



AMERICAN  
BANKRUPTCY  
INSTITUTE

## 2018 Annual Spring Meeting

# How to Successfully Litigate a Relief-from-Stay Motion

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# ABI Spring Meeting 2018

## Litigating the Automatic Stay

**Factual Background**

Gus ran a hot dog stand for many years on the site of an old filling station that sat across from the high school in town. Gus decided to retire and his buddy, Bill, wanted to take over and expand. Bill decided to create Bill's Hot Dog Emporium and undertook substantial renovations. He brought in all new equipment, financed by Utilities-R-Us. Further, he financed the expansion of the property through a mortgage by the local bank, Smallville Bank, who took a blanket lien on all the assets.

The Emporium operated successfully for a couple of years, but Smallville decided to build a new high school across town. Bill's business deteriorated and eventually led him to have to file a Chapter 11 bankruptcy.

To pump up his business, Bill had installed blowers to that the aroma of fresh hot dogs took over the neighborhood. Although some didn't mind, the all-organic, all-natural vegan supermarket Twigs & Berries ("T&B") didn't appreciate the smell. T&B had filed a nuisance and trespass suit against Bill that had been set to go to trial three weeks after the filing.

Along with the usual trade vendors, Bill had two secured lenders, Utilities-R-Us and Smallville Bank. These two lenders are now contemplating filing motions for relief from stay and how to best collect on their outstanding obligations. T&B is outraged and wonders what stunt Bill may undertake next that could destroy its business and wants to know about this "automatic stay" business.

**Recent Case Authorities**

**Background and Policy**

*In re Soares*, 107 F. 3d 969 (1<sup>st</sup> Cir. 1997)

This case arises from a Chapter 13 bankruptcy case where the debtor was seeking to protect his home. A credit union held the note and mortgage and initiated a foreclosure pre-petition. The debtor missed a couple of post-petition mortgage payments and the bank reactivated the pre-petition state court action.

The First Circuit made three important points. First, they used the term “buzznacking” to describe the creditor’s initial claim and argument in support of relief.

Second, the court clearly noted that judicial proceedings can’t conclude until a judicial function is completed and a decision rendered. As a result, the entry of an order by a state court granting the foreclosure is not purely “ministerial” and the automatic stay violation is void.

Finally, the First Circuit has given wonderful language and a description of the purpose of the automatic stay and its application. The court, referencing the purpose of the automatic stay in the Bankruptcy Code, refused to allow the retroactive granting of relief. The court reversed the bankruptcy court’s retroactive order, found the Bankruptcy Court has abused its discretion in allowing retroactive relief and further criticized the credit union for allowing the continuance of a state court action where they were fully aware and on notice of the bankruptcy.

**What is Sufficient Cause?**

*In re Elkins*, 2016 WL 6892728 (Bankr. E.D. Ky. Aug. 19, 2016). In this case, the debtor had filed two chapter 13 cases within 6 months of each other, with the first case being dismissed for the debtor’s failure to file schedules or a plan. In the second case, the debtor moved the court to extend the automatic stay past the statutory 30 day period under 11 U.S.C. § 362(c)(3) to allow him time to sell the property through a private sale. While the debtor established the second filing was done in good faith by clear and convincing evidence such that the stay could be extended under 11 U.S.C. § 362(c)(3) in the second case, the lienholder argued that there was cause to modify the stay to allow it to proceed with a judicial sale under 11 U.S.C. § 362(d)(1). In finding cause existed to lift the stay, the court noted the following facts: (i) the debtor’s second case had been pending for over 3 months; (ii) the debtor’s plan vaguely referred to an intended sale of the property and the debtor had not taken any action to follow through with a sale; (iii) the debtor did not provide an expressed timetable for the sale or a proposed sale process in the plan; (iv) the debtor had not engaged a realtor or an auctioneer; (v) the property was not the debtor’s primary residence; and (vi) the debtor provided no proof that the co-owner consented to the sale (nor had he move forward with an adversary proceeding under 11 U.S.C. § 363(h).

*In re Nierzwicki Holdings, LLC*, 544 B.R. 136 (Bankr. E.D. Ky. 2015)

On the eve of a state court trial to enjoin a nightclub's operations, the debtor filed bankruptcy. The Bankruptcy Court noted that "cause" must exist to justify stay relief to allow the state court litigation to proceed. The court, citing *In re United Imports, Inc.*, (203 B.R. 162, Bankr. D. Neb. 1996), identified five factors to determine whether to allow pre-petition litigation to proceed. Namely, the court discussed and identified (a) judicial economy; (b) trial readiness; (c) the resolution of preliminary bankruptcy issues; (d) the creditor's chance of success on the merits; and (e) the cost of defense or other potential burden on the bankruptcy estate and the impact of the litigation on other creditors. *Id.* at 138.

