

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 twelve (12) days notice to all entities on the Master Mailing List in accordance with LBR 2002-1. The notice shall describe the property or interest involved, including a statement as to its fair market value and any encumbrances thereon.

(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 twelve (12) days notice to the debtor and debtor's attorney in accordance with LBR 2002-1.

(C) 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)(3).

(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 website 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. This duty to confer shall be satisfied prior to the confirming of the hearing.

(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 six (6) days before the preliminary hearing.
- (ii) The opposing party shall file and serve responsive affidavits and opposing memoranda of authority at least three (3) 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 and a copy shall be delivered to the chambers of the Bankruptcy Judge if the document has not been filed at least seven (7) days prior to the hearing.

(E) Waiver

Failure to follow these procedures by the moving party will be deemed to be a waiver of the automatic lifting provisions of 11 USC 362(e) 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 11 USC 362(c)(4)(A)(ii), shall file a motion and shall give ten (10) days notice and hearing to the Master Mailing List in accordance with LBR 2002-1.
- (2) (A) A party in interest desiring that the stay continue in effect pursuant to 11 USC 362(c)(3)(B) shall file a motion and give ten (10) days notice and hearing to the Master Mailing List debtor and debtor's attorney in accordance with LBR 2001-1.

The motion shall be filed no later than five 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.

- (B) ~~Prior to filing the motion and sending the notice, the moving party shall obtain a hearing date and time pursuant to LBR 9073-1(a). If requested the court~~

~~shall provide a hearing date not later than thirty (30) days after the filing of the motion. The notice shall include the date and time of the hearing as well the notice and opportunity to object.~~

- (3) A party in interest desiring the automatic stay to take effect pursuant to 11 USC 362(c)(4)(B) shall file a motion and give ten (10) days notice and hearing to the Master Mailing List in accordance with LBR 2002-1 .

Note: This change would require that a party wishing to have the automatic stay continued pursuant to 11 USC 362(c)(3)(B) give 10 days notice and hearing to the MML. The change would also eliminate subparagraph ((b)(2)(B) of the rule, but retain the requirement that the date and time of the hearing be included in the notice. Reference to LBR 9073-1 in the “Relation Provisions” section should provide sufficient direction to the moving party to ensure a hearing date and time is able to be obtained in a timely manner.

.(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 to all entities on the Master Mailing List in accordance with subparagraph (a)(1) above.

(e) Non-combining of Motions

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 co-debtor stay.

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

[LBR 2001-1](#) [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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