

B-4001-1

Relief from Stay in Chapter 13 Cases

(a) If a confirmed chapter 13 plan provides for the surrender of property in which a creditor has an interest, whether as a lienholder or as a lessor, the automatic stay is terminated upon confirmation, and without the need for a further order of the court, to allow the creditor to foreclose upon, repossess, or otherwise proceed *in rem* against that property. The surrendered property will, nonetheless, remain property of the estate until it has been disposed of pursuant to applicable nonbankruptcy law as a result of the creditor's proceedings unless the confirmed plan specifically provides for its abandonment or the court enters a separate order of abandonment, following an appropriate motion and notice to creditors.

(b) In a case under chapter 13, if the provisions of a plan provide for the surrender of property in which a creditor has an interest, the court will consider a motion for relief from stay and/or abandonment as to such property without holding a hearing, unless a party in interest files an objection to the relief requested, provided that:

(1) The motion is titled "Motion for Relief from Stay and/or Abandonment Because Plan Proposes to Surrender Property";

(2) Movant serves all creditors and parties in interest with a notice of the motion and the opportunity to object thereto, containing the information required by Local Bankruptcy Rule B-2002-2(c), and makes due proof thereof; and

(3) The deadline for filing objections to the motion is no less than fourteen (14) days after service of the notice and no sooner than seven (7) days after the first date set for the meeting of creditors held pursuant to section 341(a) of the United States Bankruptcy Code. The failure to comply with the requirements of sub-paragraphs (b)(2) and (b)(3) will constitute a waiver of any time limits associated with ruling on the motion, including the time limits set forth in 11 U.S.C. § 362(e).

(c) In a case under Chapter 13, a motion for relief from stay and/or abandonment, other than a motion because a plan proposes to surrender property, will be set for such proceedings as the court deems appropriate, and must include the following information:

(1) Copies of documents upon which the claim is based, including loan documents and documents that evidence both the grant of the lien, security interest, mortgage or other encumbrance, and its proper perfection or proper recordation;

(2) The balance owing as of the date the petition is filed, and the date and amount of any payments received since the filing;

(3) The total arrearage as of the petition date, the number of pre-petition payments in arrears, and the amount of each such payment;

(4) The movant's best estimate of the value of the collateral and the basis for that value;

(5) The identity of any person or entity claiming an interest in the property that is the subject of the motion and of which movant is aware; and

(6) If the motion is based upon a post-petition payment default, the motion and/or exhibits thereto shall also contain the following:

(A) A legible post-petition payment history that sets forth the date each post-petition payment was received, the amount of each post-petition payment, and how each post-petition payment was applied;

(B) An itemization of any other expenses or fees that are due postpetition including attorney fees, filing fees, late payment fees, and escrow advance;

(C) The total dollar amount necessary to cure the post-petition debt as of a date certain; and

(D) The address where the current monthly payment is to be mailed if the mailing address is not listed in the movant's filed proof of claim or if the mailing address has changed.

The failure to provide the documentation and/or information required by this paragraph may result in the motion being stricken or denied.

HISTORICAL AND REGULATORY NOTES

By Order Amending Local Bankruptcy Rules dated December 16, 2009, this rule was amended effective January 1, 2010, to provide for substantive changes in paragraph (c).

By Order Amending Local Bankruptcy Rules dated November 18, 2009, this rule was amended effective December 1, 2009, to conform with the time computation changes in the Federal Rules of Bankruptcy Procedure. Pursuant to Order Amending Local Bankruptcy Rules dated May 11, 2009, this new rule became effective immediately.