

- (e) Payment of claims for attorneys' fees shall be made only on allowed claims for attorneys' fees. No reserve shall be established for payment of lodestar attorneys' fees that are not yet allowed except for applications for payment filed at least 21 days before the confirmation hearing. If an application for payment is filed at least 21 days before the confirmation hearing, (i) the fees shall be reserved in the amount set forth in the application until allowed or disallowed by the court; and (ii) the court at the confirmation hearing may establish such additional reserves as equity requires. Under fixed fee orders, attorneys' fees are allowed on entry of the order approving the fixed fee agreement.
- (f) The priority of payments by the chapter 13 trustee will be the priority set forth in the confirmed plan.
- (g) Each chapter 13 trustee will place information on the chapter 13 trustee's website regarding all payments made under the plans. This information shall be updated not less than quarterly.
- (h) Distributions in dismissed cases should be made by the chapter 13 trustee at the earliest practicable date following the disposition of all motions for administrative expenses that are timely filed or that are deemed allowed pursuant to BLR 4001-1. Timely filed motions for administrative expenses will be those filed within 21 days of the dismissal order.
- (i) In addition to filing proofs of claim on the proof of claim registry, proofs of claim for priority claims and secured claims must be served on the debtor, the debtor's counsel and the chapter 13 trustee. A certificate of service reflecting service must be filed with a copy of the proof of claim attached to the certificate of service.

Local Rule 4001-1. Relief from Automatic Stay.

- (a) Motions for relief from stay:
 - (1) Motions for relief from the stay must contain a certificate that the movant has conferred with opposing counsel (or, in the event of *pro se* parties, opposing parties) and been unable to reach an agreement on the requested relief. If no conference has been conducted, movant must certify the dates and times on which movant has attempted to confer. Notwithstanding the foregoing, no conference is required if the movant files a certification that a confirmed plan provides for the surrender of the collateral that is the subject of the motion.
 - (2) A motion for relief from stay must include a hearing date from the judge's web page. Failure to obtain a hearing date from the judge's web page and to include the notice in BLR 4001-1(a)(3) is a waiver of the automatic termination of the automatic stay under 11 U.S.C. § 362(e) or 1301(d).

- (3) The motion must state immediately below the title:

This is a motion for relief from the automatic stay. If it is granted, the movant may act outside of the bankruptcy process. If you do not want the stay lifted, immediately contact the moving party to settle. If you cannot settle, you must file a response and send a copy to the moving party at least 7 days before the hearing. If you cannot settle, you must attend the hearing. Evidence may be offered at the hearing and the court may rule.

Represented parties should act through their attorney.

There will be a hearing on this matter on [date] at [time] in courtroom _____, [address].

- (4) In addition to service as required by FED. R. BANKR. P. 4001(a)(1), on the same day that it is filed, the motion must be served on debtor, debtor's attorney, parties requesting notice, parties with an interest in collateral that is the subject of the requested relief, co-debtors under 11 U.S.C. § 1301, parties who are identified as a party against whom relief is sought in the motion, and the trustee.
- (5) If the moving party schedules a hearing on a motion for relief from stay or agrees to continue the hearing to a date more than thirty (30) days after the date the motion was filed (21 days for motions to lift the co-debtor stay), the party shall be deemed to have waived the automatic termination under 11 U.S.C. § 362(e) and/or 1301(d).
- (6) All motions to lift stay that request foreclosure on improved real property must be accompanied by documents evidencing the debt and lien perfection, and a payment history, including an explanation of transaction codes. Responses disputing the payment history must specify payments made that are not reflected in the payment history, the dates of payment, the amounts, and the mode. Evidence not accompanying the motion or response may be inadmissible in an evidentiary hearing.
- (7) Failure of the movant to prosecute the motion at a preliminary hearing may result in dismissal of the motion for want of prosecution unless there is (i) an order continuing the hearing and waiving the 30-day requirement; (ii) a stipulation of the parties to continue the hearing and waive the 30-day requirement; or (iii) an agreed order resolving the motion that is entered prior to or is signed at the hearing.
- (8) Motions for relief from the stay may never be combined with a request for other relief.

