

debtor's lease obligation, in which event the debtor shall make the pre-confirmation payments directly to the lessor and furnish proof of such payments to the trustee.

(E) **Chapter 13 Pre-Confirmation Adequate Protection Payments:** Pre-confirmation adequate protection payments governed by 11 U.S.C. §1326(a)(1)(C) shall be made by the debtor to the chapter 13 trustee as part of the total payment to the trustee, and the trustee shall pay the amount provided for by the plan to the secured creditor both before and after confirmation, unless the debtor's plan provides that such payments will be made directly by the debtor or no plan provision addresses payment of the secured claim, in which event the debtor shall make the pre-confirmation payments directly to the secured creditor and furnish proof of such payments to the trustee.

Comments

3070-1(C) This change is necessary because of the addition of LBR 1017-3. [Change effective 2/1/00.]

3070-1 The amendments to paragraph (C) and new paragraphs (D) and (E) are derived from former Interim Procedure 3070-1(C), (D) and (E). Stylistic changes have been made to the text of the LBR as well. [Changes effective 12/01/09.]

RULE 4001(a)-1 RELIEF FROM AUTOMATIC STAY

(A) **Applicability of Contested Matter Rules:** All motions for relief from stay, except those under paragraph (G) herein, are contested matters and are governed by FRBP 9014, 11 U.S.C. §362(c), (d), (e), (h), (l) and (m) and these Local Bankruptcy Rules.

(B) **Caption:** The motion for relief from stay, and any pleading or other paper (excepting exhibits) filed pursuant to such a motion, shall include the same caption as an adversary proceeding except that the caption shall not include an adversary proceeding (AP) number.

(C) **Response Period:** A separate notice of motion (Official Form 20A) is not required, however, unless provided otherwise by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or order of the Court. The motion for relief from stay shall clearly state and conspicuously provide the following notice:

NOTICE

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one)

If you do not wish the Court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then within 14 days from the date of

service of this motion, you must file a written response explaining your position with the Court and serve a copy on the movant. Unless a written response is filed and served within this 14-day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the 14-day period.

You will be notified separately of the hearing date on the motion.

(D) Contents of Motion for Relief from Stay: The following material, when applicable, must be included in a motion for relief from stay:

- (1) a detailed statement of the debt owed to the movant;
- (2) if periodic payments are in arrears, the amount of arrears accrued prepetition and the amount of arrears accrued post-petition;
- (3) a description of the property encumbered;
- (4) a description of the security interest and its perfection;
- (5) a statement of the basis for the relief claimed, such as, a lack of adequate protection or the absence of equity and that the property is not necessary for an effective reorganization. The specific facts constituting cause shall be set forth if a motion is brought for cause;
- (6) if the movant asserts a valuation of the subject property, the motion shall state the amount of the valuation, the date, and the basis therefore (appraisal, bluebook, etc); and
- (7) the specific nature of the relief from stay that is requested.

(E) Filing Requirements: With the original motion for relief from stay, the proponent shall also file:

- (1) the proper filing fee and
- (2) [Repealed]
- (3) a properly completed proof of service indicating that the movant served the motion for relief from stay upon each party required to receive notice under paragraph (F)(1) of this Local Bankruptcy Rule.
- (4) [Repealed]

(F) **Service**

(1) **Of Motion:** The movant shall serve a copy of the motion upon the debtor and, if applicable, upon:

- (a) the debtor's attorney;
- (b) the trustee;
- (c) each official committee appointed in the case or its authorized representatives;
- (d) if a chapter 11 case, any additional creditors if required by FRBP 4001(a)(1); and
- (e) any other party as directed by the Court.

The movant shall file, with the motion, proof of service certifying proper service of the motion.

(2) **Of Notice of Hearing:** The Clerk shall, within 7 days after the date the motion was filed, assign a hearing date and serve notice of such hearing upon the parties indicated in the proof of service filed pursuant to paragraph (E)(3) of this Local Bankruptcy Rule. For Alexandria and Richmond division cases only, the movant must select a preliminary hearing date and time from the schedule provided by the Clerk.

(G) **Requests for Additional Relief:** If a motion filed pursuant to FRBP 4001(a) requests relief beyond the termination, modification or conditioning of the automatic stay, and such additional relief is within the scope of FRBP 7001, it is deemed an adversary proceeding and it shall be accompanied by:

- (1) an adversary proceeding filing fee and
- (2) a properly completed Adversary Proceeding Cover Sheet as provided in LBR 7003-1.

If a party seeks an expedited hearing under 11 U.S.C. §362(e), only the specific issue of the automatic stay shall be considered at such hearing, unless the Court otherwise directs.

(H) **Relief from Codebtor Stay in Chapter 13 Cases:** Motions for relief from a stay of action against a codebtor in a chapter 13 case are contested matters and are governed by FRBP 9014, 11 U.S.C. §1301 and these Local Bankruptcy Rules. The motion shall clearly state in the caption of the motion the subsection of 11 U.S.C. §1301 under which the party is proceeding.