After discussing these elements, the bankruptcy court held the stay was to remain in effect, but that the nightclub was to be a good neighbor during the pendency of the bankruptcy.

#### **Standing**

*In re Basson*, 2018 WL 985754 (11<sup>th</sup> Cir. Feb. 20, 2018) and *In re Grant-Covert*, 658 Fed. Appx. 175 (3d Cir. 2016)

In both of these opinions the courts held that the evidence provided by the respective creditors seeking stay relief (assignment of mortgage, possession of note indorsed in blank, and copies of the security documents) was sufficient to establish statutory standing of the creditors to seek relief from the stay as parties in interest.

#### **In rem**

*In re Everton Aloysius Sterling*, 543 B.R. 385 (Bankr. S.D.N.Y. 2015)

In December 2011, Mr. Sterling executed a note in favor of Columbia Capital Co. in the amount of \$190,000 (the "Brooklyn Note"). The Brooklyn Note was secured by real property in Brooklyn, NY (the "Brooklyn Property") pursuant to a mortgage in favor of Columbia Capital Co. (the "Brooklyn Mortgage"). Columbia Capital Co. assigned the Brooklyn Note and Brooklyn Mortgage to 222 Funding Associates in 2012. In August 2012, Mr. Sterling, in his role as President of Latou Realty Group ("Latou"), executed a second note in favor of 222 Funding Associates in the amount of \$275,000 (the "Second Note"). The Second Note was secured by the Brooklyn Property and two parcels of real property located in Bronx, NY (the "Bronx Property," and collectively with the Brooklyn Property, the "Properties"). On the same day he executed the Second Note, the Brooklyn Note and the Second Note were consolidated (the "Consolidated Note"). Additionally, Mr. Sterling, as president of Latou, consolidated the Brooklyn Mortgage and the Second Mortgage (the "Consolidated Mortgage") in favor of 222 Funding Associates. To facilitate this transaction, Mr. Sterling deeded all of the Properties to Latou. On November 1, 2012, Latou defaulted on the Consolidated Note, and 222 Funding Associates subsequently filed a foreclosure action against the Bronx Properties in state court (the "Foreclosure Action"). On November 26, 2013, the eve of a pending motion in the Foreclosure Action for the entry of a judgment of foreclosure and sale, Latou deeded all of the Properties over to Mr. Sterling without the consent or knowledge of 222 Funding Associates. In June 2014,

222 Funding Associates assigned the Consolidated Mortgage and Consolidated Note to St. John's Place, LLC. Four months later, Mr. Sterling filed for bankruptcy protection.

St. John's Place, LLC sought relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) arguing that it lacked adequate protection due to the failure of the debtor to make any post-petition payments on the Consolidated Note and to pay real estate taxes on the Properties. Additionally, St. John's Place requested *in rem* relief under 11 U.S.C. § 362(d)(4), arguing that the bankruptcy filing was part of an improper scheme to hinder and delay its rights as a creditor. Finding that St. John's Place had standing to seek relief from the stay, the court held that a failure to make mortgage payments constitutes "cause" for relief from the automatic stay under 11 U.S.C. § 362(d)(1). Additionally, debtor's failure to timely pay real estate taxes was sufficient cause under 11 U.S.C. § 362(d)(1). The court also considered found that there was sufficient cause to lift the stay for pre-petition litigation applying the *Sonnax* Factors and concluded that a majority of the *Sonnax* Factors were applicable and supported lifting the stay to allow the Foreclosure Action to proceed.

With regards to *in rem* relief under 11 U.S.C. § 362(d)(4), the court found that the allegations asserted by St. John's Place were insufficient to satisfy the requirement of *in rem* relief under 11 U.S.C. § 362(d)(4) because under that provision the court must find that *the filing of the petition* was part of a scheme to delay, hinder, and defraud a creditor. While necessary for *in rem* relief, it was not enough that the debtor transferred the collateral without the consent of St. John's Place.

**Section 362(d)(1) and (2)**

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

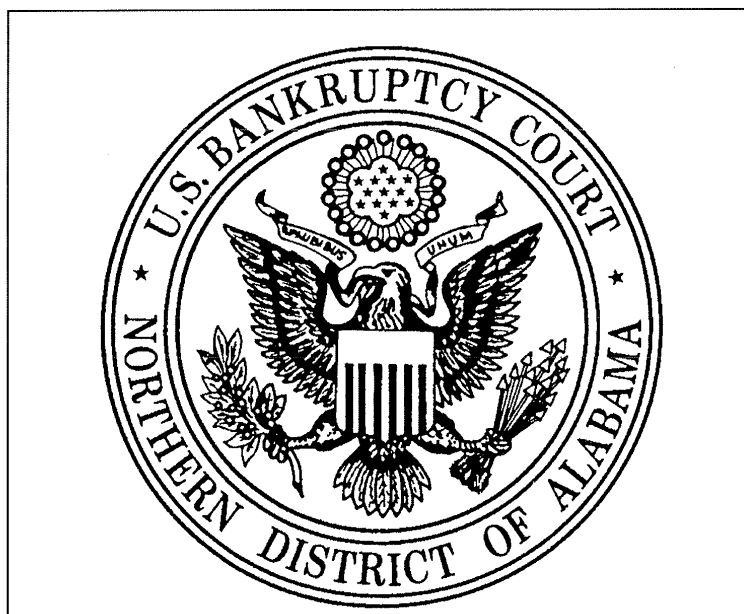
(B) such property is not necessary to an effective reorganization;

