

adequate protection offered to be provided (e.g., periodic payments, substitute liens, or other indubitable equivalents).

(4) If the debtor asserts that the debtor has made or attempted to make all delinquent payments to the moving creditor but the creditor has refused to accept such payments, the debtor shall state with specificity this fact, and state the dates of such payments, and shall provide a copy of the check or checks the debtor alleges were sent to but refused by the moving creditor.

(5) If the moving creditor has requested that the fourteen (14) day stay provided for in F.R.B.P. 4001(a)(3) be waived, the debtor shall state any objection the debtor may have to the Court's order becoming effective immediately.

**(d) Stipulation to Modify Stay.** A stipulation to modify stay, filed in compliance with Mont. LBF 8-B, joined by the creditor, debtor and trustee, if any, may be filed without fee, together with a proposed order, and an order shall be promptly issued without hearing. A creditor negotiating and filing such a stipulation is not required to retain an attorney. A form of proposed order in compliance with Mont. LBF 8-C shall accompany any Stipulation to Modify Stay.

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Related Authority:  
11 U.S.C. § 362, 1201 and 1301  
Committee Note:

In a Chapter 7, 12 or 13 case, a motion to modify stay should be served upon the debtor, debtor's attorney, the trustee, if any, the U.S. Trustee, and any entity requesting special notice. In a Chapter 9 or 11 case, a motion to modify stay should be served upon all of the above entities and any committee appointed under the Code or its authorized agent, or if no committee has been appointed, the creditors listed under F.R.B.P. 1007(d). A stipulation to modify stay only needs to be served upon the parties signing the stipulation. Debtor's and trustee's consents to modify only need to be filed and not be served upon any other entity. Note that pursuant to Rules 7004(b)(9), 7004(g) and 9014(b), F.R.B.P., all motions directed to a debtor, in addition to being served upon counsel for the debtor, must be served upon the debtor by mailing a copy of the motion "to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Such service by mail can be accomplished pursuant to F.R.B.P. 9001(8), but the debtor must be served as well as his or her counsel. Proof of service upon the debtor is required. It will now be incumbent upon a creditor moving for stay relief to attach to its motion evidence of its standing to file the motion, such as an assignment from the original note holder. Too often the mortgage and note are in the name of one party while the moving party is a different party, and there is nothing appearing within the motion connecting the two together.

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#### **RULE 4001-2. Orders Granting Modification of Stay.**

If, at any time during the pendency of a Chapter 13 case, an order modifying the stay is entered, no distributions will be made under the Chapter 13 plan to the creditor obtaining modification of the stay until such time as the creditor files an amended proof of claim, or either the creditor or debtor move for or stipulate to specific modification from the Court.

#### **RULE 4001-3. Scope and Content of Account Information, and Statements Secured**

## **Creditors May Provide to Debtors Postpetition.**

(a) **Scope and Purpose.** The purpose of this rule is to allow the routine flow of information from secured creditors to debtors to continue postpetition with respect to secured loans, in each bankruptcy case where the debtor retains possession of the collateral and continues to make regular installment payments directly to the secured creditor; and to direct that secured creditors provide debtors with a contact point so that debtors can obtain specific information on the status of their loans, as needed.

It is also the purpose of this rule to make clear that, as long as a creditor complies with this rule in furnishing account information to the debtor, such good faith attempts at compliance will not expose the secured creditor to claims of violating the automatic stay.

This rule applies in Chapters 7, 12 and 13; applies only to consumer loan relationships; and applies as long as the debtor is in bankruptcy and protected by the automatic stay. However, for cause shown and after proper notice and a hearing, the Court may direct parties to comply with this rule with regard to commercial loans, or in Chapter 11.

### **(b) Debts Secured by a Mortgage on Real Property.**

(1) For purposes of this subpart, the term “Mortgage Creditor” may include any creditor that has a claim secured by a mortgage on real property.

(2) Except as provided in paragraph (3) below, the Mortgage Creditor may provide monthly statements to all Chapter 12 and Chapter 13 debtors who have indicated an intent to retain the Mortgage Creditor’s collateral in their plan, and to all Chapter 7 debtors who have indicated an intent to retain the Mortgage Creditor’s collateral in their statement of intention which has been served on the Mortgage Creditor. Monthly statements shall contain at least the following information concerning postpetition mortgage payments to be made directly to the mortgagee (“outside the plan”):

- (A) the date of the statement and the date the next payment is due;
- (B) the amount of the current monthly payment;
- (C) the portion of the payment attributable to escrow, if any;
- (D) the postpetition amount past due, if any, and from what date;
- (E) any outstanding postpetition late charges;
- (F) the amount and date of receipt of all payments received since the date of the last statement;
- (G) a telephone number and contact information that the debtor or the debtor’s attorney may use to obtain reasonably prompt information regarding the loan and recent transactions; and
- (H) the proper payment address.

