

# **L. Rule 4001. RELIEF FROM AUTOMATIC STAY; PROHIBITING OR CONDITIONING USE, SALE OR LEASE OF PROPERTY; USE OF CASH COLLATERAL; OBTAINING CREDIT**

(a) Motions for Relief from Stay under 11 U.S.C. § 362(d)

(1) Motion and Response: Contents

(A) Motions

(i) Motions seeking relief from automatic stay shall state the specific relief requested and the provision of § 362(d) under which relief is sought. The motion shall state with specificity the facts that support the relief requested.

(ii) If the motion is filed in a Chapter 11 or Chapter 13 case with respect to residential real property and if non-payment of any post-petition payment is a ground for relief, at the time the motion is filed the movant shall serve the debtor and debtor's counsel with an affidavit and a pay history showing, at a minimum, the months in which the default was alleged to have occurred and the amount and character of the default, in a form substantially in compliance with Appendix L-4001.

(iii) By signing the certificate of service on the motion, the movant certifies that the affidavit and pay history were served on the debtor and debtor's counsel in accordance with this Rule. Failure to serve the affidavit and pay history in accordance with this Rule may be grounds for the denial of the relief requested in the motion.

(iv) A creditor moving for relief from stay under § 362(d)(1) in a case shall file with the motion, where applicable, an affidavit specifying the month or months in which the debtor failed to make a payment, any failure to satisfy an escrow shortage (including the amount of the shortage and the period of time involved), and any failure to maintain insurance (including the amount of shortage and the period of time involved).

(v) Motions for relief from stay shall not be combined with other forms of relief except those allowed by §§ 362 and 1205. Movants wishing to waive the thirty (30) day hearing requirement of § 362(e) must include such waiver in the caption of the motion.

(B) Form of Motion; Negative Notice

A movant may file a motion seeking relief from stay employing the following 15 day negative notice language:

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.**

IF NO TIMELY RESPONSE IS FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

If this negative notice language is used, the movant will be deemed to have waived entitlement to an initial hearing within thirty (30) days. If negative notice language is not used, then the motion will be set within thirty (30) days of its filing, as provided in § 362(e), unless the movant waives the thirty day hearing requirement in the caption of the motion.

#### (C) Responses

Any response (if required under L. Rule 9014(b)) must specifically contest one or more of the substantive grounds pled in support of the motion.

#### (D) Use of Affidavits

(i) Pursuant to FRCP 43(e), a movant may use affidavits as evidence at the hearing in support of the factual allegations in the motion. The affidavits should not be filed with the Clerk, but must be served pursuant to L. Rule 9013 at the same time the motion is filed.

(ii) A respondent may also use affidavits as evidence at the hearing. The affidavits should not be filed with the Clerk, but must be served pursuant to L. Rule 9013 either (i) at the same time the response is filed, if one is required under this Rule or (ii) within 15 days of the date of service of the motion, if no response is required under this Rule.

(iii) The use of affidavits does not preclude the use of witnesses at the hearing.

#### (2) Hearings

A § 362(e) hearing on a motion for relief from automatic stay shall be consolidated with the § 362(d) final hearing unless the Court, for cause, rules otherwise at the time of the hearing.

#### (b) Motions for Extensions of Stay under § 362(c)(3)(B)

A party in interest seeking relief under § 362(c)(3)(B) shall file a motion styled “Motion for Extension of Stay Pursuant to § 362(c)(3)(B).” To be timely considered, the motion must be accompanied by a separate motion for expedited hearing.

#### (c) Motions for Imposition of Stay under § 362(c)(4)(B)

A party in interest seeking relief under § 362(c)(4)(B) shall file a motion styled “Motion for Imposition of Stay Pursuant to § 362(c)(4)(B).” To be timely considered, the motion must be accompanied by a separate motion for expedited hearing.

#### (d) Motions for Orders Confirming Termination of Automatic Stay under § 362(c)

A party in interest requesting an order under § 362(j) shall file a verified motion styled “Motion for Order Confirming Termination of Automatic Stay Under § 362(c).” The verified motion shall specifically allege the grounds for contending that the stay has terminated under the provisions of § 362(c). The motion shall be served on the debtor, the trustee, the United States Trustee, and all creditors and parties in interest.

(e) Incurring Debt in a Chapter 13 Case

(1) A motion by a debtor in a Chapter 13 case to incur debt shall include the following information:

(A) the amount of debt sought to be incurred, and the reasons why the debtor believes it necessary;

(B) the percentage to be paid to unsecured creditors under the plan before and after the proposed debt to be incurred; and

(C) a copy of the debtor’s Schedules I and J, before and after the debt incurrence.

(2) The motion shall be served upon all creditors and parties in interest and may, upon a showing of need, be served on ten (10) days negative notice.