6-29/108.70 Exceptions to Automatic Stay

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 created additional exceptions to the automatic stay for: the commencement or continuation of proceedings for child custody, domestic violence, and divorce; withholding of income to pay a domestic support obligation pursuant to a judicial or administrative order or a statute; interception of tax refunds for domestic support obligations; withholding of licenses from debtors who do not pay support obligations; reporting of credit reporting agencies of debtors who do not pay support; interception of tax refunds to collect support; and enforcement of medical support obligations. (11 USC 362(b))

• 6-29/108.71 Nonresidential Property Eviction

The filing of a petition in bankruptcy does not stay an action by a landlord to recover possession of nonresidential property from a tenant under a lease which has expired under its stated term, whether the term expired prior to or after the tenant's filing of a petition in bankruptcy. A relief order from automatic stay is not required. 11 USC 362(b)(10) The levying officer may proceed with the eviction upon receipt of signed instructions from the judgment creditor stating; "The real property described in the writ of possession is nonresidential property under a lease which has, under the stated term, expired and, pursuant to 11 USC 362(b)(10), is an exception to the automatic stay."

• 6-29/108.72 Residential Property Eviction

An eviction proceeding to evict a debtor who is a residential tenant is excepted from the automatic stay and may continue if the lessor (landlord) has obtained a judgment prior to the filing of the petition. However, the automatic stay will apply for 30 days after the petition if (1) the debtor certifies in the petition a right to cure a default and (2) the debtor deposits with the bankruptcy court any rent that would become due during the 30 days after the filing of the petition. The automatic stay may be extended if the debtor files a further certification within 30 days after the petition that the debtor has cured the default and the court finds the landlord's certification to be untrue. (11 USC 362(b)(22))

• 6-29/108.73 Residential Property Eviction (Endangerment/Drug Activity)

Eviction proceedings to evict residential tenants may continue if the lessor (landlord) seeks possession based on endangerment of property or illegal use of controlled substances at the property. An exception to the automatic stay begins 10 days after the lessor files a certification with the court alleging endangerment or use of substances occurred within 30 days before the certification. The debtor must object to the certification within 15 days of the certification, in which case the court shall determine whether grounds for the exception exist. (11 USC 362(a)(3))

• 6-29/108.74 Post-Petition Earnings

The collection of alimony, maintenance, or support from earnings or services performed by an individual

debtor after the filing of the petition in bankruptcy is not stayed unless the debtor filed a Chapter 13. (11 USC 541(a)(6), FRBP 1306(a)(2)) In a Chapter 13, all wage garnishments, including those for alimony or support, are stayed and claims must be filed with the Chapter 13 trustee. Property of the estate in a Chapter 13 case is broader than that in Chapter 7 and includes earnings for personal services performed by the debtor and all property of the kind specified in 11 USC 541 acquired after the commencement of the case, but before the case is closed, dismissed, or converted to a case under another chapter.

• 6-29/108.75 Bench Warrant (Civil)

A civil bench warrant for the debtor's arrest following the failure of the debtor to appear at a judgment debtor examination may or may not be stayed, depending on whether the court is exercising its police power (contempt of court). Bankruptcy stays the debtor examination but 11 USC 362(b)(4) excludes from the automatic stay "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory powers." Case law generally recognizes the court's contempt power to uphold the dignity of the court as an exception to the automatic stay. Consequently, the debtor may be arrested for contempt, but not subjected to a debtor examination.

• 6-29/108.76 Domestic Actions

The automatic stay does not apply to civil or criminal actions concerning (11 USC 362(b)(2)):

- for the establishment of paternity
- for the establishment or modification of an order for domestic support obligations
- concerning child custody or visitation
- for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate
- regarding domestic violence

• 6-29/108.80 In Rem Order for Relief from Stay

The court may issue an in rem order for an interest in real property if the petition was filed to delay, hinder, and defraud creditors attempting to transfer ownership. The in rem order must be recorded in compliance with state recording statutes to be binding on any bankruptcy concerning that property filed within two years after the in rem order is entered. A debtor may obtain relief from the in rem order upon a showing of changed circumstances or good cause. (11 USC 362(d)(4))

• 6-29/108.90 Ineligibility for File Bankruptcy

An individual or farmer debtor cannot file bankruptcy if (11 USC 109(g)):

- the debtor filed a prior bankruptcy case within 180 days that dismissed for failure to abide the orders of

the court, or

- the debtor dismissed the prior bankruptcy following a creditor’s request for relief from the automatic stay