

Thereafter, the trustee shall disburse monthly to the attorney the lesser of 50% of the monthly plan payment or \$350 per month of each plan payment until the fee is paid in full. For additional fees allowed under the Chapter 13 Attorney Fee Guidelines, the trustee shall disburse monthly to the attorney the lesser of 50% of each monthly plan payment or \$350 of each plan payment, commencing with the first distribution period after the filing of the attorney's request for payment of compensation as an administrative expense.

- (3) **Compensation Allowed by Application and Order Under LBR 2016-1(a).** For compensation that is or will be allowed upon entry of an order on an application made under LBR 2016-1(a), the trustee shall reserve 50% (or such other amount as the court orders) of the total plan payments received from the debtor prior to the entry of the confirmation order ("50% reserve"). If the debtor's attorney fails to file an application for compensation and reimbursement of expenses within 60 days after the date of entry of the confirmation order or if the court orders otherwise, the trustee shall distribute the 50% reserve to creditors according to the plan. If the debtor's attorney files a timely application, the trustee will continue holding the 50% reserve pending a determination of the application. Upon the entry of an order allowing attorney fees and expenses, the trustee shall pay the attorney the 50% reserve if so entitled and shall distribute to the attorney, until the fees and expenses are paid in full, the lesser of 50% of each monthly plan payment after confirmation or \$350 per month of each plan payment after confirmation. For additional fees allowed after the initial application, the trustee shall disburse monthly to the attorney the lesser of 50% or \$350 of each monthly plan payment, commencing with the first distribution period after the entry of the order allowing the additional compensation.

**LBR 3070-2 Related Forms:**

- Proof of Claim [[B10](#)]
- Request for Payment of Administrative Expense: Compensation for Debtor's Attorney in Chapter 13 Case [[hib 3070-2a2](#)]
- Notice of Change of Address (Proof of Claim) [[hib 3070-2f](#)]

**LBR 4001-1. Automatic Stay – Relief From**

**(a) Motion and Supporting Documents.**

- (1) **Motion.** A motion requesting relief from the automatic stay imposed by § 362(a) must state the basis under § 362(d) for the relief being sought. Except for related relief from a codebtor stay under § 1201(a) or 1301(a), the motion may not include requests for other relief.
- (2) **Cover Sheet.** The motion must attach a cover sheet substantially conforming to the local form (Cover Sheet - Motion for Relief from Stay [[hib 4001-1cs](#)]) summarizing the factual basis for the request.

- (3) **Declaration.** A motion for relief from the automatic stay or codebtor stay must be accompanied by admissible evidence supporting the factual basis for the motion.
- (4) **Account Statement.**
- (A) **When Statement Required.** If the motion alleges that the debtor has defaulted in making payments to the moving party, the motion must include an account statement and an admissible declaration attesting to the statement's accuracy. The statement must cover the entire period during which the moving party contends that the debtor has been in default. The statement and declaration must be written in language comprehensible to a lay person, and must include the following information:
- (i) a description of the accrued and unpaid obligations, including the nature of the obligation (e.g., principal and interest, escrow, etc.) and the date on which it accrued;
  - (ii) the amount of any payments during the period of the statement; and
  - (iii) the date of receipt and posting of each such payment.
- (B) **When Statement Not Required.** An account statement is not required if the debtor has indicated in the Chapter 7 Individual Debtor's Statement of Intention or in a Chapter 13 plan that the property which is the subject of the motion will be surrendered to the moving party.
- (b) **Hearing.**
- (1) **Preliminary Hearing.** Unless the court orders otherwise, a motion for relief from the automatic or codebtor stay will be scheduled for a preliminary hearing in accordance with LBR 9013-1(c). The moving party must contact the courtroom deputy prior to filing the motion in order to obtain a hearing date that meets the requirements of § 362(e). Failure to obtain a hearing date in compliance with this rule will be deemed to be the moving party's consent to extend the automatic stay beyond thirty days, pending the conclusion of a final hearing and determination under § 362(d).
- (2) **Continuance of Hearing.** A preliminary hearing may be continued or consolidated with a final hearing if the moving party, the debtor, and all other parties responding to the motion agree to the continuance or consolidation and the extension of the 30-day period for the entry of an order under § 362(e). The parties do not need to appear at the initially scheduled hearing if the moving party contacts the courtroom deputy, represents that all parties consent to the change, obtains a new hearing date and time, and promptly files and serves a notice of the continued preliminary hearing or the final hearing.
- (3) **Oral Testimony.** Unless the court orders otherwise, no oral testimony will be received by the court at any hearing on a motion for relief from the automatic or codebtor stay.