**Sample of Local Rules**

- **Northern District of Alabama**
- **Northern District of Georgia**
- **Northern District of Texas**
- **Northern District of Illinois**
- **Central District of California**

LOCAL RULES  
OF THE UNITED STATES  
BANKRUPTCY COURT

NORTHERN DISTRICT  
OF ALABAMA



(Eff. 12/1/2017)

**RULE 3015-2**

**CHAPTER 13 CONFIRMATION OF PLAN**

(a) **Objections to Confirmation.** An objection to confirmation of the plan or to the attorney's compensation proposed in the plan should state with particularity the grounds for the objection. An objecting party must file the objection at least 7 days before the confirmation hearing, unless otherwise ordered by the Court, and shall serve the objection upon the following:

- the debtor;
- the Trustee;
- affected creditors; and
- any other entity as the Court may direct.

An objecting party must attach a certificate of service to the objection.

(b) **Waiver of Objections.** An objection may be deemed waived unless a written objection is timely filed, served upon all proper parties, and the objector appears and prosecutes the objection at any hearing set on such objection.

(Eff. 12/1/2017)

**RULE 4001-1**

**RELIEF FROM AUTOMATIC STAY**

(a) **General.** A motion for relief from the automatic stay or from the codebtor stay is a contested matter governed by Bankruptcy Rule 9014.

(b) **Notice, Service of Motion, and Hearing.** Upon the filing of such a motion, the preliminary hearing will be consolidated with the final hearing unless the Court orders otherwise. The clerk's office or some other person as the Court may direct must prepare a notice of such hearing and transmit a copy of the notice to the following:

- the movant;
- the debtor or the debtor in possession;
- the Trustee;
- any committee appointed in the case, or, if no committee is appointed and it is a chapter 9 or 11 case, then on all creditors; and
- any other entity as the Court may direct.

The movant must serve a copy of the motion upon all of the aforesaid parties and attach a certificate of service to the motion. The hearing will be a final evidentiary hearing, and parties must be prepared for trial.

(c) **Fact Summary Sheet.** For a motion for relief from stay, a motion for relief from the co-debtor stay, a motion to renew a relief from stay motion, or a motion for adequate protection filed in a chapter 7 or 13 case, the movant must complete and file a fact summary sheet. The fact summary sheet must substantially comply with the fact summary sheet form found on this Court's website at <http://www.alnb.uscourts.gov/forms/all-forms?page=1>. The movant must file and serve the fact summary sheet completed in full at least 14 days prior to the first hearing date on the motion. The movant must ensure that, when the fact summary sheet is filed, it is filed as a separate event using the proper event from CM/ECF, not as an attachment to the motion. To file the fact summary sheet, the movant must select "Bankruptcy," "Miscellaneous," and "Fact Summary for Motion for Relief from Stay." The movant will serve the fact summary sheet using CM/ECF. If the movant does not fully complete, timely file, and properly serve the fact summary sheet, the Court may continue, dismiss, or deny the motion.

(Eff. 12/ 1/ 2015)

N. A. Gongora

## BLR 4001-1. Motion for Ex Parte Relief from Stay Based on Lack of Insurance Coverage.

(a) If collateral securing a claim, including property which is the subject of a lease, is an over-the-road vehicle, such as an automobile, motorcycle, or trailer, or is a boat or an airplane, and if the same is not insured with full collision and comprehensive insurance, then the holder of such claim may file with the Bankruptcy Court a motion for *ex parte* relief from the stay of 11 U.S.C. § 362(a) pursuant to 11 U.S.C. § 362(f) to obtain possession of the collateral or leased property.