- (9) In addition to other procedures applicable to motions for relief from the stay, a chapter 13 debtor must timely respond to motions for relief from the stay. A timely response includes the filing of an agreed order, a denial that conforms with FED. R. BANKR. P. 7008, a statement of non-opposition, or another accurate statement reflecting the current status of the motion. If no timely response is filed, the court may grant the motion for relief from the stay with or without a hearing, at its discretion.
 - (10) Responses should state the efforts of respondent to reach an agreement with movant and either (i) itemize each disputed issue of law or fact; or (ii) comply with FED. R. CIV. P. 8 as applied by FED. R. BANKR. P. 7008.
 - (11) In any evidentiary hearing conducted on a motion for relief from the automatic stay, all counsel shall certify before the presentation of evidence (1) that good faith settlement discussions have been held or why they have not been held; (2) that all exhibits, appraisals and lists of witnesses (the debtor is presumed to be a witness and need not be identified) have been exchanged at least 2 days, excluding intermediate weekends and holidays, in advance of the hearing date; and (3) the anticipated length of the hearing. Exhibits must be marked in advance of the hearing and a bound, marked set of exhibits must be presented to the court at the commencement of the hearing.
- (b) Motions filed under BR 4001(b), 4001(c), or 4001(d) for the use of cash collateral, obtaining credit, or for approval of agreements on BR 4001 matters, must state immediately below the title:

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 14 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

If a hearing has been set on the motion, this language must be added at the end of the notice:

There will be a hearing on this motion on [date] at [time] in courtroom _____, [address].

- (c) Motions to approve agreements governed by Bankruptcy Rule 4001(d) must be served:
 - (1) If the agreement is in an individual chapter 7 case or a chapter 13 case and concerns consumer goods, the debtor's homestead or a non-business-use vehicle, notice should be given to the chapter 13 trustee, the debtor, any co-obligor, and any party with an interest in the collateral.
 - (2) Motions to approve all other agreements governed by Bankruptcy Rule 4001(d) shall be served under BLR 2002-1(a)(3).
- (d) Attorneys' fees will be awarded to creditors for filing motions for relief from the stay as follows:
 - (1) Undersecured creditors will not be awarded attorneys' fees for the filing of a motion for relief from the stay in a chapter 13 bankruptcy case.
 - (2) With respect to motions by oversecured creditors or by home lenders filing post-confirmation motions governed by § 1322(b)(2), the court will approve agreed orders (i) providing for attorneys' fees and costs not to exceed \$500.00 plus statutory filing fees; and (ii) providing for attorneys' fees and costs exceeding that sum only upon a submission of fee statements reflecting actual time incurred. All requests for attorneys' fees must (i) include a certification that the amount requested is less than or equal to the amount that will be paid by the holder of the lien to the holder's counsel; and (ii) be reasonable under the facts and circumstances.
 - (3) Attorneys' fees in matters not resolved by agreed orders will be considered on an evidentiary basis.
- (e) In each chapter 13 case, the Court will issue an order that authorizes the use of estate vehicles under § 363 and provides adequate protection to the holders of liens on the vehicles.
 - (1) The adequate protection order will require the debtor to (i) maintain insurance on the vehicle in the amount required by the debtor(s) prepetition contract; (ii) provide proof of insurance to the lien holder; and (iii) enter into a wage order or EFT Order not later than 14 days after the petition date.
 - (2) As additional adequate protection, the lien holder will be given an administrative claim, with priority under § 507(b), in an amount equal to

1.25% of the value of the vehicle for each 30 days that elapses from the date of the adequate protection order. For example, if the vehicle is valued at \$10,000, a § 507(b) adequate protection claim in the amount of \$125 will accrue each month. In the event of a dismissal or conversion of the chapter 13 case, the trustee will distribute the proceeds in accordance with § 1326(a)(2). This will result, in most cases, in payments being made in the following order of priority:

- (A) First, to the vehicle lien holders in the amount of the adequate protection reserve;
 - (B) Second, to debtor's counsel for unpaid fees for which an application is filed on or before 21 days after entry of the order of dismissal and that have been allowed by court order;
 - (C) Third, to the debtor (directly and not through counsel).
 - (D) Payments under paragraph "1" shall be made following the expiration of 14 days of entry of the dismissal order, unless the dismissal order is stayed.
- (3) The debtor or any other party in interest may object to the adequate protection order not later than 30 days after entry of the court's order. The objecting party must state the date that the hearing will be conducted, which date will be the next chapter 13 panel after the expiration of 14 days from the date of the objection. The objection must be served on the debtor, the debtor's counsel, the chapter 13 trustee, and any party holding security interest in the vehicle. The objecting party must attend the hearing and present evidence in support of the objection.
- (4) For purposes of valuation in the absence of any objection, the vehicle value will be determined as of the date of the filing of the chapter 13 petition and will be equal to the average wholesale and retail value listed by NADA (without options or mileage adjustments) . In determining the principal amount due to the lien holder under the plan, the § 507(b) payments will be (i) deducted from the value of the vehicle, if the value of the vehicle is less than the lien; and (ii) applied to interest if the value of the vehicle is greater than the lien. If the value of the vehicle is less than the lien, interest will begin to accrue on the confirmation date.
- (5) The adequate protection order will not provide protection to a vehicle lender if the debtor voluntarily surrenders the vehicle by delivering the vehicle to the vehicle lender within 28 days of the petition date.

