

What is the “Co-Debtor Stay?”

The Co-Debtor Stay is a provision of the United States Bankruptcy Code that extends the protections of the Automatic Stay to co-debtors in certain circumstances, even if the co-debtor did not file bankruptcy. The Co-Debtor Stay primarily applies to individuals (not businesses) who are jointly obligated with a Chapter 13 bankruptcy debtor (although it also applies to Chapter 12 and in some circumstances to Chapter 11 as well). The Co-Debtor Stay does not apply to Chapter 7 bankruptcy. Although the Co-Debtor Stay can be particularly helpful when a married couple have joint debts but only one spouse files bankruptcy, it is not restricted to married couples.

The Co-Debtor Stay only applies to Consumer Debt such as credit card debt, mortgage loans, or automobile loans. The Bankruptcy Code defines “Consumer Debt” as a debt that is incurred “primarily for a personal, family, or household purpose.” It does not apply to non-consumer debts such as taxes. Keep in mind that if one spouse files Chapter 13 bankruptcy and includes joint tax debt in his or her Chapter 13 payment plan, the taxing agency may still pursue the other spouse who is jointly liable.

The Co-Debtor’s obligation to pay a creditor is not discharged by the Co-Debtor Stay. The Co-Debtor stay only delays a creditor’s collection efforts until after the bankruptcy is concluded. The Co-Debtor Stay often gives married couples breathing room sufficient to make a Chapter 13 Plan feasible, leaving the co-debtor to deal with his or her financial obligations until after the debtor’s fiscal house is in order.

Creditors may apply to the Bankruptcy Court for relief from the Co-Debtor Stay. The Court may modify or terminate the Co-Debtor Stay when a creditor’s interests would be irreparably harmed or when the co-debtor received the benefits of the debt and the debtor did not (i.e. debtor co-signed a boat loan for the non-spouse co-debtor who actually owns the boat).

The Co-Debtor Stay can be a useful tool for someone contemplating Chapter 13 bankruptcy. It can also lead both debtor and co-debtor into a false sense of security if it is not fully understood. Debtors who are contemplating Chapter 13 bankruptcy should seek advice of a learned bankruptcy professional. The bankruptcy attorneys at Kirschenbaum & Kirschenbaum, P.C. have over 100 years of combined bankruptcy experience and are standing by to help you get the fresh start that you deserve.

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About the Author: Marc W. Daniels, Esq. is a bankruptcy attorney who has represented scores of consumer bankruptcy clients over the last twelve years. Prior to his association with Kirschenbaum & Kirschenbaum, P.C., Mr. Daniels worked at a boutique bankruptcy firm located in Melville, New York where he specialized in Chapter 7 and Chapter 13 Bankruptcy, Debt Negotiations, Mortgage Modifications, and Residential Foreclosure Defense. Mr. Daniels was born and raised on Long Island and is proud to have had the privilege of serving the community he and his family have called home for over fifty years.