(b) A motion for *ex parte* relief from the stay under this Rule shall be verified and shall:

(1) Include a description of the collateral or leased property; a statement of the amount of the claim and the basis on which the claim is secured; a statement of the basis on which the moving party believes that the collateral or leased property is not insured with full comprehensive insurance; and a statement that the moving party or its attorney has given or attempted to give oral notice to the debtor's attorney or to the debtor, if the debtor is not represented by counsel, that the motion is being filed;

(2) Be accompanied by a proposed order which shall provide that:

(A) The debtor or trustee is prohibited from using the collateral or leased property unless and until adequate evidence of full collision and comprehensive insurance is presented to the holder of the claim;

(B) The debtor or trustee, whichever is in actual physical possession of the collateral or leased property, shall notify the holder of the claim of the location of the collateral;

(C) The debtor or trustee, whichever is in actual physical possession of the collateral or leased property, shall surrender it to the holder of the claim within 72 hours, unless within that time (i) the holder of the claim is provided with adequate evidence of full collision and comprehensive insurance or (ii) the debtor or trustee requests a hearing concerning same;

(D) The holder of the claim is authorized to take physical possession of collateral or leased property required to be surrendered under this Rule, and to hold same, provided that (i) the holder may not dispose of the collateral or leased property unless and until the automatic stay is modified or terminated or expires as a matter of law, and (ii) if the debtor or trustee provides adequate evidence of full collision and comprehensive insurance prior to the expiration or termination of the automatic stay, then the holder of the claim must return the property to the debtor or trustee; and

(E) Upon entry of the order, the holder of the claim or its attorney shall serve copies of the motion and order promptly on the debtor, the debtor's attorney, and the trustee, and shall provide telephonic notice of entry of the order to the debtor's attorney and the trustee, if the trustee is in actual physical possession of the property.

(c) This relief does not limit the availability of *ex parte* relief from the stay in accordance with the requirements of Bankruptcy Rule 4001(a)(2).

**LOCAL BANKRUPTCY RULES  
OF THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

**EFFECTIVE SEPTEMBER 10, 2010**

*Revised as of December 1, 2017*

**PART IV. THE DEBTOR: DUTIES AND BENEFITS**

***L.B.R. 4001-1 Automatic Stay - Relief From.***

**(a) Motions; Service.**

No summons is required. The movant shall file with the Bankruptcy Clerk a certificate of service attached to the motion, evidencing the mode of service and the names and addresses of the parties served, and a certificate of conference evidencing compliance with Local Bankruptcy Rule 9014-1(d)(1). The motion shall contain a notice of the requirement of the filing of a response to the motion as set forth in subdivision (b) of this rule. A motion for relief from the automatic stay shall be served on the following parties:

- (1) The debtor, and, if the debtor is represented by an attorney, the attorney;
- (2) Any attorney for a committee appointed or elected in the case, or if no attorney has been employed to represent the committee, through service on its members; and if no committee has been appointed in a chapter 9 or 11 case, the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d);
- (3) Any party scheduled in the case as holding a lien, with respect to a motion seeking relief from the stay of an act against property;
- (4) The United States Trustee;
- (5) Any trustee or examiner appointed in the case; and
- (6) All parties requesting notice pursuant to Local Bankruptcy Rule 2002-1(j).

**(b) Response Required.**

Any party opposing the motion for relief from stay shall file a response within 14 days from the date of service of the motion. Such response shall include a detailed and comprehensive statement as to how the movant can be “adequately protected” if the stay is to be continued. If no response is filed, the allegations in the motion may be deemed admitted, and an order granting the relief sought may be entered by default. The motion for relief shall contain a statement in substantially the following form:

PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT (ADDRESS OF CLERK'S OFFICE) BEFORE CLOSE OF BUSINESS ON (MONTH) (DAY),

(YEAR), WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE HEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE “ADEQUATELY PROTECTED” IF THE STAY IS TO BE CONTINUED.

**(c) Discovery.**

The time within which responses to discovery requests on automatic stay issues are due under Bankruptcy Rules 7028-7036 is shortened from 30 to 14 days. Similarly, depositions on automatic stay issues may be taken commencing at the expiration of 14 days after service of the motion for relief from the automatic stay.

**(d) Attorney Certification.**

In any evidentiary hearing conducted on a motion for relief from the automatic stay, all counsel shall certify before the presentation of evidence: (1) that good faith settlement discussions have been held or why they were not held; (2) that all exhibits, appraisals and lists of witnesses (it is presumed that the debtor(s) will testify) have been exchanged at least 2 days in advance of the hearing date; and (3) the anticipated length of the hearing. Exhibits shall be marked in advance of the hearing and two bound, marked sets of exhibits shall be presented to the court prior to the commencement of the hearing.

