

Rule 4001-1

Relief from Automatic Stay

(a) Motion. A party seeking relief from the automatic stay provided by 11 U.S.C. § 362(a) must file a motion in accordance with Fed. R. Bankr. P. 9014, specifically setting forth the basis for the relief requested. Relief is limited to termination, modification or conditioning of the automatic stay. A motion for relief from stay must not be combined with a request for any other type of relief unless so authorized by the court, except that the movant may request adequate protection as alternative relief.

(b) Affidavit of Military Service Required. At the time of the filing of a motion for relief from stay in accordance with Fed. R. Bankr. P. 4001, and motions for relief from co-debtor stay in accordance with Fed. R. Bankr. P. 9014, movant must file an affidavit with the court which (a) states whether or not the respondent is in military service and shows necessary facts to support the affidavit, or (b) if movant is unable to determine whether or not the respondent is in military service, states that movant is unable to so determine. The court will not enter any default orders lifting the stay if a movant does not supply the required affidavit of military service. If the court is unable to ascertain a respondent's military status from the presented affidavit, it may require movant to file a bond before entering any default order lifting the stay.

(c) Service. Movant must serve both the motion and a notice that substantially conforms to LBR F within three (3) days of issuance of the notice. It must file a certificate of service, as provided on the bottom of the reverse side of the notice, within five (5) days of effecting service. The court may deny the motion for relief from stay and remove the matter from the court's calendar, if movant fails to serve the notice within the three (3) day period prescribed herein. All documents filed pursuant to this LBR must be served on the following parties:

- (1) the debtor;
- (2) debtor's counsel;
- (3) the trustee, if one has been appointed;
- (4) any committee elected pursuant to § 705 or appointed pursuant to § 1102;
- (5) all parties with liens of record, or any other party known to the movant claiming an interest in the property;
- (6) parties requesting notice; and
- (7) The United States Trustee in a Chapter 11 case.

(d) Relief from Stay of Act Against Property. If movant seeks relief with respect to a stay of an act against property under 11 U.S.C. § 362(d)(1) or (d)(2), the motion must be accompanied by the following supporting documents:

(1) true copies of all notes, bonds, mortgages, security agreements, financing statements, assignments, and any other document on which the movant will rely at the hearing;

(2) a report of any appraiser whose testimony is to be presented at the hearing;

(3) a statement of amount due, including a breakdown in the following categories:

(A) unpaid principal;

(B) accrued interest, from and to a specific date;

(C) late charges, from and to a specific date;

(D) attorney's fees;

(E) advances for taxes, insurance, and like concepts;

(F) unearned interest;

(G) any other charges; and

(H) a per diem interest factor.

(e) Response. Respondent must file an answer to the motion for relief from stay within eleven (11) days after service of the notice prescribed in subsection (c) of this LBR. The court may enter the order lifting stay for the moving party and take the matter off the court's calendar if respondent does not file a timely answer, provided that movant has filed the certificate of service prescribed in subsection (c) of this LBR.

(f) Hearing. The notice prescribed in subsection (c) of this LBR must set forth a specific date for the preliminary hearing on the motion for relief from stay. A hearing will be held on the date indicated in the notice if movant has timely filed the certificate of service and respondent has filed a timely response.

(g) Supporting Documents – Respondent. At least three (3) days prior to the hearing, respondent must file with the court and serve upon movant – or his attorney if so represented – a report of any appraiser whose testimony is to be presented at the hearing, as well as a copy of any other document to be used at the hearing.

(h) Attorney Conference – Contested Motions. If the motion for relief from stay is contested, counsel for the parties must confer with respect to the issues raised in the motion, in order to determine whether a consent order may be entered and/or to stipulate to relevant facts about the value of the property and to the extent and validity of any security agreement.

(i) Relief from Co-debtor Stay in Chapter 13 Cases. A motion for relief from a stay of action against a codebtor in a Chapter 13 case is a contested matter and is governed by Fed. R. Bankr. P. 9014, 11 U.S.C. § 1301 and these LBRs. The motion shall clearly state in the caption of the motion the subsection of 11 U.S.C. § 1301 under which the party is proceeding.