

## PART IV

### 4001-1 AUTOMATIC STAY-RELIEF FROM

The procedures applicable to all motions also apply to Section 362(d) Motions and Agreements relating to relief from the Automatic Stay. Motions for relief as described in this section shall comply with F.R.B.P. 4001 and with 9014 where applicable. In addition, such motions shall comply with the following.

#### A. Contents of the Motion.

1. The motion shall contain a short and plain statement of the alleged facts that are grounds for relief; mere statement of the statutory grounds for relief is insufficient.
2. If "cause" other than lack of adequate protection is alleged, the motion must explain the "cause."
3. If valuation of property is an issue, the motion must state the valuation asserted by movant. The following shall be attached to the motion or must be supplied to the court and to the opposing party (through counsel) as soon as possible.
  - (I) If movant intends to offer valuation testimony at the hearing, the name(s) and address(es) of the witness(es) and a copy of the appraisal (if one is to be introduced at the hearing);
  - (II) If expert testimony will be offered at the hearing, a statement of the qualifications of the expert must be attached;
  - (III) The court may refuse to admit evidence or may impose other appropriate sanctions for failure to observe the requirements of this rule.
4. If the motion seeks relief from the stay to proceed to foreclose on a security device (security interest) affecting property of the estate, copies of the following must be attached to the motion:
  - (a) All notes or other obligations secured by the property;
  - (b) All security devices (instruments included);
  - (c) Proof of perfection of the security instrument (stamped copies may be filed with the motion, but certified copies shall be submitted at trial of the motion or in the event an entry of default is desired, then at the time such default is requested).

**B. Answer Required.** No hearing will be held on a motion for relief from the automatic stay and relief may be granted by default as set forth hereinafter in *D. Relief From the Stay by Default*, unless an answer, objection or opposition is filed by the **RESPONSE DEADLINE** set forth hereinafter in *G. Required notice and Filing of Response Deadline*. An answer, opposition or objection shall contain the following.

1. If valuation of property is an issue, the answer must state the valuation asserted by respondent. The following shall be attached to the answer or must be supplied to the court and to the opposing party (through counsel) as soon as available:

(I) If respondent intends to offer valuation testimony at the hearing, the name(s) and address(es) of the witness(es) and a copy of the appraisal (if one is to be introduced at the hearing);

(II) If expert testimony will be offered at the hearing, a statement of the qualifications of the expert must be attached;

(III) The court may refuse to admit evidence or may impose other appropriate sanction for failure to observe the requirements of this rule.

2. If the party intends to dispute the existence, validity, effect or other aspect of the notes or security devices (instruments) required by these rules to be attached to the motion for relief from the stay, the objections must be stated with specificity.

3. If the party proposes to offer adequate protection, it must state with specificity the adequate protection that is offered; if periodic payments are proposed, the specific amounts and intervals (if applicable) must be stated or a formula must be set forth to determine the amount of the payments; if substitute liens are proposed, a description of the proposed collateral must be set forth as well as valuation allegations (such as those described above) must be supplied. If other indubitable equivalents are involved, the allegations must be equally specific.

**C. Service of Pleadings in Motions Under Section 362.** The following persons must receive service unless otherwise designated by F.R.B.P. 4001 and/or F.R.B.P. 9014.

1. Chapter 7 cases--The debtor, debtor's attorney, debtor's trustee, and the United States Trustee. All parties requesting notice under F.R.B.P. 2002(I).

2. Chapter 11 cases--The debtor, debtor's attorney, the debtor's trustee if one is appointed, the United States Trustee, any committee appointed under the Code or its authorized agent, or, if no committee has been appointed, the creditors on the list filed pursuant to F.R.B.P. 1007(d), and all parties requesting notice under F.R.B.P. 2002(i).

3. Chapter 12 and 13 cases--The debtor, debtor's attorney, the debtor's trustee, the United States Trustee, and all parties requesting notice under F.R.B.P. 2002(I).

