bkrtcy. N.D. Ind. 2006). Debtor failed to timely file reaffirmation agreement but stay remained in place for property of the debtor apparently because creditor refused to enter into reaffirmation agreement.
- D. *Ipso Facto* default clause in underlying contract, most contracts define the filing of a bankruptcy as an act of default entitling the creditor to accelerate the debt, repossess, etc.
1. Clauses are generally disfavored under 365(e)(1) for executory contracts and leases.
 2. Exception found for failure to perform under 521(a)(6) or 362(h)(1) and (h)(2), i.e. Bankruptcy Code cannot override *ipso facto* clause in this circumstance.
 3. Other state laws may still protect collateral/property from repossession.
 4. Where a debtor performs the stated intent to reaffirm, contractual *ipso facto* default clauses do not apply even if reaffirmation agreement is rejected by court 521(d). In re Dumont, 383 B.R. 481 (9th Cir. B.A.P. 2008).
- E. The *Fourth Option* - “Debtor will retain collateral and continue to make payments.”
1. Allowing debtor to *ride through* the bankruptcy without electing to reaffirm or redeem.
 2. Prior to BAPCPA, circuit split on whether debtors could opt for retaining collateral without reaffirming or redeeming. The Seventh Circuit required debtors to choose to reaffirm or redeem. In re Edwards, 901 F.2d 1383 (7th Cir. 1990).
 3. 521(a)(2) was largely unchanged by BAPCPA, but 521(a)(6), 521(d), and 362(h) all added by BAPCPA.
 4. The Fourth Option largely viewed as eliminated by BAPCPA. In re Dumont, 383 B.R. 481 (9th Cir. B.A.P. 2008)(pronouncing unanimous support for elimination of ride through). But one court held differently, In re Baker, 390 B.R. 524 (Bankr. D. Del. 2008), theorizing that Congress should have been more explicit if it wanted to overrule Circuit precedent.
 4. Back door method to utilizing Fourth Option where debtor performs obligations of 521(a)(2), 521(a)(6) and 362(h), but reaffirmation agreement not approved for some reason.

III. Real estate taxes and the automatic stay

- A. While in preceding years, some courts held that the extension of the property owner/debtor’s rights of redemption of sold real estate taxes could only be extended 60 days from the date of filing under §108(b), more recent Chapter 13 cases have allowed redemption of the taxes to be paid over the term of the Plan.
1. In re Application of the County Collector, Phoenix Bond v. Mattingly, 367 Ill.App.3d 34, 854 N.E.2d 244, 304 Ill. Dec 902 (3rd. Dist. Ill. 2006). The Court determined that the debtor had an additional 60 days to redeem the taxes upon filing a bankruptcy case and had in fact, redeemed the taxes before that extended due date. The tax purchaser obtained a tax deed without obtaining relief from the automatic stay and the Court affirmed that the tax deed was void.
 2. In re Comming, 297 B.R. 701 (Bkrtcy.N.D.Ill. 2003) (bankruptcy case filed before redemption expired). The tax purchaser has a claim in the bankruptcy case which can be paid over the life of the Chapter 13 plan.
 3. In re Kasco, 378 B.R. 207 (Bkrtcy.N.D. Ill., 2007). “A Chapter 13 debtor doesn't need Section 108(b) because he is not exercising the right to redeem under state law. Instead, the debtor is exercising a right accorded by federal bankruptcy law, which

preempts contrary state law.” *Id.* at 212-213. On August 14, 2008, the District Court affirmed. *In re Kasco*, N.D. Ill. case no. 07-07270.

- B. However, in Chapter 7 cases, the redemption must occur within the 60 day extension granted by §108(b). *In re Davenport*, 268 B.R. 159 (Bank. N.D. Ill. 2001). *In re Dumas*, Bankruptcy case no. 07-11984, Adversary 07-00380 and 07-00620 (Schmetterer, J.). The Court held that the debtor cannot use the 60 day extension obtained in the first case to create a second 60 day extension in a second case. Note: currently on appeal to the District Court, N.D. Ill. case no. 08-02424.

IV. Landlord Tenant issues – BAPCPA sought to restrict renter’s ability to use bankruptcy to halt evictions and proceedings to collect unpaid rent. 362(b)(22) added to state evictions are not stayed by the filing of a case if landlord obtained a pre-petition judgment for possession. 362(b)(23) also added to allow landlords to state rental property is endangered or being used for illegal substances.

A. Eviction following judgment for possession

1. 362(b)(22) delayed until 30 days elapse after filing only if debtor classifies unpaid rent as such and certifies he has right to cure. 362(l)
2. Debtor can remain only if they cure the rental default and pay post-petition rent within 30 days. 362(l)(1) and (l)(2).
3. Provision meant to be self executing and motion to confirm absence of stay is unnecessary if debtor does not follow procedures. *In re Williams*, 371 B.R. 102 (Bankr. E.D. Pa. 2007).
4. Stay in place as to personal property by language of 362(b)(22) allowing landlord to proceed only against debtor and her rental unit. *Ward v. Edwards*, 2007 WL 3046133, Bankr. L. Rep. P 81,045, N.D. Ill., October 10, 2007 (No. 07 C 3159).
5. Public Housing tenant may be exempt from these provisions by anti-discriminatory treatment provisions of 525(a). *In re Kelly*, 356 B.R. 899 (Bankr. S.D.Fla. 2006)

B. Eviction regarding property endangerment or drug use

1. §362(b)(23) requires landlord action before stay becomes inapplicable
 - a. eviction action has been filed pre petition or
 - b. there has been endangerment of the property or drugs in the last 30 days.
 - c. stay ceases against landlord after 15 days.
2. §362(m)(2)
 - a. debtor can object and the court will have a hearing
 - b. debtor has to have a defense

V. Exceptions to the stay relating to §362(b)(4) – police powers

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--
(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by

the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

- A. Actions relating to the state's regulatory power are not stayed. Dixon v. Grand Spaulding Dodge, Inc., (In re Grand Spaulding Dodge Inc.), 5 B.R. 481 (N.D. Ill. 1980). The Court held that the state of Illinois "interest under its police powers in revoking, suspending or failing to renew [the debtor] dealership license constitutes a "claim" against the debtor. Id. at 486. There was no stay in place as to the state's action to relating to fraud at the auto dealership. Id. at 487.
- B. Civil judgments can be part of the state's regulatory power.
 1. Consumer Protection Div., Office of the Atty Gen. of the State of Maryland v. Luskin's, Inc. (In re Luskin's), 213 B.R. 107 (D.Md. 1997). The action filed by the state's Consumer Protection Division was not just to "protect a pecuniary interest in the [debtor's] property for the benefit of Maryland's consumers and the state was not stayed from seeking the entry of a money judgment because it was also acting to "protect[] the public interest." Id. at 111.
 2. Corbett v. Burns (In re Burns), Slip Copy, 2008 WL 3246244 (Bkrcty. M.D.Pa. 2008). The state was seeking to enforce its governmental regulatory powers, no to collect a debt. Therefore, the stay did not apply. However, the Court notes that seeking to enter a money judgment is separate from seeking to enforce that judgment, which would violate the stay.
- C. Complaint to a licensing board was not a violation of the automatic stay under §362(b)(4). In re McMullen, 386 F.3d 320, 325-327 (C.A.1 (Mass.) 2004).
- D. Demolition of building due to violations of the building codes is not a violation of the automatic stay under §362(b)(4). In re Javens, 107 F.3d 359 (C.A.6 (Mich.) 1997). It was proper for the Bankruptcy Court to presume the good faith of state and local officials. Id. at 366. If the state did violate the debtor's rights in demolishing his buildings, he was free to sue the state (which he had).