**(e) Preliminary Hearings and Affidavits**

- (1) Preliminary Hearings and Affidavits, Generally.** Absent compelling circumstances warranting an alternative procedure, evidence presented at preliminary hearings in the Dallas and Fort Worth Divisions on motions for relief from the automatic stay will be by affidavit only. Except as set forth below (with regard to a motion filed by the holder of claim secured by a security interest in the debtor’s principal residence, and with regard to requests for expedited settings), the party requesting the hearing shall serve evidentiary affidavits at least 7 days in advance of such hearing; the responding party shall serve evidentiary affidavits at least 2 days in advance of such hearing; the party requesting the hearing must give notice to all other affected parties of the requirement of this rule. The failure of a respondent to file an evidentiary affidavit, or the failure of an attorney to attend a scheduled and noticed preliminary hearing, shall be grounds for granting the relief, regardless of the filing of a response to the motion.
- (2) Special Affidavits and Proof Requirements for Holders of Mortgages on a Debtor’s Principal Residence (Applicable in all Chapter Cases).** Whenever a motion for relief from automatic stay or whenever a motion for approval of an agreement regarding automatic stay is filed regarding a security interest in the debtor’s principal residence, an affidavit in support of the motion shall be filed and served on the debtor, debtor’s counsel, trustee, United States Trustee, and any

other affected party within 7 days of the filing of the motion—regardless of the hearing date and regardless of whether any opposition is expected. The affidavit must be signed and certified under penalty of perjury by a person with knowledge of the facts, and must include: (a) a copy of the note or other debt instrument and any and all assignments thereof to substantiate proof of holder status; (b) a copy of the deed of trust showing the date, volume, page and county of recordation; and (c) in the event of alleged delinquent payments as a “cause” for relief from stay, a chronological payment history for the debtor showing, on a month-by-month basis, beginning with the first payment alleged to be delinquent, the date payment was due, the amount due, the date payment was received (if applicable), the amount received (if applicable), how any received payments were applied (*e.g.*, applied to balance, put in suspense, put in escrow, *etc.*), and also indicating any other types of defaults alleged including escrow shortages, such as for payments for insurance premiums or ad valorem tax payments made by the creditor. The affidavit shall clearly reflect all amounts received by the movant since the debtor allegedly first became delinquent, and whether such amounts were applied to indebtedness, put in suspense, or otherwise dealt with. The response deadline for motions for relief from automatic stay or for a motion for approval of an agreement regarding automatic stay regarding security interests in the debtor’s principal residence, as well as the affidavit deadline for any responders, is the same as set forth in subdivisions (b) and (e)(1) of this L.B.R. 4001-1. No Order will be entered on a motion for relief from automatic stay or on a motion for approval of an agreement regarding a security interest in the debtor’s principal residence unless an affidavit complying with this subdivision is filed and properly served (regardless of whether there is any pending opposition to the motion by any party).

- (3) **Time for Filing Affidavit in the Event of a Request for an Expedited Hearing.** Notwithstanding the foregoing, whenever a party seeks an expedited setting on a motion for relief from automatic stay, an affidavit in support of such motion shall be filed at the time of the filing of the motion.
- (4) **Motions to Extend Time to File Affidavits/Dismissal of Stay Motions.** In the event that an Affidavit is not timely filed by a holder of a security interest in the debtor’s principal residence, as set forth in subsection (e)(2) above, the underlying motion may be *sua sponte* dismissed by the court. A holder of a security interest in the debtor’s principal residence may move for an extension of time to file the required affidavit, but (a) extensions shall be granted only in exceptional circumstances; and (b) in the event of an extension, the preliminary hearing will be continued out to a date that is at least as many days long as the extended time to file the affidavit. By seeking such an extension, the holder of a security interest in the debtor’s principal residence waives the time periods provided by Section 362(e).

- (5) **Application of Rule of Divisions.** Subsections (2) through (4) of this Rule 4001-1(e), describing the specific affidavit requirements in connection with stay motions involving a debtor's principal residence, apply in all Divisions of the Northern District of Texas. Subsection (1) of this Rule 4001-1(e), which more generally refers to there being preliminary hearings on motions to lift stay, applies only in the Dallas and Fort Worth Divisions.
- (f) **Continuation or Imposition of Automatic Stay.**
- (1) **Motion Required.** Any party that seeks a continuation or imposition of the automatic stay under 11 U.S.C. §§ 362(c)(3)(B) or -(c)(4)(B) shall file a motion with the court, and shall set the motion for hearing on notice to all parties against whom the movant seeks to continue or impose the stay.
- (2) **Filing, Service and Setting.** The motion shall be filed and served promptly upon the filing of a petition for relief under the Bankruptcy Code so that it may be heard by the court within 30 days of the date of the filing of the petition, and so that parties may be given at least 21 days' notice of the hearing without the need for an expedited or emergency hearing, which will be granted only in exceptional circumstances. A copy of the motion and notice of hearing shall be served on all parties against whom the debtor seeks to continue or impose the stay, and proof of such service shall be filed within 2 days after service of the motion.
- (3) **Content of Motion.** The motion shall:
- (A) specifically allege the identity of the creditor(s) as to which the movant seeks to continue or impose the stay;
  - (B) identify, by case number, any and all prior bankruptcy filings by the debtor;
  - (C) state whether the debtor has had more than one previous case pending within the preceding year;
  - (D) state whether any previous case was dismissed within the preceding year after the debtor failed to perform any of the acts set forth in 11 U.S.C. § 362(c)(3)(C)(i)(II);
  - (E) state whether there has been a substantial change in the financial or personal affairs of the debtor and, if so, support the statement with specific factual allegations;
  - (F) state whether any creditor moved for relief from the automatic stay in a previous case and, if so, the disposition of that motion; and
  - (G) allege specific facts entitling the movant to relief.

