

## **Rule 4001-2**

### **Cash Collateral**

#### **(a) Contested Use of Cash Collateral**

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

- (A) Unless the consent of each entity having an interest in the cash collateral is obtained, a trustee or debtor in possession desiring to use, sell, or lease cash collateral shall file and serve a motion, along with a form of the order as an attachment as required by FRBP 4001(b), and shall give fourteen (14) days' notice to parties with an interest in the collateral, to any committee appointed under the Code or its authorized agent, or, if no committee has been appointed, the creditors included on the list filed pursuant to FRBP 1007(d) and to such other entities as the Court may direct. If an objection is timely filed, the trustee or debtor in possession shall request a final hearing date in accordance with LBR 2002 - 1(f)(3).
- (B) For good cause shown, the trustee or debtor in possession may apply ex parte for an order shortening time for notice and setting a date for an interim hearing. The interim hearing will ordinarily be scheduled by the Court within five (5) days of the application. The trustee or debtor in possession shall promptly give telephonic notice of the interim hearing to entities with an interest in the collateral.

##### **(2) Interim Hearing**

The interim hearing may be conducted telephonically on the record submitted. The record shall include affidavits or declarations in support of or in resistance to the requested use of cash collateral. Affidavits or declarations shall be served and filed as soon as practicable. The parties may present testimony at the interim hearing only on request of a party and approval of the Court. In the event testimony is permitted and fourteen (14) days' notice has been provided in accordance with the provisions of subparagraph (a)(1)(A) of this Rule, then the interim hearing may be treated by the Court as a final hearing.

##### **(3) Final Hearing**

The date for the final hearing shall be set by the Court at the conclusion of any interim hearing. An interim order providing for use of cash collateral may, by its terms, become a final order approving use of cash collateral if notice of the interim order is provided as set out in subparagraph (a)(1)(A) of this Rule and no objection is timely filed.

**(b) Agreement Concerning Use of Cash Collateral Involving Adequate Protection and/or Security Interest in Post-Petition Assets**

- (1) Any agreement concerning use of cash collateral involving adequate protection and/or granting of a security interest in post-petition assets of the debtor must be approved by order of the Court in accordance with FRBP 4001(d).
- (2) The provisions of this Rule pertaining to use of cash collateral set out in subparagraph (a) hereof shall also be applicable as to approval of agreements for use of cash collateral involving adequate protection and/or granting of a security interest in post-petition assets of the debtor.

**(c) Agreements Concerning Use of Cash Collateral Not Involving Adequate Protection and/or Security Interest in Post-Petition Assets**

Agreements between a trustee or debtor in possession and all parties having an interest in cash collateral that do not involve granting of adequate protection and/or security interests in post-petition assets of the debtor are not subject to approval by the Court, and notice of such agreements are not subject to the notice requirements of subparagraph (a) of this Rule.

**(d) Motion to Prohibit Use of Cash Collateral**

A party in interest may bring a motion to prohibit use by the trustee or debtor in possession of cash collateral. A motion to prohibit use of cash collateral shall be subject to the requirements of subparagraph (a) of this Rule.

**(e) Use of Cash Collateral in Chapter 13 Case**

In a case under Chapter 13, the debtor shall prepare all pleadings and documents if the debtor intends to use, sell or lease cash collateral. The debtor shall sign the pleadings, serve them on all required entities, including the Chapter 13 trustee, and file them with the Court. It shall be the debtor's responsibility to timely obtain the Chapter 13 trustee's signature on any necessary documents, to set any necessary hearings and to appear and argue at all hearings.

**Related Provisions**

FRBP 4001                      Relief from Stay and Use of Cash Collateral  
FRBP 9006(f)                Time

11 USC 353(a)(c)        Cash Collateral

28 USC 1930(b)        Bankruptcy Court Fee Schedule

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