(3) No monthly statement shall be required in a Chapter 12 or Chapter 13 where postpetition mortgage payments are to be made to the trustee (“through the plan”).

If a Mortgage Creditor sends a monthly statement to a debtor in such a case which complies with subsection (d)(2) below, the Mortgage Creditor is entitled to the protections of subsection (d)(2).

- (4) The Mortgage Creditor shall provide any of the following information to the debtor upon the reasonable written request of the debtor:
  - (A) the principal balance of the loan;
  - (B) the original maturity date;
  - (C) the current interest rate;
  - (D) the current escrow balance, if any;
  - (E) the interest paid year to date;
  - (F) the property taxes paid year to date, if any; and/or
  - (G) any other amounts due, including charges paid by lender for taxes, insurance, attorney's fees, or other expense, the nature of the expense, and the date of the payment.

(c) **Other Secured Debts.** For the purposes of this subpart, the term "creditor" shall include any creditor that holds a claim secured by personal property, and lessors for assumed leases for personal property, for which monthly statements are provided under non-bankruptcy law or practice. For all debts secured by property other than as provided by for subpart (b)(2) above, and for assumed leases for personal property, the creditor shall provide monthly statements to the debtors in the following manner:

- (1) If the case was filed under Chapter 12 or 13 and the secured debt is paid entirely through the plan, the creditor is under no obligation to send a monthly statement to the debtor directly. However, if a creditor or lessor sends a monthly statement which complies with this rule to the debtor in such a case, then the creditor shall be entitled to the protection described in subsection (d)(2), below.
- (2) If the case was filed under Chapter 7, or was filed under Chapter 12 or 13 and the secured debt is not paid entirely through the plan, and the creditor sent monthly statements to the debtor prior to the bankruptcy petition, the creditor shall send monthly statements which contain the same information as, and are similar to, the monthly statements that the creditor sent to the debtor before the bankruptcy was filed.
- (3) If the case was filed under Chapter 7, or was filed under Chapter 12 or 13 and the secured debt is not paid entirely through the plan, and the creditor provided a coupon book or other similar set of invoices to the debtor, the creditor shall send to the debtor and the debtor's attorney a default letter setting forth the postpetition arrearages, upon any perceived or actual default by the debtor, and before taking any steps to modify the automatic stay.

(d) **Forms of Communication; Issuance of Monthly Statements Do Not Violate the**

### **Automatic Stay.**

- (1) For the purposes of this rule, creditors shall be considered to have sent the requisite documents or monthly statements to the debtor when the creditor has placed the required document in any form of communication which in the usual course would result in the debtor receiving said document, to the address that the debtor last provided to the creditor by agreement between the debtor and the creditor. Said communication may be transmitted via electronic mail, facsimile, United States Postal Service, commercial communications carrier, or such other mode as is mutually acceptable to the parties.
- (2) Creditors who provide account information or monthly statements under subparts (b) or (c) above shall not be found to have violated the automatic stay by doing so. Secured creditors may contact the debtors about the status of insurance coverage on property that is collateral for the creditor's claim, may respond to inquiries and requests or information about the account from debtors, and may send the debtor statements, payment coupons, or other correspondence that the creditor sends to its non-debtor customers, without violating the automatic stay, provided none of these communications includes an attempt to collect the debt.

### **(e) Motions to Compel a Creditor to Issue Monthly Statements that Comply with this Rule.**

- (1) A debtor may file a Motion to Compel Creditor to Issue Monthly Statements in Compliance with Mont. LBR 4001-3 (a "Motion to Compel") if the debtor can offer evidence that the information in sections (b), (c), or (d) is necessary. Before filing such a Motion to Compel, the debtor must make good faith attempts to contact the creditor to determine whether the information is available. The Motion must include a description of the debtor's good faith attempts taken prior to filing the Motion, any response(s) from the creditor, and the harm the debtor has suffered, if any, as a result of the creditor's failure to provide appropriate monthly statements.
- (2) If a creditor's regular billing system can provide a statement to a debtor that substantially complies with this rule, but does not fully confirm to all of its requirements, the creditor may request that the debtor accept such statements, and the debtor may do so. If the debtor declines to accept the non-conforming statements, a creditor may file a motion, on notice to the debtor and debtor's attorney, seeking a declaration of the Court that cause exists to allow such non-conforming statements to satisfy the creditor's obligations under this rule. For cause shown, the Court may grant a waiver for purposes of a single case or multiple cases, and for either a limited or unlimited period of time. No waiver will be granted, however, unless the proffered statement substantially complies with this rule and the creditor has demonstrated that it would be an undue hardship for it to strictly comply with this rule.