- (c) **Notice.**
- (1) **Form of Notice.** The moving party must file and serve a notice of hearing substantially conforming to the local form (Notice of Hearing [[hib 9073-1](#)]), which provides explicit notice of the deadline to file an opposition statement and that the court may grant the relief without a hearing in the absence of a timely filed opposition statement.
  - (2) **Separate Document.** The notice must be filed as a separate docket entry.
- (d) **Service.** The moving party must serve, promptly after filing, a copy of the motion and the notice on:
- (1) the debtor;
  - (2) the debtor's attorney;
  - (3) any trustee appointed in the case;
  - (4) any committee appointed in the case under § 705 or 1102, or its attorney, or, if no committee of unsecured creditors has been appointed in a chapter 11 case, the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d);
  - (5) if the motion seeks to enforce a lien, all other parties, known to the moving party, who claim an ownership or security interest in the same collateral;
  - (6) if the motion concerns a codebtor stay, the codebtor; and
  - (7) if the motion concerns the commencement or continuation of a judicial, administrative, or other action or proceeding, all parties to the action or proceeding.
- (e) **Opposition Statement and Reply.**
- (1) **Opposition Statement.** A party opposing or responding to a motion under this rule must file and serve on the moving party a statement not later than:
    - (A) 14 days before the hearing date if the motion requests relief only from the automatic stay under § 362; or
    - (B) 20 days after the filing of the motion if the motion includes a request for relief from the codebtor stay under § 1201 or 1301.
  - (2) **Reply Memorandum.** The moving party may reply to an opposition or other responsive statement by filing a reply memorandum not later than 3 days before the preliminary hearing.
- (f) **Order Granting Relief.**
- (1) **Relief Granted by Default.** If no timely opposition has been filed, the moving party may request the entry of an order by filing a declaration substantially conforming to the local form (Declaration and Request for Entry of Order [[hib 9021-1](#)]). The section regarding the Servicemembers Civil Relief Act of 2003 must be completed.
  - (2) **Form of Order.** The moving party may obtain the relief requested by submitting a proposed order substantially conforming to the local form order (Order Granting Relief from Stay [[hib 4001-1f2](#)]). If the form order is not used, the

proposed order must include the following provisions unless the court directs otherwise:

- (A) No deficiency judgment or other money judgment may be entered against the debtor unless and until the bankruptcy court enters an order
    - (i) denying the debtor a discharge;
    - (ii) determining that the debt owed to the moving party is not dischargeable,
    - (iii) dismissing the case prior to the entry of a discharge, or
    - (iv) expressly authorizing the entry of such a judgment;
  - (B) If the subject property is sold and the proceeds exceed the amount of the secured claim(s), the moving party must turn over the surplus proceeds to the trustee;
  - (C) The secured portion of any proof of claim filed by the moving party with respect to the subject property is deemed withdrawn and the moving party may seek collection of any unsecured deficiency amount only by filing a proof of claim under § 501, or by amending a previously filed proof of claim;
  - (D) The order will remain effective despite the conversion of the case to one under another chapter;
  - (E) The order is limited to granting relief from the automatic stay and/or the codebtor stay under the Bankruptcy Code and does not determine any issues concerning any rights, claims, remedies, or defenses of the moving party, the debtor, or any other party; and
  - (F) In a chapter 13 case, as soon as practicable after the trustee receives notice of this order, the trustee shall cease making distributions on all claims secured by the property described above except for funds then being held by trustee for distribution.
- (3) **Special Provisions.** The order may include the following special provisions only if the motion specifically requested such relief and provided an adequate factual and legal basis therefor:
- (A) inapplicability of the stay provided under Bankruptcy Rule 4001(a)(3);
  - (B) “in rem” relief, where the order is binding with respect to the subject property in another bankruptcy case that has been or may be filed;
  - (C) retroactive relief or annulment of the stay; and
  - (D) with respect to relief from the codebtor stay under § 1201 or 1301, a provision for a deficiency judgment against a codebtor without further order of the court.
- (g) **Stipulations.** The court will consider granting relief from the automatic or codebtor stay, without the filing of a motion, upon submission of a stipulation for the relief if signed by the debtor, the party seeking relief, the trustee, and any party in interest, including a codebtor. In a chapter 11 case where no trustee has been appointed, the stipulation must be signed by the members of the unsecured creditors committee or its

attorney. In a chapter 11 case where no trustee or unsecured creditors committee has been appointed, notice of not less than 21 days of the stipulation and an opportunity to object must be given to the holders of the 20 largest unsecured claims.

**LBR 4001-1 Related Local Forms:**

- Cover Sheet - Motion for Relief from Stay [[hib 4001-1cs](#)]
- Notice of Hearing [[hib 9073-1](#)]
- Declaration and Request for Entry of Order [[hib 9021-1](#)]
- Order Granting Relief from Stay [[hib 4001-1f2](#)].

**LBR 4001-2. Cash Collateral and Postpetition Financing**

- (a) **Scope of Rule.** This rule applies to all requests for authority to use cash collateral and all requests for authority to incur debt in cases under chapter 7, chapter 11, and chapter 12 (“Financing Motions”).
- (b) **Contents of Motion.** All Financing Motions must include a budget covering the time period during which the order will remain in effect.
- (c) **Effect of Noncompliance.** The court may deem unenforceable any provision not described, explained, or identified as required by Bankruptcy Rule 4001(c)(1)(B).
- (d) **Interim Relief.** Absent extraordinary circumstances, the court will not approve an interim order on a Financing Motion that contains any of the provisions described in Bankruptcy Rule 4001(c)(1)(B).

**LBR 4001-5. Automatic Stay – Extending or Imposing Stay; Confirming No Stay in Effect**

- (a) **Motions to Extend or to Impose Stay.**
  - (1) **Motion Required.** A party requesting an order to extend the automatic stay under § 362(c)(3)(B), or to impose the stay under § 362(c)(4)(B), must file a motion.
  - (2) **Contents.** The motion must state whether relief is sought with respect to all creditors or only specified creditors, who must be identified by name. The motion must set forth facts, supported by declarations as appropriate, showing that the filing of the present case is in good faith as to the creditors to be stayed and describing the circumstances that led to dismissal of any prior case(s) by the debtor.
  - (3) **Notice and Hearing.**
    - (A) **Motion to Extend Stay.** A party seeking to extend the stay under § 362(c)(3)(B) must obtain a hearing date that is not later than 30 days after the date of filing of the petition. A request to shorten time is not required if the motion is filed and served not less than 14 days before the