

## **L.R. 4001-1 - Relief from the Automatic Stay.**

**A. Service of Motions for Relief from the Automatic Stay.** The movant shall serve any motion for relief from the automatic stay and notice of hearing upon: the debtor, the debtor's attorney (if any), and the Trustee, if any, and any entity actually known by the movant to have a mortgage on or consensual interest in the collateral. In Chapter 11 cases, unless otherwise ordered, the movant shall also serve the motion and notice upon the L.R. 9013-3(D) Master Service List, or, if no such list exists, upon those entities that would be on such a list, the Trustee (if any), the Trustee's attorney, any examiner in the case, and on any entity who may be affected by the motion.

**B. Hearings on Motions for Relief from the Automatic Stay.** Motions for relief from the automatic stay shall ordinarily be set giving a minimum of 21 days notice. If the movant sets a hearing on the motion to take place on a date that is more than 30 days from the date of the motion, the movant shall be deemed to have waived the movant's right to have the automatic stay terminated pursuant to Bankruptcy Code § 362(e)(1).

### **C. Content of Motion for Relief from the Automatic Stay.**

#### **1. Motion for Relief from the Automatic Stay to Foreclose on Collateral.**

a. **General Provisions.** In a case filed under any chapter in which the movant is seeking to foreclose on collateral, the motion shall recite the legal and factual basis on which relief is sought including:

- i. the basis for the debt;
- ii. the balance of the indebtedness on the petition date or otherwise; and
- iii. the date and manner of perfection, including book and page number, certificate of title, or UCC-1 recording.

Documentation in support of a motion for relief shall be summarized using an Exhibit Summary following the procedures under L.R. 9040(A) unless otherwise permitted in this Rule. On request, the movant shall provide copies of all exhibits in their entirety as set forth in L.R. 9040(C).

b. **Chapter 13 Cases.** In a Chapter 13 case in which the movant is seeking to foreclose on collateral, the following procedures apply:

- i. **Balance due.** The motion shall include a statement of the amount due including a breakdown of the following categories:
  - (1) unpaid principal;
  - (2) accrued interest from a specific date to a specific date;
  - (3) late charges from a specific date to a specific date;

(4) attorneys' fees;

(5) advances for taxes, insurance and the like; and

(6) any other charges.

ii. **Post-Petition Payments.** In Chapter 13 cases, where the movant is seeking relief from the stay for failure to make post-petition payments on a claim secured by real property that is the Debtor's principal residence or is treated by the Debtor's Chapter 13 plan pursuant to Bankruptcy Code § 1322(b)(5), the motion or attachments thereto, shall contain a legible post-petition payment history. The payment history shall set forth:

(1) the date each post-petition payment was received,

(2) the amount of each post-petition payment received, and

(3) how each post-petition payment was applied by the movant.

Pursuant to Bankruptcy Code § 362(g)(2), the Debtor has the burden to prove any post-petition payment(s) alleged to have been made but not set forth in the motion, or attachments thereto.

iii. **Exhibits.** Select exhibits or page(s) may be attached to the motion provided the exhibit page(s) contain evidence of perfection. It is sufficient for the movant to attach only the first page of a deed of trust, certificate of title, or UCC-1 form showing the recorder's stamp and verifying lien perfection. On request, the movant shall provide copies of all exhibits in their entirety as set forth in L.R. 9040(C).

iv. **Order Granting Relief from Automatic Stay - Effect on Secured Claims.**

All orders granting relief from the automatic stay in a Chapter 13 case shall contain the following language:

*The Trustee is directed to discontinue payment on all claims secured by the property against which relief from the automatic stay is granted in this Order.*

*The Trustee is directed to resume payment on such claims on notification pursuant to L.R. 3021(A).*

**2. Motions for Relief from the Automatic Stay for All Other Purposes.** In a case under any chapter of the Bankruptcy Code, a motion for relief from the automatic stay for any purpose other than to foreclose on collateral shall include all legal and factual allegations supporting the relief requested and shall use the Exhibit Summary procedures of L.R. 9040.

**D. Responses to Motions for Relief from the Automatic Stay.** Any response to a motion for relief from the automatic stay shall be filed no later than 7 days before the hearing date set for the motion for relief. The response shall specifically admit or deny the allegations in each

paragraph. A general denial is insufficient and prohibited. When a response asserts adequate protection, the response shall state how the movant will be adequately protected if the automatic stay remains in effect. The parties shall exchange and file exhibits following the procedures in L.R. 9040(C).

**E. Duty to Confer.** As required by L.R. 2093(B), in advance of hearing, attorneys for the parties involved in a motion for relief shall confer with respect to the issues raised by the motion to determine whether a consensual order may be entered or whether a stipulation may be reached concerning relevant facts.

**F. Consent Motions for Relief from the Automatic Stay.** A consent motion for relief from the automatic stay shall be styled as a “consent motion.” Pursuant to L.R. 9013-1(F), a consent motion for relief from the automatic stay need not be set for hearing and may be ruled upon without hearing. The Clerk of Court is authorized to waive the filing fee for a motion for relief from the automatic stay when the motion is filed with the written consent and signature of the Trustee and all respondents in all cases except Chapter 13 cases. In a Chapter 13 case, the written consent of the Trustee is not necessary. Consent may be shown by separate certificate of consent or certificate of no opposition signed by the responding party but such consent or no opposition shall be filed as part of the consent motion. In a Chapter 7 case, the Trustee’s Report of No Distribution shall be deemed the Trustee’s consent to any motion for relief from the automatic stay, and the Trustee’s signature will not be required on the consent motion where such a report has been filed. All consent motions for relief from stay shall be filed using the proper non-fee consent motion event in the CM/ECF system to avoid automatic assessment of the filing fee. Consent motions for relief to proceed with a domestic action do not require the signature of the non-debtor spouse.

**G. Orders on Motions for Relief from the Automatic Stay.** Proposed Orders on any motion for relief from the automatic stay shall follow the format in L.R. 9050 and shall specifically describe the property (collateral) that is the subject of relief. “So Ordered” provisions shall not be used with motions for relief from the automatic stay. In Chapter 13 cases, the order shall include the language set forth in L.R. 4001-1(C)(1)(b)(iv).

**H. Mandatory Form Consent Order & Stipulation re: Relief from Stay on Real Property.** The Court adopts as a Local Form “Consent Order and Stipulations in Settlement of Motion for Relief.” This form is available on the Court’s web site. Absent good cause, use of this form is mandatory in Chapter 13 cases.

**I. Emergency and Ex Parte Relief from the Automatic Stay.** Procedures for emergency and ex parte relief from the automatic stay shall be as stated in L.R. 9013-2(C) and (D), respectively.

**J. Continuances.** If the court does not render a final decision on a motion for relief from stay during the 60-day period referenced in Bankruptcy Code § 362(e)(2), any party wishing to have the automatic stay extended until a continued hearing date shall submit a proposed order continuing the hearing and ordering that the stay be extended until such hearing. If the

movant sets the motion for a hearing on, or requests a continuance of the hearing to a date that is more than 60 days from the date of the motion, the movant shall be deemed to have waived the movant's right to have the automatic stay terminated pursuant to Bankruptcy Code § 362(e)(2).