

## Rule 4001-1

### Automatic Stay –Relief From

(a) **Relief From Automatic Stay Against Property of the Estate**

(1) Notice General Provisions

(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 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 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 received, the moving party must confirm the preliminary hearing with the appropriate chambers. Such confirmation of the preliminary hearing may be accomplished as soon as an objection is received but in no event later than eight (8) days prior to the date set for the hearing.~~

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) **Confirmation That No Stay is in Effect, Continuation or For Re-imposition of Stay Against Other Acts**

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(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 10 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 11 USC 362(c)(3)(B) shall file a motion and give ten (10) days notice and hearing to the Master Mailing List. The motion shall be filed and the notice given before the expiration of the thirty (30) day period set out in 11 USC 362(c)(3)(A).~~

~~(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.~~

~~(1) A party in interest desiring relief from the automatic stay of an act other than against property of the estate shall give twelve (12) days notice to the debtor and debtor's attorney in accordance with LBR 2002-1.~~

~~(2) 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 2002-1(e).~~

~~(3) 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.~~

**(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
<u>11 USC 362</u>	<u>Automatic Stay</u>
28 USC 1930 (b)	Bankruptcy Court Fee Schedule

*Note: Proposed changes would update the rule to reflect current practice concerning how hearings are set where there are modifications to the automatic stay.*

*Subsection (b) provides a process for changes to the Bankruptcy Code section (c)(4)(A)(ii) and (B). Sub-section (4)(A)(ii) provides that "on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect . In this section, notice and hearing in not required. In the companion section, however, a party in interest may ask the court to order the stay to take effect. This issue arises in relation to the "automatic" non-imposition of the stay where the debtor has had 2 or*

*more cases “pending within the previous year but were dismissed, other than a case refiled under section 707(b)”. This rule would not address the “in rem” automatic stay and relief therefrom provided by 11 USC 362(d)(4). The request to re-impose the stay is required to be made 30 days following the filing of the later case.*

**LBR 4001-1**  
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