

Rule 4001-1 AUTOMATIC STAY - RELIEF FROM

(a) Consent Orders

An order stipulating to relief from the automatic stay may be entered without hearing under the circumstances set out in this subsection. A motion seeking relief from the automatic stay must have been filed. The motion or order must show the assent of the affected parties. The clerk shall waive the filing fee for the motion if assent is shown at the time of the filing of the motion.

In a case under chapter 7, 12, or 13, the proposed order must show the assent of the debtor or the debtor's attorney and the trustee.

In a case under chapter 11, the proposed order must show the assent of the debtor or debtor's attorney, the attorney of any official creditors' committee, or if none, the chairperson(s) of the committee(s), and the United States trustee. If no committee has been appointed, movant may not obtain relief under this subsection.

Such order must be limited to granting relief from the automatic stay. It shall not recognize for any purpose other than relief from the stay the validity of any lien, title to any property or the validity or amount of any indebtedness. Nor shall the proposed order waive or otherwise compromise any claims of the estate against the movant.

(b) Contents of a Motion for Relief Without Consent

(1) The motion must contain a short plain statement of the alleged facts that are grounds for relief; a 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 lack of equity in property is an issue, the motion must state the movant's estimation of value and a brief statement as to the basis for the estimate. The estimation may not state only that it is made "on information and belief."

(4) If the motion seeks relief from the stay to foreclose a security agreement or mortgage 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; and (B) all security documents involved, including evidence of perfection.

If security documents are particularly voluminous, they need not be attached to the motion, provided there is a statement in the motion to that effect, and the documents are exchanged with counsel for the opposing parties at least 14 days prior to the hearing. See [Local Rule 9070-1](#).

Attachment of the documents to the motion shall be considered compliance with [Local Rule 9070-1](#) regarding exchanging exhibits if the movant gives notice in the motion or by way of separate document that the movant is relying upon the documents attached in compliance with

Local Rule [9070-1](#). Failure to object timely to the introduction of the attachments into evidence shall result in their admission pursuant to Local Rule [9070-1](#). Notwithstanding reliance on the attachment of the documents, movant shall offer separate copies of the attachments, marked as exhibits, at any final hearing on the motion for relief.

(5) The motion must include a notice that any party opposing the motion must timely file and serve an answer at least 7 days prior to the date set for the preliminary hearing on the motion.

(c) Answer Required for Resisted Motions

At the preliminary hearing, the court may refuse to hear an objection to a motion for relief or it may grant the motion by default unless an answer or other objection has been filed and served on the movant at least 7 days before the date set for the preliminary hearing. An answer contesting the requested relief must contain the following:

(1) If valuation of property is at issue, the answer must state the respondent's estimate of value and give a brief statement as to the basis for the estimate. Local Rule [3012-1](#) regarding valuation hearings shall be applicable to the valuation dispute at any final in-court hearing on the motion for relief. The estimation of value may not state only that it is made "on information and belief."

(2) If the respondent intends to dispute the existence, validity, execution, effect or any other aspect of the notes or security documents, those objections must be stated with particularity.

(3) If the respondent proposes to offer adequate protection, it must state with particularity the adequate protection it offers to provide. If periodic payments are proposed, the specific amounts and intervals must be stated or respondent must set forth a formula which permits ready calculation of the amounts of the payments. If substitute liens are proposed, respondent must describe the proposed collateral and its estimated value. Respondent must disclose any existing liens on substitute collateral and the value of the liens.

(d) Section 362(e) Time Requirements

For purposes of the time requirements set forth in [11 U.S.C. § 362\(e\)](#), the request for relief shall be considered made on the filing date of the motion or on the date on which required service was made or on the date the motion's filing fee was paid, whichever is later. If in the motion for relief, the movant requests any additional relief other than a request for adequate protection or prohibition of the use of collateral, the movant will be deemed to have waived the time requirements of [§ 362\(e\)](#).

(e) Relief from Stay by Default

A default order granting the motion for relief from stay for failure to file a timely answer will not be granted prior to the time and date set for the preliminary hearing. However, if a party against whom relief is sought has not filed an answer by the time of the preliminary hearing, the preliminary hearing will not go forward and, if the preliminary hearing was set as a telephone hearing, it will not be necessary for movant's attorney to contact the opposing attorney or any unrepresented party.

(f) Procedure for Contested Motions

(1) Telephonic Hearing

If any entity has filed an answer or objection to the motion, the preliminary hearing may be scheduled as a telephonic hearing. The attorney for the movant shall be responsible for arranging the telephonic conference. The movant shall include in the conference call any entity that has served an answer, objection, request to be heard, or other response to the motion, whether the response is timely or untimely, so long as the response has been received by movant's attorney at any time, by any method of delivery, prior to the time and date of the preliminary hearing. Movant's attorney need not include in the conference call any entity filing a response indicating consent to the relief and a desire not to be included in the conference.

(2) Preliminary Hearing

At the preliminary hearing, the following matters will be considered:

- (A) the issues in dispute and whether there is a reasonable likelihood that the entity opposing relief will prevail at a final hearing;
- (B) if the value of collateral is in dispute, the method to be used to value the collateral;
- (C) the time necessary for the final hearing;
- (D) the setting of the final hearing;
- (E) waiver of the timing requirements of [§ 362\(e\)](#); and
- (F) such other matters as may be appropriate