- (4) **Evidence Presented at Hearing.** At the hearing on the motion, the movant shall present evidence demonstrating that the new case is filed in good faith as to the creditor(s) to be stayed. The movant shall be present at the hearing to testify.

**PART V. COURTS AND CLERKS**

***L.B.R. 5003-1 Bankruptcy Clerk - General Authority.***

**(a) Bankruptcy Clerk Authorized to Amend Form of Mailing List.**

The Bankruptcy Clerk shall be authorized to change the form of the mailing list required by Local Bankruptcy Rule 1007-1(a) to meet requirements of any automated case management system hereafter employed by the Bankruptcy Clerk. The Bankruptcy Clerk shall give appropriate notice to the bar of any such change in form.

**(b) Bankruptcy Clerk Authorized to Refuse Certain Forms of Payment.**

The Bankruptcy Clerk shall maintain a list of all attorneys and law firms whose checks or credit or debit cards have been dishonored. The Bankruptcy Clerk may refuse future check, credit or debit card payments from such attorneys or firms and require an alternative form of payment.

***L.B.R. 5004-1 Disqualification - Recusal.***

A Presiding Judge, upon recusal in any case, shall request that the chief bankruptcy judge or the Bankruptcy Clerk reassign the case.

***L.B.R. 5005-1 Filing Papers - Requirements.***

**(a) Filing the Petition.**

The petition shall be filed in the office of the Bankruptcy Clerk responsible for the division in which the case is to be filed.

**(b) Signature Block.**

The signature block of every pleading shall include the name, state bar number, if applicable, address, telephone number and email address, if applicable, of the party or attorney filing the pleading. In the case of an attorney, the attorney's firm name and the name of the party represented shall also be included.

**United States Bankruptcy Court**  
*Northern District of Illinois*



**Local Rules**

As amended, Effective April 01, 2016

**RULE 3022-1 NOTICE TO CLOSE CASE OR ENTER FINAL DECREE IN  
CHAPTER 11 CASES**

Unless the court orders otherwise, debtors or other parties in interest moving after Chapter 11 plan confirmation either to close the case or enter a final decree must (1) give notice of such motion to the United States Trustee, any Chapter 11 trustee, and all creditors, and (2) state within the notice or motion the actual status of payments due to each class under the confirmed plan.

**RULE 4001-1 MOTIONS TO MODIFY STAY**

**A. Required Statement**

All motions seeking relief from the automatic stay pursuant to § 362 of the Bankruptcy Code, must be accompanied by a completed copy of the Required Statement form available on the court's web site ([www.ilnb.uscourts.gov](http://www.ilnb.uscourts.gov)). Motions filed without the Required Statement may be stricken or denied without notice.

**B. Date of Request**

The date of the "request" for relief from the automatic stay referred to in § 362(e) of the Bankruptcy Code is deemed to be the date of presentation of the motion, provided that the movant has complied with applicable notice requirements.

**RULE 4001-2 CASH COLLATERAL AND FINANCING ORDERS**

**A. Motions**

- (1) Except as provided in these Rules, all cash collateral and financing requests under §§ 363 and 364 of the Bankruptcy Code must be heard by motion filed pursuant to Fed. R. Bankr. P. 2002, 4001, and 9014 ("Financing Motions").
- (2) Provisions to be Highlighted. All Financing Motions must (a) recite whether the proposed form of order or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation or loan agreement, and (c) state the justification for the inclusion of such provision:
  - (a) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditors (i.e., clauses that secure pre-petition debt by post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its pre-petition security agreement or applicable law).

