

Rule 4001-1. Relief From Automatic Stay.

(A) Notice Requirements. In cases other than chapter 11 cases, notice of any motion seeking relief from the automatic stay, pursuant to 11 U.S.C. §362(d), shall be sufficient if served on the debtor, the debtor's attorney, the trustee, and any person known to the moving party to claim a legal or equitable interest in any property which may be the subject of the motion. In a chapter 11 case, when applicable, service must be in accordance with Local Rule 2002-1(H), otherwise, the notice must be served on the debtor, the debtor's attorney, the trustee, if any, the U.S. Trustee, the members of the creditors' committee or the committee's attorney and any other person known to the moving party to claim a legal or equitable interest in any property which may be the subject of the motion; however, if no creditors' committee has been formed then the notice may be served on the creditors holding the 7 largest unsecured claims according to the debtor's list of 20 largest creditors filed in the case.

(B) Contents of Motion. Motions for relief from the automatic stay must comply with this court's "Guidelines for Motions for Relief From the Automatic Stay".

(C) Requests for Relief On Negative Notice. Creditors in chapter 7, 11, or 12 cases, in which the debtor is represented by an attorney, may seek relief from stay on negative notice if the motion meets the requirements of the Guidelines referred to in subdivision (B) above, is served in accordance with subdivision (A) above, and includes above the preamble and below the title of the motion the following bulletin in print either highlighted or bold so as to make it more prominent than the remainder of the text:

Any interested party who fails to file and serve a written response to this motion within 14 days after the date of service stated in this motion shall, pursuant to Local Rule 4001-1(C), be deemed to have consented to the entry of an order granting the relief requested in the motion.

When this bulletin is included in the motion, no hearing will be scheduled unless a response is filed. The failure of parties, properly served, to file a response within 14 days after service of the motion shall be deemed a consent to the granting of the requested relief. After the time to respond has expired, the moving party shall either (a) promptly file the Local Form "Certificate of No Response or Settlement" accompanied by a proposed order pursuant to Local Rule 5005-1(G), or (b) promptly file the Local Form "Certificate of Contested Matter". If a certificate of contested matter is filed, the court will schedule a hearing in accordance with the procedures contained in Local Rule 9073-1(A). The "Notice of Hearing" shall be served by movant in accordance with the procedures contained in Local Rule 9073-1(B). The option provided in this paragraph is not intended to limit the court's ability to grant or deny relief sooner than 14 days after service of the motion, or the court's discretion to grant relief without a hearing either by consent of the

parties or on verified motions which allege pursuant to 11 U.S.C. §362(f), that immediate irreparable harm will result from the failure to grant emergency relief without a hearing. A party filing a motion for relief from stay pursuant to this subdivision is deemed to have consented to voluntarily extending, to a date 60 days after the filing of a Local Form "Certificate of Contested Matter" by the party filing the motion for relief from stay, the provision of 11 U.S.C. §362(e), which provides for termination of the automatic stay within 60 days absent an order of the court continuing the stay.

(D) Contested Motions; Response. A response which objects to the granting of the requested relief shall identify the motion, the movant's attorney, and the motion's service date, and shall set forth a short and plain statement of the facts countervailing the motion, including:

- (1)** a statement of indebtedness, if the amount of debt is in dispute;
- (2)** a specific statement of any objection to the authenticity, accuracy or completeness of the moving party's exhibits; and
- (3)** a statement of how the responding party proposes to adequately protect the moving party's security interest, if it is the debtor who objected and adequate protection may be necessary; however, the objection of a chapter 7 trustee prior to the §341 meeting need state only that the §341 meeting has not yet been held and that the trustee lacks the necessary information to adequately respond further.

The response must be served on the movant's attorney and on the same parties on whom the motion was served. Notice, pursuant to Local Rule 9073-1(B), shall be served on the same parties on whom the motion was served.

(E) Hearing. An evidentiary hearing scheduled on a motion for relief from the automatic stay will be a final evidentiary hearing unless the court otherwise notifies the parties in advance. If the court designates the initial hearing as a non-evidentiary hearing, the hearing shall be restricted to the pleadings, affidavits and papers of record and to the arguments of attorneys.

(F) Cooperation of Parties in Preparation for Hearing. At least two business days prior to an evidentiary hearing, the parties or their attorneys must meet in an effort to identify those specific issues of fact or law genuinely in dispute, to exchange copies of appraisals and other exhibits and the names and addresses of witnesses the parties intend to offer at the hearing, and to discuss

the possibilities of settlement. At the commencement of the hearing, the parties shall present an exhibit register in accordance with Local Rule 9070-1, and shall announce any stipulations of fact or law.

(G) Discovery. A party may take deposition testimony of any party or witness and may request the production of documents or things and inspection of land, upon actual delivery of at least 14 days' notice, and the minimum time requirements of Bankruptcy Rules 7030 and 7034 shall not apply. The parties shall make their appraisers or other experts and fact witnesses, if any, available for deposition, without the need for subpoena, at least two business days before an evidentiary hearing, and the parties are expected to cooperate in exchanging information and documents without the need for formal discovery procedures. In extraordinary circumstances the court, upon motion of a party but without notice or hearing, may authorize the use of interrogatories or other discovery procedures, and may shorten the notice requirements of any applicable rule.

(H) Continuances. Continuances are governed by Local Rule 5071-1. A party seeking relief from the automatic stay who moves for, or consents to, continuance of the hearing waives the right to enforce the 30 or 60 day rules contained in 11 U.S.C. §362(e), and the 30 or 60 day hearing requirements shall be deemed extended until the court's ruling at the rescheduled hearing.

[Comment: See also 28 U.S.C. §1930 (clerk's fee required for motions for stay relief), Bankruptcy Rule 9014 (contested matters governed by general rules of discovery) and Local Rules 5071-1 (continuances), 7026-1 (discovery), and the court's "Guidelines for Preparing, Submitting, and Serving Orders".]