

Rule 4001-1: Automatic Stay - Relief From

(a) Form. A motion or stipulation for relief from the automatic stay shall be in the form as required by Local Rule 9004-1. The caption shall contain a brief description of the property, and the nature of the relief requested. The motion or stipulation and notice provided for in this Local Rule together shall constitute a request for relief from the automatic stay and such request shall be deemed to have been made after completion of service of the motion or stipulation and notice.

(b) Orders Confirming Termination or Absence of Stay. Any party seeking entry of an order confirming the termination or absence of a stay under any applicable provision of the Bankruptcy Code must file a motion or stipulation in accordance with this Rule and Local Bankruptcy Rule 9013-1.

(c) Residential Property Pre-Filing Certification. Unless the movant is seeking emergency relief under Bankruptcy Code § 362(f), a motion seeking relief as to the debtor's residence must be accompanied by a certification that: (i) ~~movant's~~movant's counsel sent a letter seeking to resolve the issues necessitating the motion to ~~debtor's~~debtor's counsel or the debtor, if the debtor is without counsel, and that after sincere effort the parties have been unable to resolve the matter, and (ii) the letter was sent at least seven days prior to the filing of the motion. In the absence of such certification the court may deny the inclusion of attorney's fees as part of the secured debt or as part of the allowed claim.

(ed) Service.

(1) Motions. A motion for relief from the automatic stay, a proposed form of order, and the notice required by subsection (d) shall be promptly served by movant upon:

- (A) The debtor;
- (B) The debtor's counsel;
- (C) The case trustee, if any; and
- (D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured creditors' committee and counsel for any committee appointed under the Code.

(2) Stipulations. A stipulation for relief from the automatic stay entered into by the parties before the filing of a motion, a proposed form of order, and the notice required by subsection (d) shall be promptly served by movant upon:

- (A) The debtor;
- (B) The debtor's counsel;

(C) The case trustee, if any; and

(D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured ~~creditors'~~creditors' committee and counsel for any committee appointed under the Code.

(3) Additional Notice. The notice required by subsection (d) of this rule shall be promptly served by movant upon:

(A) Any other party known to movant to claim an interest in the property that is the subject of the motion; and

(B) Any other person or entity required by law or the court.

(4) Stipulated Order. Upon proper notice, the movant may upload a Stipulated Order Modifying the Automatic Stay without the necessity of filing a motion for relief and without incurring a filing fee should the parties resolve the matter without court action.

(de) Notice of Motion or Stipulation. Contemporaneously with the motion or stipulation, movant will serve and file a form of notice providing the details of the motion or stipulation and that if no objection is served on movant and filed within 14 days of service, the motion or stipulation may be approved by the court.

(ef) Movant's Supporting Documents. Each motion shall be supported by legible copies of:

(1) All documents asserted to establish a valid, perfected security interest; and

(2) All documents that movant contends support an assertion of a lack of adequate protection or equity in property, including appraisals or summaries thereof, currently in ~~movant's~~movant's possession or control upon which it intends to rely at final hearing.

(fg) Entry of Order. If an objection to the motion or stipulation is not timely filed and served, the proposed form of order may be lodged and served with a certification of service and of no objection, ~~which certification may not be made until the expiration of three business days after the last day for objection.~~ If the court determines that the movant filed improperly or in bad faith a certification of no objection, the movant may be subject to sanctions.

(gh) Form of Order. The order lodged with the court shall not grant relief greater than that requested in the motion or stipulation. The caption also shall contain a brief description of the property.

(hi) Objection. An objection to the motion or stipulation for entry of an order for relief from stay shall be supported by specific facts. The objection shall be supported by legible copies of all documents that the objector contends supports an assertion of

adequate protection or equity in property, including appraisals or summaries thereof, currently in the objector's possession or control, which the objector intends to rely on at a final hearing-

(ij) Procedure Upon Objection.

(1) If a timely objection is filed and served, the court shall issue an order establishing the procedures for adjudication of the motion, including the procedures for the movant to obtain and notice a date, time, and place for a preliminary hearing in the matter or setting a preliminary or final hearing.

(2) Relief may be granted or denied at the preliminary hearing based upon the affidavits, declarations, and other supporting documentation filed as part of the motion or objection if the opposing party's affidavits, declarations and supporting documentation fail to establish the existence of a material issue of fact that requires an evidentiary hearing.

(jk) Separate ~~Litigation File-Adversary Proceeding~~. Upon request or sua sponte, the court may order the clerk to establish a separate ~~contested matter litigation file~~adversary proceeding.

Committee Notes ~~2009: Time deadlines have been~~2014: A new subsection (b) was added to consolidate former Local Rule 4001-2 with this Rule.

The timing for entry of a lodged order under subsection (g) was amended to be consistent with amendments to remove the requirement that an additional three days pass before any order could be entered. The timing of lodging order must still comply with Federal Rules of Bankruptcy Procedure, effective December 9006 and Local Rule 9006-1, 2009.