

Related Authority:  
28 U.S.C. §§ 1112(b)(4)(K) 1930(a)(6)  
F.R.B.P. 2015(a)

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**RULE 3022-1. Chapter 11 Case Closings.**

To facilitate the closing of Chapter 11 cases in accordance with F.R.B.P. 3022, the debtor in possession (or trustee) shall file a Motion for Final Decree within sixty (60) days of the Order of Confirmation of the plan in conformity with Mont. LBF 13. The motion shall be filed and served on all creditors. The motion may be immediately granted by the Court, as provided in Mont. LBR 9013-1(g)(2)(AA). Beginning sixty (60) days after confirmation of the plan and then every thirty (30) days thereafter, the debtor in possession shall file a Status Report with the Court explaining the failure to file a Motion for Final Decree in accordance with the terms of this rule. Failure to file such monthly reports shall subject the case to summary dismissal or conversion by the Court, without further notice or hearing. In the case of individual debtors, the case will remain open until completion of all payments provided for in the debtor's plan, unless otherwise ordered by the Court.

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Related Authority:  
11 U.S.C. §§ 350(a); 1141(d)(5)

Committee Note:

Section 28 U.S.C. § 1930(a)(6) was amended on January 27, 1996, to provide that quarterly fees due the U.S. Trustee in a Chapter 11 case are payable after confirmation of a plan until the case is closed by the Court, and interest accrues on delinquent quarterly fees until paid.

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**PART IV.**

**RULE 4001-1. Motions to Modify Stay.**

(a) **Motion.** A motion to modify stay under 11 U.S.C. § 362 shall be made in conformity with Mont. LBF 8. Consents to the motion shall conform to Mont. LBF 9 and 9-A. Copies, or excerpts, of security documents and proof of perfection do not need be attached to a motion to modify stay if a proof of claim has been filed on or before the motion to modify. Instead, copies, or excerpts, of security documents and proof of perfection should be attached to the proof of claim filed on or before the motion to modify, and reference to such proof of claim shall be made in the motion to modify. A proposed order shall be filed with every motion to modify in accordance with Mont. LBF 8-A. Evidence of proof of the moving party's standing to file the motion shall be attached to the motion.

(b) **Impact of Postpetition Invoicing on Content of Motion; and Specificity Required in Both Motion and Response to Motion.**

- (1) A secured creditor seeking relief from the automatic stay based upon allegations of a postpetition payment default by a debtor must specify that it seeks relief based on the debtor's payment default, and articulate with specificity the amount and date of the payments the debtor allegedly failed to make, and attest that it responded promptly and thoroughly to the trustee or to the debtor's reasonable requests for account information. In the event the secured creditor has not provided the debtor with the account information required by this rule, the Court may deny the secured creditor's request for recovery of attorney's fees or costs in connection with the motion, regardless of the terms of its agreement with the debtor; and the Court may order the secured creditor to pay the debtor's reasonable attorney's fees, if any, for responding to the motion.
- (2) A debtor opposing relief from stay in connection with a debt within the scope of this rule shall state with specificity which allegations of the creditor's motion the debtor disputes and must append to the response either an affidavit of the debtor or copies of records showing proof of payment on the account, and articulate the debtor's legal and factual basis for asserting that the creditor is not entitled to relief from stay. The debtor's failure to meet these requirements may constitute cause for the Court to deny the debtor's request for additional time and/or for the Court to consider the motion unopposed.
- (3) When a Chapter 13 debtor's objection to a motion for relief from stay contests, with specificity, either the payment default or the creditor's application of payments, the creditor shall immediately transmit the debtor's payment history and a detailed accounting of how the debtor's payments were applied to the outstanding obligation to counsel for the debtor (or to the debtor directly, if not represented by counsel), by electronic or facsimile means, to ensure that the debtor has a reasonable opportunity to review this data prior to the hearing on the motion for relief from stay.

**(c) Response and Hearing.** If a debtor, trustee or party in interest files a response, then a hearing shall be noticed pursuant to Mont. LBR 9013-1. In the event such scheduled hearing date is thirty (30) days beyond the date of the motion to modify, then a preliminary hearing within such thirty (30) day period will be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response. The response and request for hearing must include the legal and factual basis for the objection and as appropriate the following:

- (1) If valuation of property is an issue, the estimation of value asserted by the respondent.
- (2) If the existence, validity, or any other aspect of the notes or security documents is an issue, such objections must be stated with particularity.
- (3) If the debtor proposes to offer adequate protection, it must state with specificity the

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**