**D. Relief From the Stay by Default.** If no answer, objection or opposition is filed by the **RESPONSE DEADLINE**, then the clerk shall, as soon as possible thereafter, submit the Order Lifting the Stay to the court for consideration ex parte. If the pleadings and papers are in proper form and indicate that relief is warranted as prayed for, then the court shall execute the proposed Order Lifting the Stay and same shall be duly filed and entered on the docket and notice given. If the pleadings and papers are defective or do not warrant the relief prayed for, then the court shall deny the relief prayed for and state in writing on the proposed order or in the court's own order

the grounds for the denial, and same shall be duly filed and entered on the docket and notice given.

If an answer, objection or opposition is filed after the **RESPONSE DEADLINE** and before the court executes an order granting the relief prayed for, the court **shall not consider same UNLESS** it is accompanied by an additional ex parte motion stating cause for the late filing and requesting that the court grant leave for the late filing and place the then contested Motion to Lift the Stay on the court's calendar for the originally noticed hearing date, as if the opposition was timely filed. The ex parte motion shall be accompanied by a proposed order granting leave to file the opposition late and resetting the original hearing date, and a certificate of counsel certifying that prior to the submission to the court that counsel has been in contact with counsel for the movant in the motion to lift the stay, informed such person when the ex parte motion to allow the late filed answer would be submitted, and the response of opposing counsel. If counsel was unable to make such contact with opposing counsel, then the certificate shall state what efforts were made to make such contact. If the court decides to grant the ex parte motion, then it shall execute the proposed order granting leave to file the late opposition and resetting the hearing and same shall be duly filed and entered on the docket. *Counsel for the party requesting the late filing shall promptly give timely and sufficient notice to opposing counsel of the granting of the ex parte motion and the resetting of the hearing for the originally scheduled date, and proof of such notice shall be set forth in a certificate of notice which shall be filed and entered on the docket prior to the hearing date.* If the court decides to deny the ex parte motion, then it shall state in writing on the proposed order or in the court's own order the grounds for the denial, and same shall be duly filed and entered on the docket and notice given.

**E. Procedure for Motions Timely Controverted.** If the motion is timely and properly controverted:

1. The initial hearing will, in most cases, be a final hearing. The parties, unless they agree otherwise prior to the hearing, should be prepared to proceed to final hearing of the issue. The court will ordinarily set a time later on the same motion day when the merits shall be heard, but the court may set the case for final hearing at a later date in its discretion and in the interest of justice.
2. The initial hearing may be a preliminary hearing to:
  - (a) determine length of hearing necessary;
  - (b) determine if there is reasonable likelihood that the party opposing relief from such stay will prevail at the final hearing;
  - (c) set date for final hearing; and
  - (d) enter such other orders as may be appropriate.

**F. Certificate of Service Required.** All motions filed hereunder shall be accompanied by a Certificate of Service as described in Local Bankruptcy Rule 9013-3.

**G. Required Notice, Response Deadline and Determining Factors on Hearings.** The

movant in a Motion to Lift the Stay shall obtain a hearing date from the clerk's office controlling the division where the motion will be heard. Movant shall give notice of the filing of the motion and the hearing date to parties entitled to notice under these Rule, the F.R.B.P. and the Code. The notice shall inform all parties that a hearing will be held on the motion **IF AND ONLY IF** an answer, objection or opposition to the motion is filed with the clerk's office and mailed to the movant's counsel within seventeen (17) days of the mailing date shown on movant's certificate of mailing of the motion to lift the stay. This seventeen (17) day period is calculated by using fourteen (14) days from F.R.B.P. Rule 4001, PLUS three (3) days from F.R.B.P. Rule 9006(f). The date to answer, object or oppose shall be clearly and succinctly stated in bold type on the notice and shall be referred to as the **RESPONSE DEADLINE**. The hearing date assigned by the clerk shall be no less than seven (7) calendar days after the **RESPONSE DEADLINE**. The clerk shall not place the Motion to Lift the Stay on the hearing calendar unless an answer, objection or opposition to the motion is filed by the **RESPONSE DEADLINE**. The court may, for cause stated in written and filed pleadings, extend or reduce these notice, response and hearing provisions.

**H. Motion for Relief From Co-Debtor Stay.** In addition to the notice provisions outlined in this rule, movant shall specifically certify that the co-debtor against whom relief is sought has been properly served with notice according to F.R.B.P. 7004.