

MOTIONS TO EXTEND OR IMPOSE

MAKING THE MOST OF SECOND CHANCES, BY LEARNING
FROM THE FIRST.

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MOTIONS TO EXTEND OR IMPOSE: A REVIEW OF §362(c)(3) & (4) PRACTICAL CONSIDERATIONS AND RECENT CASE LAW

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OUTLINE

1. §362(c)(3) – Motion to Extend
2. §362(c)(4) – Motion to Impose
3. Practical Considerations
4. Recent & Helpful Case Law



MOTION TO EXTEND THE AUTOMATIC STAY

when debtors need a second chance

11 USC §362(C)(3)AUTOMATIC STAY

(3) If a single or joint case is filed by or against a 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)-

1. **(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**;
2. **(B)** on the motion of a party in interest for continuation of the automatic stay and upon notice and hearing, **the court may extend the stay** in particular cases as to any or all creditors (subject to such conditions or limitation as the court may then impose) **after notice and 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

11 USC §362(C)(3)AUTOMATIC STAY (continued)

(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

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