



#1 Free Legal Website

FindLaw.com is the leading and largest online resource for legal information. For basic legal issues to more complex ones, you'll find thousands of helpful articles, a legal community to get answers to your specific questions, an attorney directory, blogs, news, DIY forms, and much more.

How a Tenant Bankruptcy Affects a Landlord's Right to Evict

Whether a tenant has filed for bankruptcy before or after an eviction judgment affects the steps a landlord must take to regain possession of the rental unit.

What If the Tenant Filed for Bankruptcy after an Eviction Judgment?

Prior to 2005, a tenant bankruptcy could impede a landlord's ability to proceed with a court-ordered eviction proceeding. A tenant could easily stop an eviction by filing for a Chapter 7 or Chapter 13 bankruptcy. Once the tenant filed for bankruptcy, an "automatic stay" prevented all creditors, including landlords, from pursuing the repayment of debt.

In 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act changed the prior law. The landlord can now evict a tenant, regardless of an automatic stay, if the landlord had a court-ordered judgment for possession prior to the tenant filing for bankruptcy. The landlord, therefore, can ignore the automatic stay.

If the eviction is for the nonpayment of rent, an exception applies if state law allows a tenant to remain in the rental unit and "cure," or pay the rent, after an eviction judgment. Most states, however, do not allow this option. The tenant can stop the eviction process by taking these steps:

- File a certification, or a sworn statement, with the bankruptcy court stating that state law allows a tenant to stay in the rental unit and pay the delinquent rent after the issuance of an eviction judgment;
- Deposit with the bankruptcy clerk the amount of rent that will be due 30 days from the filing of the petition; and
- Serve the landlord with a copy of the certification.

The tenant has 30 days from filing the certification to pay the amount owed. If the tenant cures the default, the tenant must file a second certification with the bankruptcy court and serve the landlord. A landlord can object to either certification, and the bankruptcy court will hold a hearing within ten days of the objection. If the landlord prevails, the court will lift the stay and the eviction may proceed.

What If the Tenant Has Already Filed for Bankruptcy?

If a tenant fails to pay rent or violates a term in the rental agreement, an automatic stay will prevent the landlord from giving the tenant a termination notice or from beginning the eviction process if the tenant has already filed for bankruptcy. The landlord can proceed with the eviction by asking the federal bankruptcy court to lift the stay. In most cases, the judge will lift the stay because a lease agreement has no effect on the value of the tenant's estate.

What If There is Illegal Drug Use and Property Endangerment?

If a tenant has already filed for bankruptcy, the landlord can begin eviction proceedings or continue with the eviction process without asking the bankruptcy court to lift the stay if the use illegal drugs occurred on the property or the property was endangered. The landlord must take either of the following steps:

- If the landlord filed the eviction action prior to the tenant filing for bankruptcy, the landlord must file a certification with the bankruptcy court stating that the basis of the eviction is for illegal use of drugs on the property or property endangerment.
- If the eviction action began after the tenant filed for bankruptcy, the landlord must provide the bankruptcy court with certification that illegal drug use occurred on the property or that the tenant endangered the property within the past 30 days.

The landlord must serve a copy of the certification on the tenant. The landlord can proceed with the eviction after 15 days have elapsed, unless the tenant files an objection with the court and serves the landlord. The court will hold a hearing within ten days if the tenant objects. If the tenant cannot establish that the situation has been remedied or that the landlord's statement was untrue, the court will allow the landlord to proceed with the eviction.

FINDLAW.COM EMPOWERS PEOPLE WITH TRUSTED, TIMELY AND INTELLIGENT LEGAL INFORMATION

BLOGS – FindLaw Blogs present timely news that has real-life implications, deliver important information and discuss law-related entertainment.

FINDLAW ANSWERS – A vibrant, interactive online community where everyday people can ask legal questions and get real-time answers from legal professionals and others with similar experiences.

NEWS & NEWSLETTERS – Updated throughout the day and night and covering a wide range of legal topics, FindLaw.com's News page presents current legal news, keeping people informed and educated.

FIND A LAWYER – An easy-to-search database of more than one million lawyers and law firms. It provides detailed information, enabling people to contact a qualified lawyer when they are ready.



DO-IT-YOURSELF FORMS & CONTRACTS – FindLaw.com provides accurate legal documents for common legal matters. Choose from a library of easy-to-use, low-cost, accurate legal forms for everyday legal issues.

FINDLAW VIDEO – On FindLaw.com, you'll find an online directory of more than 1,500 short videos dedicated exclusively to legal topics and attorney and law firm profiles.

Connect With Us

FindLaw.com has an entire social media team dedicated to providing our users with as many options as possible to join, participate in, and learn from the FindLaw community. Some of the social key channels are the following:



[FindLaw for Consumers on Facebook](#)

Making the law easy to access with interactive legal updates aimed at starting conversations, informing followers of their legal rights and providing a forum for questions and resources



[@FindLawConsumer on Twitter](#)

Tweeting interesting, entertaining and informative legal news everyday

HAVE A LEGAL QUESTION?
NEED TO FIND AN AFFORDABLE,
QUALIFIED ATTORNEY?

Protect yourself, your family or
your business with a legal plan
or form from LegalStreet

www.LEGALSTREET.com

Copyright © 2013 FindLaw, a Thomson Reuters business. All rights reserved. The information contained in this article is for informational purposes only and does not constitute legal advice. The use and distribution of this article is subject to the Creative Commons BY-NC-ND license, which can be viewed at <http://creativecommons.org/licenses/by-nc-nd/3.0/>. You must attribute the article by providing the title of the article, FindLaw copyright notice and link to the original work. You may not use the article for commercial purposes and you may not alter or transform this article in any way.

FindLaw[®]
A Thomson Reuters Business