

Rule 4001-1. Relief from the Automatic Stay or Prohibiting or Conditioning the Use, Sale, or Lease of Property; Confirming Termination of the Stay.

(a) Motion for relief from the automatic stay *with notice*.

(1) Content. A motion for relief from the automatic stay shall state the specific subsection or subsections of 11 U.S.C. § 362(d) under which relief is sought; include a description of any property with respect to which relief is sought; and include specific facts that demonstrate the movant is entitled to relief from the automatic stay. Any request for a waiver of the stay of an order imposed by Fed.R.Bankr.P. 4001(a)(3) must be specifically stated. A motion for relief from the automatic stay shall not be combined with a request for relief from the codebtor stay under 11 U.S.C. § 1301(c).

(2) Waiver of automatic termination provisions. Unless a motion for relief from the automatic stay includes a declaration that the movant is specifically relying on the time limitations imposed by 11 U.S.C. § 362(e), those time limitations are deemed waived for good cause under 11 U.S.C. § 362(e)(2)(B)(ii), and any hearing on the motion will be held on the first available hearing date for the division in which the case is venued.

(3) Service and notice. Unless relief from the automatic stay is sought *ex parte* pursuant to Fed.R.Bankr.P. 4001(a)(2) and Bankr. D.S.D. R. 4001-1(c), the motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall set forth a last date (month, day, year) for filing an objection or other response that is 14 days after service of the motion and notice of motion.

(b) Motion to prohibit or condition the use, sale, or lease of property *with notice*.

A motion to prohibit or condition the use, sale, or lease of property shall include a description of the property with respect to which relief is sought, a description of any liens or other encumbrances against the property, and specific facts that demonstrate the movant is entitled to the prohibition or condition requested. Unless such relief is sought *ex parte* pursuant to Fed.R.Bankr.P. 4001(a)(2) and Bankr. D.S.D. R. 4001-1(c), the motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall set forth a last date (month, day, year) for filing an objection or other response that is 14 days after service of the motion and notice of motion.

(c) *Ex parte* motion for relief from the automatic stay or to prohibit or condition the use, sale, or lease of property. An *ex parte* motion for relief from the automatic stay under 11 U.S.C. § 362(f) or to prohibit or condition the use, sale, or lease of property shall comply with Fed.R.Bankr.P. 4001(a)(2)(B), except the Court will serve any order granting *ex parte* relief. A notice of motion shall not be filed with the motion.

(d) Motion to confirm termination or absence of automatic stay. A motion seeking confirmation of the termination or absence of the automatic stay under 11 U.S.C. § 362(c) or § 362(j) and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall set forth a last date (month, day, year) for filing an objection or other response that is 14 days after service of the motion and notice of motion.

(e) Agreement regarding relief from the automatic stay or to prohibit or condition the use, sale, or lease of property when a motion for such relief has been filed. If the movant and all parties who timely objected to a properly filed and served motion for relief from the automatic stay or motion to prohibit or condition the use, sale, or lease of property reach an agreement regarding such relief that does not exceed the scope of the motion, the agreement, if reduced to writing, shall be filed with the Court, and an agreed proposed order shall be submitted to the Court under Bankr. D.S.D. R. 9021-1 after the last date for objections to the motion has passed. Upon entry of the agreed order, any previously scheduled hearing on the motion will be deemed moot. If the agreement exceeds the scope of the motion, the agreement shall be noticed for objections in compliance with Bankr. D.S.D. R. 9019-1(b).

(f) Agreement regarding relief from the automatic stay or to prohibit or condition the use, sale, or lease of property when a motion for such relief has not been filed. If parties in interest reach an agreement regarding relief from the automatic stay or to prohibit or condition the use, sale, or lease of property before a motion for such relief has been filed, a motion to approve the agreement and a notice of motion shall be served on parties in interest. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall set forth a last date (month, day, year) for filing an objection or other response that is 14 days after service of the motion and notice of motion.

(g) Proposed order for relief from the automatic stay. If a motion for relief from the automatic stay is filed with the Court, a proposed order that strictly conforms to the sample at [Appendix 4A](#) shall be submitted to the Court with the motion.

REFERENCES: 11 U.S.C. §§ 362 and 363; Fed.R.Bankr.P. 4001. *Compare* Bankr. D.S.D. R. 4001-4 regarding relief from the co-debtor stay under 11 U.S.C. § 1301(c).

Practice Pointers: If any party is served by mail, electronically, or under the provisions of Fed.R.Civ.P. 5(b)(2)(D), (E), or (F), the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

A sample motion for relief from the automatic stay and a variety of sample orders granting relief from the automatic stay in situations not addressed by the sample order at [Appendix 4A](#) (e.g., granting relief from the automatic stay and compelling abandonment, granting relief from the automatic stay following a hearing, granting relief from the automatic stay after an objection or other response is withdrawn, and granting

relief following a failure to comply with the terms and conditions established in an earlier order) are available on the Court's website at www.sdb.uscourts.gov under Forms/Local.