

LBR 4001(a).1
STAY RELIEF

(a) Adequate Protection. A creditor may combine a motion for stay relief with a request for adequate protection.

(b) Waiver. The following constitutes a voluntary waiver of the 30-day requirement for a hearing contained in § 362(e):

- (1) the motion for stay relief includes a request for any other relief;
- (2) movant sets a motion for stay relief, pursuant to D. Kan. LBR 9013.2 for a docket more than 30 days from the filing of the motion, which is considered a preliminary hearing under that section; and
- (3) movant fails to request that the final hearing conclude within 30 days of the preliminary hearing.

(c) Effect of Debtor's Stated Intent to Surrender Property. If an individual Chapter 7 debtor's Statement of Intention (Official Form 8) to surrender property securing a debt owed to a creditor was not amended or withdrawn, the debtor is deemed to agree to the creditor's stay relief motion concerning that property. When a stay relief motion clearly informs the clerk that it is filed pursuant to this provision, the filing fee is the same as for a motion for approval of an agreement or stipulation for stay relief. A creditor filing a stay relief motion pursuant to this provision must give notice of the motion (and the deadline for filing objections) to the debtor, as well as to any other parties required by the Bankruptcy Code or applicable rules of procedure.

(d) Information and Documentation Required With Motions For Relief From Automatic Stay. Motions for Relief From Stay must include the following:

- (1) copies of documents on which the claim is based, including loan documents and documents evidencing both the grant of the lien, security interest, mortgage or other encumbrance, and its proper perfection or proper recordation;
- (2) the balance owing on the petition date, and the date and amount of any payments received since the filing;
- (3) the number of payments the debtor is in arrears, and the amount of each payment, including the total arrearage on the petition date;
- (4) the movant's best estimate of the collateral's value; and
- (5) the identity of any person or entity claiming an interest in the property that is the subject of the motion and of whom movant is aware.

(e) Post-Petition Stay Relief in Chapter 13 Cases. If the movant seeks stay relief for default in post-petition payments on the debtor's principal residence or a long term debt provided by the Chapter 13 Plan pursuant to § 1322(b)(5), the motion and/or exhibit(s) must contain the following:

- (1) a legible post-petition payment history listing the date each post-petition payment was received, the amount of each post-petition payment, and how each post-petition payment was applied;
- (2) an itemization of any other expenses or fees due postpetition, including attorney fees, filing fees, late payment fees, and escrow advances;
- (3) the total dollar amount necessary to cure the postpetition debt on a date certain; and
- (4) 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.

(f) Conditional Orders Granting Stay Relief in Chapter 13 Cases. An agreed order resolving the motion for stay relief that does not grant immediate stay relief will be known as a "Conditional Order Granting Stay Relief." The following will apply upon alleged default:

- (1) the movant must file and serve a notice of the default on debtor and debtor's attorney that lists each payment allegedly missed and any other term(s) allegedly breached;
- (2) if debtor disputes the default, debtor may file a response within the time listed in the Conditional Order Granting Stay Relief or within 14 days, whichever is later, and the court will set the matter for hearing. If debtor does not timely file a response to the notice of default, movant should submit to the court a final order granting stay relief; and
- (3) the trustee will continue to disburse on movant's claim until the final order granting relief from stay is entered. After that order is entered, the trustee will adjust movant's claim to zero (\$0.00), effective the date of the order, and make no further disbursements on the claim. It is the responsibility of the parties to notify the trustee of the terms of any agreement or decision reinstating the automatic stay, so that the claim may be restored.

(g) Stay Relief. A creditor filing a stay relief motion pursuant to this rule must give notice of the motion (and the deadline for filing objections) to the debtor, as well as to any other parties required by the Bankruptcy Code or applicable rules of procedure. Notice with an objection deadline is not required when the creditor simultaneously submits, with the motion for stay relief, an agreed order signed by the creditor's attorney, debtor's attorney, and trustee.

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As amended 3/17/10, 10/17/05.