## 2018 ANNUAL SPRING MEETING

### REQUIRED STATEMENT TO ACCOMPANY MOTIONS FOR RELIEF FROM STAY

All Cases: Debtor(s) \_\_\_\_\_ Case No. \_\_\_\_\_ Chapter \_\_\_\_\_

All Cases: Moving Creditor \_\_\_\_\_ Date Case Filed \_\_\_\_\_

Nature of Relief Sought: ☐ Lift Stay ☐ Annul Stay ☐ Other (describe) \_\_\_\_\_

Chapter 13: Date of Confirmation Hearing \_\_\_\_\_ or Date Plan Confirmed \_\_\_\_\_

Chapter 7: ☐ No-Asset Report Filed on \_\_\_\_\_

☐ No-Asset Report not Filed, Date of Creditors Meeting \_\_\_\_\_

1. Collateral
  - a. ☐ Home
  - b. ☐ Car Year, Make, and Model \_\_\_\_\_
  - c. ☐ Other (describe) \_\_\_\_\_
2. Balance Owed as of Petition Date \$ \_\_\_\_\_  
Total of all other Liens against Collateral \$ \_\_\_\_\_
3. In chapter 13 cases, if a post-petition default is asserted in the motion, attach a payment history listing the amounts and dates of all payments received from the debtor(s) post-petition.
4. Estimated Value of Collateral (must be supplied in *all* cases) \$ \_\_\_\_\_
5. Default
  - a. ☐ Pre-Petition Default  
Number of months \_\_\_\_\_ Amount \$ \_\_\_\_\_
  - b. ☐ Post-Petition Default
    - i. ☐ On direct payments to the moving creditor  
Number of months \_\_\_\_\_ Amount \$ \_\_\_\_\_
    - ii. ☐ On payments to the Standing Chapter 13 Trustee  
Number of months \_\_\_\_\_ Amount \$ \_\_\_\_\_
6. Other Allegations
  - a. ☐ Lack of Adequate Protection § 362(d)(1)
    - i. ☐ No insurance
    - ii. ☐ Taxes unpaid Amount \$ \_\_\_\_\_
    - iii. ☐ Rapidly depreciating asset
    - iv. ☐ Other (describe) \_\_\_\_\_
  - b. ☐ No Equity and not Necessary for an Effective Reorganization § 362(d)(2)
  - c. ☐ Other "Cause" § 362(d)(1)
    - i. ☐ Bad Faith (describe) \_\_\_\_\_
    - ii. ☐ Multiple Filings
    - iii. ☐ Other (describe) \_\_\_\_\_
  - d. Debtor's Statement of Intention regarding the Collateral
    - i. ☐ Reaffirm
    - ii. ☐ Redeem
    - iii. ☐ Surrender
    - iv. ☐ No Statement of Intention Filed

Date: \_\_\_\_\_

\_\_\_\_\_  
Counsel for Movant

(Rev. 12 /21/09)

# LOCAL BANKRUPTCY RULES

Effective December 1, 2017\*



## UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA

Edward R. Roybal Federal Building  
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Los Angeles, CA 90012  
(855) 460-9641

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\* LBR 3015-1(b)(3) revised 2/13/18 (see Public Notice 18-005)

**LBR 4001-1. STAY OF 11 U.S.C. § 362**

- (a) **General.** Except as provided by this rule, the requirements of LBR 9013-1 through LBR 9013-4 apply to a motion for relief from the automatic stay, extension of the stay, imposition of the stay, or confirmation that the stay is terminated or no longer in effect. If the motion is filed in a chapter 13 case, the moving party must also comply with LBR 3015-1(r).
- (b) **Form Motions and Orders.**
  - (1) **Motions.** An entity seeking relief from the automatic stay, extension of the stay, imposition of the stay, or confirmation that the stay is terminated or no longer in effect, must file a motion using the court-mandated F 4001-1 series of form motions. The failure to use the mandatory forms may result in the denial of the motion or the imposition of sanctions.
  - (2) **Orders.** In addition to the requirement that all orders on § 362 motions comply with LBR 9021-1:
    - (A) **Mandatory Form Orders.** Any order granting relief from the automatic stay, extension of the stay, imposition of the stay, or confirming that the stay is terminated or no longer in effect, must be lodged using the court-mandated F 4001-1 series of form orders. The failure to use the mandatory form orders may result in the court not signing or entering the order; and
    - (B) **Motions Settled by Stipulation.** Any order granting a motion regarding the stay, as settled by stipulation, must be prepared using the court-mandated F 4001-1 series of form orders and is exempt from the requirements of LBR 9021-1(b)(2). Compliance with the CM/ECF Procedures contained in the Court Manual is required regarding signatures of parties and/or counsel to the stipulated terms.
- (c) **Motion for Relief from Automatic Stay.**
  - (1) **Filing and Service.** The motion, notice of hearing, and all supporting documents must be served by the moving party in the time and manner prescribed in LBR 9013-1(d) on the following parties:
    - (A) **Residential Unlawful Detainer Motions.** If the motion seeks relief from the stay to proceed with an unlawful detainer action involving a residential property with a month-to-month tenancy, tenancy at will, or a tenancy terminated by an unlawful detainer judgment, the movant must serve only the debtor and debtor's attorney (if any).
    - (B) **Motions Requesting Relief Applicable in Future Cases, Including Under 11 U.S.C. § 362(d)(4).** If a motion seeks relief from the stay applicable in future cases (sometimes called "in rem" or "ex parte" relief), the movant must serve the person(s) who executed the documents through which the

**LBR 4001-1**

movant asserts its interest in the property (sometimes referred to in the mortgage context as the “original borrower”, and in the leasehold context, the “original lessee”), in addition to those persons and entities required by LBR 4001-1(c)(1)(C).