- (6) If a debtor proposes to make direct, post-petition payments to a lender on a vehicle loan that was not in default as of the petition date, no additional adequate protection payments are required, unless otherwise ordered by the Court. If a debtor defaults on direct payments, the debtor must make a cash payment to the lien holder at or before the time of any plan modification. The cash payment must equal or exceed 1.25% of the vehicle's value (determined in the manner set forth in paragraph 4 above) for each one month of missed direct payments.
- (f) Motions for relief from the automatic stay that pertain to exempt residences or exempt vehicles ("Consumer Lift Stay Motions") are governed by this BLR 4001-1(f).
- (1) Parties who file motions for relief from the stay on exempt residences or exempt vehicles in chapter 7 and chapter 13 cases must comply with this BLR 4001-1(f) and must use the forms promulgated by the court from time to time.
 - (2) Variance from this rule is allowed, if exceptional circumstances exist.
 - (A) Exceptional circumstances include:
 - (1) A motion for relief from the stay filed against a repeat bankruptcy case filer for which the movant seeks relief other than a routine termination of the stay; or
 - (2) A motion for relief from the stay on which there are disputes regarding the extent, validity, or priority of liens on the collateral that is the subject of the motion.
 - (B) A party believing that are other exceptional circumstances justifying exemption from this rule must allege the exceptional circumstances with particularity in the motion.
 - (3) Variance from this rule is allowed, if exceptional circumstances exist. When exceptional circumstances are alleged, the court may conduct an evidentiary hearing at which time the exceptional circumstances must be demonstrated by a preponderance of the evidence.
 - (4) Prior to filing a Consumer Lift Stay Motion, the movant must attempt to contact the debtor(s)' counsel to discuss whether an agreement can be reached utilizing the court's a agreed order forms. If such an agreement can be reached, the parties may submit a Motion for Entry of Agreed Order under FRBP 4001. Conferences may be attempted by telephone or by e-mail. In all conferences, movant's counsel must provide a contact

person with a direct telephone number for future discussions. The motion may be filed by the movant if settlement is not concluded in writing within 2 days, excluding intermediate weekends and holidays, of the initial attempt to confer.

- (5) If the parties cannot reach agreement to submit an agreed order in the court's format, the party seeking relief from the stay may file a Consumer Lift Stay Motion in the court's format along with a proposed order, also in the court's format. Responses by the debtor must be one of the following and must be filed at least 7 days before the hearing:
 - (A) Submission of an agreed order terminating the stay utilizing a form from the court's website. If an agreed order is filed in accordance with these procedures, the court usually will issue the order prior to the hearing. Attendance at the originally scheduled hearing is not necessary, by either party. If the court declines to issue the order, the court will issue an order for further proceedings.
 - (B) Submission of an agreed order conditioning the stay utilizing a form from the court's website. If an agreed order is filed in accordance with these procedures, the court will usually issue the order prior to the hearing. Attendance at the originally scheduled hearing is not necessary, by either party. If the court declines to issue the order, the court will issue an order for further proceedings.
 - (C) Filing an answer or other response. Answers must comply with FRBP 9011. Responses must be based on reasonable investigation and must not be filed for delay or other improper purpose. A response stating that the debtor(s)' attorney has not been able to contact the debtor(s) or a general denial not based on reasonable investigation may not be sufficient to prevent default relief. If a timely response is filed, attendance at the hearing by both parties is required.
- (6) If a sufficient response has not been timely filed, the movant must submit a proposed form of default order with a certification of default. The proposed form of default order and certification must comply with the court's form as promulgated from time to time. The court may issue a default order if an adequate response is not filed at least 7 days before the hearing. If the court issues a default order prior to the hearing, counsel need not appear at the hearing. If the court has not issued a default order and a party who has failed to respond appears at the hearing, the court may nevertheless grant default relief or may set a date for an evidentiary hearing.

Local Rule 4002-1. Duties of Debtor-in-possession.

- (a) A debtor in possession is responsible for strict compliance with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and standing orders. Counsel for the debtor-in-possession is responsible for instructing the debtor about the U. S. trustee guidelines for a debtor-in-possession and insuring compliance with those guidelines.
- (b) The debtor, its officers, and agents hold and manage the debtor's assets as fiduciaries for the estate; they must strictly comply with court orders and Bankruptcy Code §§ 363 and 1107. The debtor must prevent the depletion of the assets of the business during the proceedings, and it must notify its counsel immediately of a depletion or potential depletion.
- (c) If the debtor becomes aware of facts indicating that the continued operation of its business may not be in the best interest of the creditors or of the estate, it must immediately notify its counsel, who may immediately notify the court and recommend a solution.
- (d) The debtor may not use property of the estate to pay any prepetition unsecured obligation except on order.
- (e) The debtor must not transfer (sell, give, move, encumber) an asset outside of the ordinary course of business except on order.
- (f) The debtor must not incur administrative and priority expenses unless funds are reasonably expected to be generated to pay them.
- (g) The debtor must comply fully with Title 11's tax provisions, with the deposit requirements of the Internal Revenue Code and Regulations, and with all state tax laws.
- (h) The debtor must pay on a current basis all obligations incurred by it in operating its business.
- (i) The debtor must not use cash collateral without prior written consent of the secured creditor or an order.
- (j) This list of duties is not exclusive, and it does not exclude unenumerated obligations imposed by law. Counsel for the debtor-in-possession is responsible to instruct the debtor of this rule immediately on filing the case.
- (k) Counsel may advise the court of any knowing violation by debtor.

Local Rule 4003-1. Exemptions.

- (a) If an amendment or supplement to the list of exemptions is filed after the § 341(a) meeting of creditors, it must be served by the party claiming the exemption under BLR 9013-1.
- (b) When a hearing date on an objection to an amended or supplemented list of exemptions is established, the objector must give notice as if the objection were a motion with service under BLR 9013-1.

Local Rule 4008-1. Reaffirmation Agreements.

The filing of a reaffirmation agreement will be a request for a hearing if the reaffirmation agreement is not accompanied by a § 524(c)(3) declaration or affidavit of debtor's counsel. No motion is required to invoke the reaffirmation procedures of § 524(c).

Local Rule 5005-1. Filing of Papers.

- (a) The Texas statewide procedures for electronic filing are adopted by this court and are published on the Court's website.
- (b) Except as expressly provided or unless permitted by the presiding Judge, the Court requires documents being filed to be submitted, signed or verified by electronic means that comply with the procedures established by the Court. The notice of electronic filing that is automatically generated by the Court's electronic filing system constitutes service of the document on those registered as filing users of the system.
- (c) Depositions, interrogatories, answers to interrogatories, requests for production or inspection, responses to those requests, and other discovery material may not be filed. When a discovery document is needed in a pretrial proceeding, those portions that are needed will be an exhibit to it. When this material is needed at trial, it may be introduced under the Federal Rules of Evidence.

Local Rule 5011-1. Withdrawal of Reference.

A motion to withdraw a case, contested matter, or adversary proceeding to the district court must be filed with the clerk. Unless the district court orders otherwise, the matter will first be presented to the bankruptcy judge for recommendation.

Local Rule 5074-1. Communication and Cooperation With Foreign Courts and Foreign Representatives.

Except for communications for scheduling and administrative purposes, the court in any case commenced by a foreign representative shall give at least 21 days' notice of its intent to

communicate with a foreign court or a foreign representative. The notice shall identify the subject of the anticipated communication and shall be given in the manner provided by Rule 2002(q). Any entity that wishes to participate in the communication shall notify the court of its intention not later than 7 days before the scheduled communication.

Local Rule 7007-1. Motions in Adversary Proceedings.

Motion practice in adversary proceedings is governed by BLR 9013-1.

Local Rule 7016-1. Pretrial Adversary Proceeding Case Management.

Parties must comply with pretrial procedures on the website of the judge to whom the adversary proceeding has been assigned.

Local Rule 7041-1. Settlement.

When a motion to approve a compromise of controversy is required, the motion must be filed in the main case, accompanied by a proposed order in the main case and by a proposed final judgment in the adversary proceeding.

Local Rule 7067-1. Registry of the Court and Costs.

A proposed order for the deposit or withdrawal of funds from the court registry must contain the approval stamp of the Finance Department of the Office of the Clerk of Court. Unless the court orders otherwise, a motion to deposit funds will be considered *ex parte*.

Local Rule 9003-1. Matters Heard *Ex Parte*.

Motions for admission *pro hac vice* may be considered *ex parte*. Applications to retain general counsel or accountants need be served only on the U. S. trustee or as ordered. Applications to retain special counsel pursuant to § 327(e) must be served under BLR 9013-1 or as ordered.

Local Rule 9013-1. Pleadings, Hearings, and Service.

- (a) Pleadings must include a title that identifies the party filing the pleading and a brief description of the nature of the pleading. Example: XYZ Finance Company Motion for Relief From the Stay for 2003 Ford Explorer. Responses, other pleadings, and proposed orders filed after the initial motion should state the title and the docket number of the motion to which it applies. Example: Joe Debtor Response to XYZ Finance Company Motion for Relief from the Stay for 2003 Ford Explorer (docket 17).
- (b) Except as noted in (e), each pleading seeking an order must include this immediately below the title:

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

- (c) Movants should check the individual judge's web page to determine whether the motion may be self calendared. If the motion may be self-calendared, this language must be added at the end of the notice:

There will be a hearing on this motion on [date] at [time] in courtroom _____, [address].

- (d) In addition to service required by the FED. R. BANKR. P., and except as noted in (e), the movant must serve the entities with pleadings requesting an order, notices, and hearing settings:

Main case

Party against whom relief is sought and its counsel, if known;
Debtors;
Debtors' counsel;
Trustee, if one has been appointed;
Examiner, if one has been appointed;
Committees, if any have been appointed;
Parties who have filed a notice of appearance;
Twenty largest unsecured creditors;
Parties claiming an interest in any property that is affected by the motion;
Parties claiming a lien on any property that is affected by the motion;
United States trustee;
Parties on whom the court has ordered notice.

Adversary Proceedings

Parties to the proceeding.

- (e) The notice language, hearing settings, and service requirements for the following matters are governed by the rules noted, instead of BLR 9013-1(a-d):

Claim Objections, Rule 3007

Motions for Relief from Stay, Rule 4001

Employment Applications, Rule 2014 and Rule 9003

Pro Hac Vice Applications, Rule 9003

- (f) Whenever service of a pleading, notice, or other document is required under these rules or the Fed. R. Bankr. P, the serving party must serve it within one day, excluding intermediate weekends and holidays, after the pleading is filed. The serving party must file a certificate of service including the name and address of those served.
- (g) Responses to Motions.
- (1) Responses to motions to lift the automatic stay are governed by BLR 4001-1. Responses to all other motions are governed by FED. R. BANKR. P. 7008. Prior to filing a response, counsel (or unrepresented parties) shall confer with movant to attempt to resolve the relief requested in the motion without the necessity of a hearing. Responses must include a certificate either that (i) a conference was held and that the parties were unable to resolve the matter; or (ii) the specific dates that the respondent attempted to contact the movant and the reason why no conference was held.
- (2) If no timely response is filed, the court may grant the motion without a hearing.
- (h) Each motion, application, objection, and response filed with the court must be accompanied by a proposed order.
- (i) Some judges allow self-calendaring of emergency motions through the judge's web page. If self-calendaring is not authorized, requests for emergency hearings may be made in the pleading requesting the relief. No separate motion requesting an emergency hearing is required. The emergency motion must contain the word "Emergency" in the title of the motion. The motion must include a detailed statement why an emergency exists and the date relief is needed to avoid the consequences of the emergency. The motion seeking an emergency hearing must be certified for its accuracy by the party seeking the emergency relief or by its counsel.

In addition to the notice required by BLR 9013-1(b), the movant must include the following paragraph:

Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.

Local Rule 9027-1. Removal.

- (a) A party removing a civil action to the bankruptcy court must comply with FED. R. BANKR. P. 9027 and must (i) list all names and addresses of the parties, (ii) designate on which parties service of process has been accomplished, and (iii) list the name, address, and telephone number of the counsel for every party.
- (b) The notice of removal must be accompanied by copies of all papers that have been filed in the court from which the case is removed.
- (c) Removals under 28 U.S.C. § 1452 must contain this caption:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
_____ DIVISION