

# 4000

## 4001-1

### **RULE 4001-1 RELIEF FROM AUTOMATIC STAY [Modified 12/1/09]**

**(a) Standing Modification:** The automatic stay provided in [11 U.S.C. § 362\(a\)](#) is modified in bankruptcy cases as follows:

Affected secured creditors may, and their agents, may, without violating the automatic stay:

(1) Contact the debtor IN WRITING, with a copy to debtor's counsel about the status of insurance coverage, tax payments, municipal charges on property used as collateral, in addition to sending written correspondence, such as; statements, payment coupons, and other similar correspondence that the creditor typically sends to its non-debtor customers. If the debtor is making direct payments to the creditor, the lender may contact the debtor IN WRITING, with a copy to debtor's counsel about payment defaults; and

(2) Discuss and/or negotiate with a debtor regarding a proposed modification of the terms of any secured indebtedness, including, EXCEPT that all such negotiations and/or discussions shall be conducted through counsel for the debtor, if the debtor is represented by counsel and such counsel has not, in writing, granted permission of such direct communication by creditor representatives with the debtor.

(3) Participation by debtors and mortgagees in any state or locally legislated foreclosure meditation program does not violate the automatic stay against the debtor under 11 U.S.C. § 362(a). Therefore, parties are not required to first seek relief from the automatic stay to participate in such programs.

(4) The secured creditor shall terminate any of the foregoing communications immediately upon receipt of written notice from the debtor or debtor's counsel requesting that such contacts cease.

**(b) Motion.** A party seeking relief from the automatic stay provided by 11 U.S.C. § 362(a) shall file, in accordance with [Fed. R. Bankr. P. 9014](#), a motion specifically setting forth the basis for such relief. In addition to the motion, in cases filed by individuals concerning real property where a Chapter 7 debtor has not indicated on their Individual Statement of Intention or a Chapter 13 debtor in their Chapter 13 plan, an intent to surrender the property, the moving party shall include, as an attachment to either the motion or memorandum, a completed copy of **R.I. Bank. Form R, Relief from Stay Worksheet Real Estate** — , as well as the required attachments to the motion as specified on [Form R](#). If applicable, the motion for relief from stay must contain a conspicuous statement indicating the debtor's intent to surrender the property.

**(c) Service.** All documents filed pursuant to this rule shall be served in accordance with [Fed. R. Bankr. P. 4001\(a\)](#) and [9006\(d\)-\(f\)](#) upon all parties who have filed appearances and requested service of all notices and pleadings. Additionally, any party filing a motion for relief from the automatic stay shall serve copies of the motion on the following parties:

- (1) the debtor;
- (2) debtor's counsel;
- (3) the trustee if one has been appointed;
- (4) any official committee appointed and serving in the case under [11 U.S.C. §1102](#);
- (5) all parties with liens of record or any other party known to the movant claiming a lien in the property;
- (6) parties requesting notice;
- (7) in a Chapter 11 case, the local office of the United States trustee;

**(d) Response.** A party objecting to a motion for relief from the automatic stay must file an opposition to the motion within fourteen (14) days, or seventeen (17) days if you were served as provided in [Fed. R. Bankr. P. 9006\(f\)](#). If the motion is scheduled for an expedited hearing before the expiration of the fourteen (14) day period, then the opposition shall be filed within 24 hours of the expedited hearing.

**(e) Disposition Without a Hearing.** In the absence of a timely filed opposition and upon evidence of proper service, the Court, pursuant to [R.I. LBR 9013-2](#), without a hearing, may allow or deny the motion after the expiration of the opposition period set forth in section (d). The Court may deny a motion for relief from stay without a hearing if the moving party fails to comply with section (b) and (c).

**(f) Position of Estate Representative.** If the estate representative fails to file a response within the time prescribed in section (d), then the estate representative shall be deemed to have assented to the motion.

**(g) Hearing.** Upon the expiration of the response deadline set forth in paragraph (d), and if the matter is contested, the Court will notify the parties of a hearing date within the time prescribed by [11 U.S.C. § 362\(e\)](#). A preliminary hearing on a motion for relief from the automatic stay will be a consolidated preliminary and final nonevidentiary hearing unless at the conclusion of the preliminary hearing the Court schedules a final evidentiary or nonevidentiary hearing. If the Court schedules a final evidentiary hearing, the parties shall file a Joint Pre-Trial Order in accordance with the requirements of section (i), three (3) business days before the final evidentiary hearing date.

**(h) Motions to Continue the Consolidated Preliminary Hearing.** Whenever a party seeks to continue the consolidated preliminary hearing beyond the time prescribed in 11 U.S.C. § 362(e), the movant must obtain and include an affirmation in the motion that creditor consents to the extension of the time limit set forth in 11 U.S.C. § 362(e).

**(i) Joint Pre-Trial Orders**

**(1) Filing Requirement.** In all cases where a joint pre-trial order is due prior to the final evidentiary hearing, the movant shall deliver by hand, mail, facsimile, or other agreed upon electronic means, a draft of the joint pre-trial order, in compliance with [R.I. LBR 9014-1](#), and R.I. Bankr. Form O, to the respondent within seven (7) days of the conclusion of the preliminary hearing. The respondent shall then submit to the movant, by hand, mail, facsimile, or other agreed upon electronic means, any comments or revisions within three (3) business days in order to finalize the document. The joint pre trial order must be filed with the Court no less than three (3) business days prior to the date set for the final evidentiary hearing.

**(2) Content.** If "adequate protection" is at issue, the respondent shall explain the character of any adequate protection offered in lieu of relief from stay. If the issue of whether the property is necessary to an effective reorganization is in dispute, the debtor must affirmatively state whether a reorganization plan is in prospect and, to the extent possible, provide a summary of the plan expected to be filed.

**(3) Failure to File.** If the movant fails to timely file the joint pre-trial order with the Court, the motion for relief from stay will be denied without prejudice and the matter will be removed from the calendar. A new motion for relief and filing fee will be required to reinstate the matter. If either party fails to perform timely under these local rules, any aggrieved party may file a motion to adjudge the other party in default in accordance with R.I. [LBR 9014-1](#).

**(j) Setoff of Prepetition Tax Obligations.** The Internal Revenue Service is granted relief from stay in individual Chapter 7, 11 and 13 cases for the limited purpose of offsetting refunds for prepetition years against prepetition tax indebtedness. The IRS shall amend its claims to reflect any such offset. In addition, nothing in this rule shall prejudice or limit the right of any party to object to a refund or offset of such refund as described herein or to any claim filed by the Internal Revenue Service.