- (C) Other Relief from Automatic Stay Motions. In all other cases, the movant must serve:
- (i) The debtor and debtor’s attorney (if any);
  - (ii) The trustee or interim trustee (if any);
  - (iii) Any applicable codebtor where relief is sought from the codebtor stay under 11 U.S.C. §§ 1201 or 1301;
  - (iv) If relief is sought as to property of the estate, the holder of a lien or encumbrance against the subject property that is known to the movant, scheduled by the debtor, or appears in the public record; and
  - (v) Any other party entitled to notice under FRBP 4001.
- (2) Hearing. Unless the court orders otherwise at the time of the hearing, the preliminary hearing under 11 U.S.C. § 362(e) is consolidated with the final hearing under 11 U.S.C. § 362(d).
- (3) Continuance By Stipulation. A stipulation by the moving party to continue a hearing under 11 U.S.C. § 362(d) to a later date is deemed a waiver of the applicable portions of 11 U.S.C. § 362(e) until the conclusion of the hearing on such later date. Unless otherwise ordered, an order by the court to continue a hearing under 11 U.S.C. § 362 to a later date is deemed to include an order continuing the stay in effect until the conclusion of the hearing on such later date.
- (4) Separate Motion. A motion for relief from the automatic stay must be filed separately from, and not combined in the same document with, any other request for relief, unless otherwise ordered by the court.
- (d) Motion for Extension or Imposition of Stay.
- (1) A party in interest seeking an extension of the stay under 11 U.S.C. § 362(c)(3)(B) or imposition of the stay under 11 U.S.C. § 362(c)(4)(B) must file a motion and serve the motion, notice of hearing, and supporting documents as provided in subsection (c)(1) of this rule and upon all other parties in interest against whom extension or imposition of the stay is sought.
  - (2) The motion must be filed promptly after the petition date to be timely considered and, if necessary, accompanied by a separate motion under LBR 9075-1(b) for a hearing on shortened notice.

(e) **Motion for Order Confirming Termination of Automatic Stay.**

- (1) A party in interest requesting an order under 11 U.S.C. § 362(j) confirming termination of the automatic stay must file a motion supported by a declaration containing competent evidence establishing that the stay has terminated or was never in effect under 11 U.S.C. § 362(c).
- (2) The motion and supporting declaration must be served as provided in subsection (c)(1) of this rule.

(f) **Deposit of Rent under 11 U.S.C. § 362(l).**

- (1) Any rent deposited with the clerk of the court pursuant to 11 U.S.C. § 362(l)(1)(B) must be in the form of a certified or cashier's check or money order payable to the lessor or landlord in the amount of any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
- (2) The rent must be deposited with the clerk of the court at the time the bankruptcy petition is filed. The rent deposit and the bankruptcy petition must be accompanied by a copy of the judgment for possession and Official Form 101A, Initial Statement About an Eviction Judgment Against You.
- (3) As the certification to be filed and served pursuant to 11 U.S.C. § 362(l)(2), debtor must use Official Form 101B, Statement About Payment of an Eviction Judgment Against You. This certification must be filed and served within 30 days after the filing of the bankruptcy petition in accordance with 11 U.S.C. § 362(l)(2).
- (4) Pursuant to 11 U.S.C. § 362(l)(5)(D), the clerk will transmit the payment to the lessor at the address listed Official Form 101A, Initial Statement About an Eviction Judgment Against You.

(g) **Relief from Automatic Stay to Proceed in Another Forum.** If the court grants a motion for relief from the automatic stay to proceed in another forum, the prevailing party must promptly file a copy of the entered order in that forum.

(h) **Application Confirming Loan Modification Will Not Violate the Stay.** An application for order confirming loan modification does not violate the automatic stay must be served on the debtor, debtor's attorney, and applicable lender, and may be ruled on without a hearing pursuant to LBR 9013-1(p).

**LBR 4001-2. CASH COLLATERAL AND DEBTOR IN POSSESSION FINANCING**

- (a) **Use of Mandatory Form for Cash Collateral and/or Debtor in Possession Financing Motions or Stipulations.** Each motion to obtain credit or to approve the use of cash collateral, debtor in possession financing, and/or cash management under 11 U.S.C. §§ 363 or 364, or related stipulation (collectively, "Financing Motion") must be accompanied by mandatory court-approved form F 4001-2.STMT.FINANCE.