

## **Rule 4001-1**

### **Automatic Stay**

#### **(a) Relief From Automatic Stay**

##### **(1) Notice**

###### **(A) As to Property of the Estate**

A party in interest desiring relief from the automatic stay of an act against property of the estate shall file a motion and give fourteen (14) days' notice in accordance with FRBP 4001 and LBR 2002-1 to the debtor(s), attorney for the debtor(s), trustee, United States Trustee, those requiring notice under FRBP 2002(i) and FRBP 4001, and any other party known to movant claiming an interest in the subject property.

###### **(B) As to Other Acts**

A party in interest desiring relief from the automatic stay of an act other than against property of the estate shall file a motion and give fourteen (14) days' notice to the debtor and debtor's attorney in accordance with LBR 2002-1.

###### **(C) Content of Notice**

The notice and motion shall describe the property or interest involved, including a statement as to its fair market value and encumbrances thereon.

###### **(D) General Provision**

The date of the request shall be the date that a motion requesting a modification to the automatic stay is filed along with the certificate required by LBR 2002-1(b)(4).

##### **(2) When an Objection is Made**

**(A)** If an objection is timely filed and served, the party desiring relief from the stay shall obtain a hearing date and time from the court's Web site and shall notify the objecting party of the date of the hearing.

**(B)** The preliminary hearing will be by telephonic conference and based on affidavits only, but may be supported by written memoranda.

(C) Duty to Confer

The moving party has a duty to confer with an objecting party for the purpose of attempting to resolve the differences between the parties.

(D) Timing of Filing Affidavits and Supporting Memoranda

(i) Notwithstanding LBR 5005-1(c), the moving party shall file and serve affidavits in support of request for modification of stay together with any memoranda of authority at least seven (7) days before the preliminary hearing.

(ii) The opposing party shall file and serve responsive affidavits and opposing memoranda of authority at least seven (7) days before the preliminary hearing.

(iii) Notwithstanding LBR 5005-1(c), a document intended to be considered by the Court in connection with a scheduled hearing or a request for modification of stay shall be served and filed in accordance with subparagraphs (i) and (ii) above.

(E) Waiver

Failure to follow these procedures by the moving party will be deemed to be a waiver of the automatic lifting provisions of § 362(e) of the Code and consent to the continuation of the automatic stay pending the conclusion of the final hearing.

**(b) Confirmation That No Stay is in Effect, Continuation or For Reimposition of Stay**

(1) A party in interest desiring an order confirming that no stay is in effect pursuant to § 362(c)(4)(A)(ii) of the Code, shall file a motion and shall give fourteen (14) days' notice and hearing to the Master Mailing List in accordance with LBR 2002-1.

(2) A party in interest desiring that the stay continue in effect pursuant to § 362(c)(3)(B) of the Code shall file a motion and give fourteen (14) days' notice and hearing to the Master Mailing List in accordance with LBR 2002-1.

The motion shall be filed no later than seven (7) days following the filing of the petition for relief.

The date and time of the hearing shall be included in the notice and shall be within thirty (30) days of the filing of the petition for relief.

- (3) A party in interest desiring the automatic stay to take effect pursuant to § 362(c)(4)(B) of the Code shall file a motion and give fourteen (14) days' notice and hearing to the Master Mailing List in accordance with LBR 2002-1.

**(c) Proof of Interest**

A party desiring relief from the stay shall provide to the trustee or debtor in possession, with the notice, copies of documents evidencing the interest of the requesting party, and the perfection of that interest, if appropriate.

**(d) Stipulation**

A stipulation of the debtor allowing relief from the stay is effective only as to acts against the debtor or the debtor's property. A stipulation of the trustee or debtor in possession allowing relief from the stay is effective only after notice has been given in accordance with subparagraph (a)(1) above.

**(e) Combining of Motions**

- (1) A motion for relief from the automatic stay or adequate protection shall not be combined with any other motion except a motion for abandonment or for relief from the codebtor stay.
- (2) If motions are combined, each request shall be clearly identified in the caption and in the body of the pleading.

**(f) Where No Objection is Made**

If no objection is timely filed and served, the party desiring relief from the stay may present ex parte a proposed order in accordance with LBR 9013-1.

## **Related Provisions**

FRBP 4001 Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

FRBP 9006 Computing and Extending Time

LBR 2002-1 Notice to Creditors & Other Interested Parties  
LBR 9073-1 Hearings

11 USC 362 Automatic Stay

28 USC 1930(b) Bankruptcy Court Fee Schedule

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**AUGUST 1, 2016**