(1) **Caption:** The caption for a motion for relief from codebtor stay, and any pleading or other paper (excepting exhibits) filed pursuant to such a motion, shall include the caption described in paragraph (B) of this Local Bankruptcy Rule.

(2) ***Service and Time for Response:*** Service shall be as set forth in paragraph (F)(1) of this Local Bankruptcy Rule. The time for response is 21 days from the date of service of the motion. The notice served upon the codebtor in any relief action shall include notice of the response period. In addition, in a relief action under 11 U. S. C. §1301(c)(2) the notice shall include the following language: "If you do not file a written response by the deadline shown, the law provides that the stay protecting you from further legal action against you by this creditor will automatically terminate [see 11 U.S.C. §1301(d)]."

(I) ***Rent Deposit and Transmittal Procedure Under 11 U.S.C. §362(l):*** Any deposit of rent made by or on behalf of the debtor, pursuant to §362(l)(1)(B), shall be made in the form of a certified check or money order payable to the order of the lessor, and delivered to the Clerk upon the filing of the petition. The Clerk is directed to promptly transmit the rent deposit to the lessor, by certified mail, return receipt requested, to the address listed on the petition.

Comments

4001(a)-1(C) The notice conforms substantially with Official Form 20A so that movant is not required to serve a separate "notice of motion." The subsection of 11 U.S.C. §1301 under which a party is proceeding must now be clearly stated in the caption of the motion for relief of codebtor stay. [Changes effective 1/1/97.]

4001(a)-1(G)(2) This adjustment was made to note the proper 20 days for response instead of 15, in line with 11 U.S.C. § 1301(d). [Change effective 2/1/00.]

4001(a)-1(D) This rule is new. The rule requires the inclusion of relevant information so that interested parties can formulate a position on the motion prior to the preliminary hearing. The requirements of Local Bankruptcy Rule 9022-1, regarding court orders, apply with respect to motions for relief from the automatic stay. [New Rule effective 8/1/03.]

4001(a)-1 Paragraph (B) of the rule has been amended to effect a technical change in that contested matter (CM) numbers no longer are required. [Change effective 7/1/04.] [Stylistic change effective 1/1/07.]

4001(a)-1 Paragraph (C), at the fourth and final paragraph of the "NOTICE", is amended by deleting the phrase "by the CLERK" to conform to the procedures to be used in those divisions where available dates may be obtained on-line. Subparagraphs (E)(2) and (E)(4) are repealed in light of the amendments to the Court's CM/ECF Administrative Procedures at new subparagraph IC7, effective December 1, 2006. Subparagraph (F)(2) is amended by adding a bracketed statement regarding action that a movant must take in Alexandria and Richmond division cases only. [Changes effective 1/15/07.]

4001(a)-1 Former Interim Procedure 4001(a)-1(A) is incorporated, as modified, into LBR 4001(a)-1. Former Interim Procedure 4001(a)-1 is incorporated as new paragraph (I). Paragraphs (E) and (F) are amended. Stylistic changes have been made to the text of the LBR as well. [Amendments effective 12/01/09.]

4001(a)-1 A technical change has been made at paragraph (G)(2). Time-computation adjustments have been made, as needed, to conform to a revision to the Federal Rules of Bankruptcy Procedure that takes effect December 1, 2009. Stylistic changes have been made to the text of the LBR as well. [Changes effective 12/01/09.]

RULE 4002-1 DUTIES OF THE DEBTOR [New]

(A) Tax Information Under 11 U.S.C. §521:

(1) ***Pre-petition Tax Information Dismissal of Debtor's Case:*** Pursuant to 11 U.S.C. §521(e)(2)(B), if the debtor fails to comply with either §521(e)(2)(A)(i) or (ii), unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor, the Court shall dismiss the debtor's case upon either:

- (a) certification by the trustee wherein the Clerk shall issue a rule to show cause to the debtor and the debtor's attorney, if any, and set the matter for a hearing; or
- (b) motion by a creditor and after service of the motion by the creditor on the debtor and debtor's attorney, if any and a hearing. Any motion to dismiss filed by a creditor must state with particularity that the creditor timely requested a copy of the tax return under FRBP 4002(b)(4).

(2) ***Procedure for Requesting Debtor to File Post-petition Tax Information with the Court:***

(a) ***Motion by Requestor for Court Order Directing Debtor to File Tax Information or Statement:*** If the debtor does not file the requested tax information or statement with the Court required by 11 U.S.C. §521(f), the movant may file a motion requesting that the Court enter an order directing the debtor to file the requested tax information or statement with the Court. The motion shall be set for hearing in accordance with LBR 9013-1. The Court may determine the motion without oral hearing in accordance with LBR 9013-1(L).

(b) ***Motion Requesting Access to Tax Information or Statement:*** The movant may file a motion with the Court requesting access to tax information or statement filed by the debtor. The motion shall be served on the debtor and the debtor's attorney, if any. The motion shall include: