

PART IV — THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1 Motions for Relief From Stay

(a) Motion.

(1) Motions for relief from stay under §§362(d), 1201(c), or 1301(c) of the Code, must:

- [A] be so titled;
- [B] not be combined with any other motion;
- [C] conform to AK LBF 1, if appropriate; and
- [D] be accompanied by the filing fee.

(2) All applications or requests for relief under any other provision of §362 of the Code, must be in the form of a motion and:

- [A] contain in the title the subsection under which relief is sought;
- [B] not be combined with any other motion; and
- [C] be accompanied by any required filing fee.

(b) Notice

(1) For cases involving termination of a stay under § 362(d) of the Code, notice of the motion must:

- [A] state the date on or before which written objection must be filed and served, which date must not be less than fourteen (14) days following the date of service by mail of the notice;
- [B] conform to AK LBF 2, if appropriate; and
- [C] on or before the date the motion is filed, be transmitted to the United States trustee and served on:
 - [i] all entities upon whom the motion was served, and
 - [ii] all persons who have filed an appearance or request for notice.

(2) In cases involving termination of the code debtor stay under §§ 1201 and 1301 of the Code, notice of the motion must:

- [A] state the date on or before which written objection must be filed and served, which date must be twenty (20) days after the motion is filed;
- [B] conform to AK LBF 3, if appropriate; and
- [C] on or before the date the motion is filed, be transmitted to the United States trustee and served on:
 - [i] all entities upon whom the motion was served,
 - [ii] all individuals who are liable on the debt with the debtor, and
 - [iii] all persons who have filed an appearance or request for notice.

(3) If the moving party serves the parties listed in paragraph (1) or (2) instead of serving the master mailing list, the moving party must identify, in any certification of mailing, each party served by name, address and classification in accordance with paragraph (1) or (2), as appropriate.

(c) Service of the Motion. In addition to the entities identified in Rule 4001, Federal Rules of Bankruptcy Procedure, a motion brought under §§ 362, 1201, or 1301 of the Code must be:

- (1) transmitted to the United States trustee; and
- (2) served on—
 - [A] in a case under chapter 7, 12 or 13, of the Code, both the trustee and the debtor(s),
 - [B] if the motion seeks relief from stay as to an act against property, to all entities who hold or claim an interest in the subject property, and
 - [C] if known, counsel for each entity served.

(d) **Uncontested Motion.** After expiration of the applicable time, if any, within which to object or otherwise respond, if no objection or other appropriate response has been filed, the moving party may:

- (1) file a certificate of mailing conforming to AK LBF 4; and
- (2) lodge a proposed order granting the relief requested.

(e) **Contested Motion Under §§ 362(d), 1201, or 1301.**

- (1) For motions brought under §362(d) of the Code, if an objection is timely filed and served:
 - [A] either party may request a hearing, which request must include the date the motion for relief was filed;
 - [B] the court will schedule a preliminary hearing and advise the requesting party of the hearing date; and
 - [C] the requesting party must give notice of the date and time set for the hearing within 24 hours, both telephonically and in writing to:
 - (i) the adverse party,
 - (ii) trustee,
 - (iii) debtor, and
 - (iv) counsel for each.
- (2) For motions brought under §362(d) of the Code:
 - [A] (i) if no hearing is held within thirty (30) days after the motion is filed, the automatic stay may be terminated or modified as requested without order of the court, consistent with § 362(e) of the Code; and
 - (ii) although any party may request a hearing on an objection to a motion for relief from stay, the party desiring the stay to remain in effect must request a hearing and be certain that a hearing is timely scheduled.
 - [B] (i) If desired, an order may be lodged *ex parte* thirty (30) days after filing of the motion.
 - (ii) The moving party must file an affidavit of mailing.

(3) In cases involving termination of the codebtor stay under §§ 1201 and 1301 of the Code, any party may request a hearing by submitting a calendar request form (AK LBF 7).

(f) **Preliminary Hearing.**

- (1) Parties may present testimony at the preliminary hearing only on the request of a party and approval by the court.
- (2) A request to present testimony at the preliminary hearing must be by motion:
 - [A] served and filed not less than five (5) days before the hearing; and
 - [B] set forth—
 - (i) the name and address of the witness,
 - (ii) a concise statement of the testimony to be offered, and
 - (iii) a concise statement of the necessity for the testimony.

(g) **Objection to Motion.** The objection to the motion brought under §§ 362(d), 1201, or 1301 of the Code must fairly and completely state the grounds for the objection, including:

- (1) if value is placed at issue, the value placed on the property by the objecting party;
- (2) if the amount claimed due by the moving party is disputed, the amount that the objecting party contends is due the moving party;
- (3) if the objecting party contends the property is necessary to an effective reorganization, a concise statement of the nature of the necessity and when the expected reorganization will become effective; and
- (4) if the existence of equity or an equity cushion is placed at issue, an analysis of all liens and encumbrances on the property, including—
 - [A] the nature and amount of each lien, and
 - [B] whether the lien is senior or junior to the lien of the moving party.

(h) Motions under §362(c).

(1) A motion to continue the stay under §362(c)(3) or to impose a stay under §362(c)(4) of the Code must:

[A] clearly state—

(i) the date, case number, and date of dismissal of all previous bankruptcy filings within the year prior to the filing of the current proceeding,

(ii) the reasons for dismissal of each previous case(s);

(iii) the date of the filing of the current case;

(iv) a statement as to why the present case is being filed in good faith, including all facts offered to rebut the presumption that the filing was made in bad faith,

(v) the identity of all creditors to whom the stay is requested to be continued, and

(vi) any other facts or circumstances that should be considered by the Court;

[B] be served on

(i) all parties to be affected by the motion,

(ii) the trustee, and

(iii) counsel for the above; and

[C] be transmitted to the United States trustee.

(2) Any objection to the motion must be filed not later than fourteen (14) days after the motion is served.

(3) Although any party may request a hearing on an objection to a motion under §362(c)(3), the party desiring the stay to remain in effect must request a hearing and be certain that a hearing is timely scheduled.

(4) If the motion is timely contested, the debtor must appear at the hearing of the matter and be available to be examined, under oath, by any affected party.

(5) Any objection will be considered a contested matter under Rule 9014, Federal Rules of Bankruptcy Procedure.

(i) Procedures Under §362(l).

(1) Unless otherwise ordered by the court, the Clerk of the Court will forward to the lessor the rental deposit made by the debtor as provided in AK LBR 1002-1(d) no later than seven (7) days after the deposit is received by the clerk.

(2) If the debtor files the second Certificate, as required in §362(l)(2), the deposit may be considered as part of any paid post-petition rent (not pre-petition rent), for purposes determining whether the monetary default has been cured, or whether the lease is current.

(j) Mandatory Discovery Exchange.

(1) Unless the court orders otherwise, not later than seven (7) days after service of any objection or response to a motion or application brought under §§362, 1201, or 1301 of the Code, which motion is governed by Rule 9014, Federal Rules of Bankruptcy Procedure, the moving party and each objecting party must, to the extent relevant to the issues fairly raised by the motion and objection or objections thereto, comply with the requirements of Rule 26(a)(1) and (2), Federal Rules of Civil Procedure.

(2) The parties may stipulate, in writing, subject to approval by the court, for different times to comply with this subdivision.

(3) Any party refusing or failing to comply with this subdivision may be subjected to such sanctions as the court may deem appropriate under the circumstances, including the assessment of costs and attorney's fees or the exclusion of the evidentiary materials not produced.

Related Provisions:

11 U.S.C. § 361	Adequate Protection
11 U.S.C. § 362	Automatic Stay
11 U.S.C. § 1201	Stay of Action Against Codebtor
11 U.S.C. § 1301	Stay of Action Against Codebtor
Fed. R. Civ. P. 26	General Provisions Governing Discovery; Duty of Disclosure
Fed. R. Bank. P. 4001	Relief from Automatic Stay; Use of Cash Collateral; Obtaining Credit; Agreements
Fed. R. Bank. P. 7001(2)	Scope of Rules of Part VII
Fed. R. Bank. P. 9014	Contested Matters
AK LBR 1002-1	Petitions
AK LBR 7026-1	Discovery and Depositions
AK LBR 9013-1	Briefs; Memoranda
AK LBR 9075-1	Hearings; Trials
AK LBF 1	Motion for Relief From Stay
AK LBF 2	Notice of Motion for Relief From Stay
AK LBF 3	Notice of Motion for Relief From Stay (Codebtor)
AK LBF 4	Certificate of No Objections
AK LBF 7	Bankruptcy Court Calendar Request

Rule 4001-2 Use Of Cash Collateral and Obtaining Post Petition Credit

(a) **Motions to Use Cash Collateral.** Motions by the debtor in possession or trustee for authorization to use cash collateral must, in addition to Fed. R. Bankr. P. 4001(b), contain:

- (1) the relationship to the debtor, if any, of the creditor whose cash collateral is to be utilized;
 - (2) the nature or source of the cash collateral;
 - (3) the estimated amount of cash collateral to be used;
 - (4) a 90-day cash flow projection segregating cash receipts from cash collateral from all other sources of cash receipts;
 - (5) the balance owed to the creditor, as of the date the petition was filed, including any accrued, unpaid interest, cost or fees as provided in the agreement;
 - (6) an estimate of the amounts of any postpetition interest, costs and fees the creditor would be entitled to recover under § 506(b) of the Code;
 - (7) if the cash collateral is rent, the amount of the gross and net rent realized each month, and the fair market value of the property from which the rent emanates;
 - (8) if the collateral is receivables, an accounts receivable aging statement;
 - (9) if the collateral is inventory, current book or market value, whichever is lower, of the inventory;
 - (10) for any other collateral, the fair market value of the collateral;
 - (11) the method or means by which the interests of the creditor are to be adequately protected;
- and
- (12) a statement of whether or not the debtor proposes to grant any provision contained in subsection (f) and, if so, identify the provision.

(b) **Cash Collateral Utilization Agreements.** Motions or applications for the approval of an agreement for use of cash collateral must, in addition to complying with Fed. R. Bank. P. 4001(b), set forth in the body of the motion or application the information required by paragraphs (a)(1) through (a)(10), inclusive, and whether or not the agreement contains any provision contained in subsection (f) and, if so, identify the provision.