

## LBR 4001-1. Automatic Stay; Codebtor Stay - Relief From

**(a) Motion and Supporting Documents.**

- (1) Motion.** A motion requesting relief from the automatic stay imposed by § 362(a) must state the basis under § 362(d) for the relief being sought. Except for related relief from a codebtor stay under § 1201(a) or 1301(a), the motion may not include requests for other relief.
- (2) Cover Sheet.** The motion must attach a cover sheet substantially conforming to the local form (**Cover Sheet - Motion for Relief from Stay**) summarizing the factual basis for the request.
- (3) Declaration.** A motion for relief from the automatic stay or codebtor stay must be accompanied by admissible evidence supporting the factual basis for the motion.
- (4) Account Statement.**
  - (A) When Statement Required.** If the motion alleges that the debtor has defaulted in making payments to the moving party, the motion must include an account statement and an admissible declaration attesting to the statement's accuracy. The statement must cover the entire period during which the moving party contends that the debtor has been in default. The statement and declaration must be written in language comprehensible to a lay person, and must include the following information:
    - (i)** a description of the accrued and unpaid obligations, including the nature of the obligation (e.g., principal and interest, escrow, etc.) and the date on which it accrued;
    - (ii)** the amount of any payments during the period of the statement; and
    - (iii)** the date of receipt and posting of each such payment.
  - (B) When Statement Not Required.** An account statement is not required if the debtor has indicated in the Chapter 7 Individual Debtor's Statement of Intention or in a Chapter 13 plan that the property which is the subject of the motion will be surrendered to the moving party.

**(b) Hearing.**

- (1) Preliminary Hearing.** Unless the court orders otherwise, a motion for relief from the automatic or codebtor stay will be scheduled for a preliminary hearing in accordance with LBR 9013-1(c). The moving party must contact the courtroom

deputy prior to filing the motion in order to obtain a hearing date that meets the requirements of § 362(e). Failure to obtain a hearing date in compliance with this rule will be deemed to be the moving party's consent to extend the automatic stay beyond thirty days, pending the conclusion of a final hearing and determination under § 362(d).

- (2) **Continuance of Hearing.** A preliminary hearing may be continued or consolidated with a final hearing if the moving party, the debtor, and all other parties responding to the motion agree to the continuance or consolidation and the extension of the 30-day period for the entry of an order under § 362(e). The parties do not need to appear at the initially scheduled hearing if the moving party contacts the courtroom deputy, represents that all parties consent to the change, obtains a new hearing date and time, and promptly files and serves a notice of the continued preliminary hearing or the final hearing.
- (3) **Oral Testimony.** Unless the court orders otherwise, no oral testimony will be received by the court at any hearing on a motion for relief from the automatic or codebtor stay.

(c) **Notice.**

- (1) **Form of Notice.** The moving party must file and serve a notice of hearing substantially conforming to the local form (**Notice of Hearing**), which provides explicit notice of the deadline to file an opposition statement and that the court may grant the relief without a hearing in the absence of a timely filed opposition statement.
- (2) **Separate Document.** The notice must be filed as a separate docket entry.

(d) **Service.** The moving party must serve, promptly after filing, a copy of the motion and the notice on:

- (1) the debtor;
- (2) the debtor's attorney;
- (3) any trustee appointed in the case;
- (4) any committee appointed in the case under § 705 or 1102, or its attorney, or, if no committee of unsecured creditors has been appointed in a chapter 11 case, the creditors included on the list filed pursuant to Bankruptcy Rule 1007(d);
- (5) if the motion seeks to enforce a lien, all other parties, known to the moving party, who claim an ownership or security interest in the same collateral;
- (6) if the motion concerns a codebtor stay, the codebtor; and
- (7) if the motion concerns the commencement or continuation of a judicial, administrative, or other action or proceeding, all parties to the action or

proceeding.

**(e) Opposition Statement and Reply.**

- (1)** Deadlines to file and serve an opposition or reply regarding a motion requesting relief only from the automatic stay under § 362:
  - (A)** opposition or other responsive statement: 14 days before the hearing date;
  - (B)** reply by moving party: 7 days before hearing date;
- (2)** Deadlines to file and serve an opposition or reply regarding a motion including a request for relief from the codebtor stay under § 1201 or 1301:
  - (A)** opposition or other responsive statement: the later of (i) 20 days after the filing of the motion or (ii) 7 days before the hearing date;
  - (B)** reply by moving party: 3 days before hearing date.

**(f) Order Granting Relief.**

- (1) Relief Granted by Default.** If no timely opposition has been filed, the moving party may request the entry of an order by filing a declaration substantially conforming to the local form (**Declaration and Request for Entry of Order**). The section regarding the Servicemembers Civil Relief Act of 2003 must be completed.
- (2) Form of Order.** The moving party may obtain the relief requested by submitting a proposed order substantially conforming to the local form order (**Order Granting Relief from Stay**). If the form order is not used, the proposed order must include the following provisions unless the court directs otherwise:
  - (A)** No deficiency judgment or other money judgment may be entered against the debtor unless and until the bankruptcy court enters an order
    - (i)** denying the debtor a discharge;
    - (ii)** determining that the debt owed to the moving party is not dischargeable;
    - (iii)** dismissing the case prior to the entry of a discharge; or
    - (iv)** expressly authorizing the entry of such a judgment;
  - (B)** If the subject property is sold and the proceeds exceed the amount of the secured claim(s), the moving party must turn over the surplus proceeds to the trustee;
  - (C)** The secured portion of any proof of claim filed by the moving party with respect to the subject property is deemed withdrawn and the moving party may seek collection of any unsecured deficiency amount

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- only by filing a proof of claim under § 501, or by amending a previously filed proof of claim;
- (D) The order will remain effective despite the conversion of the case to one under another chapter;
  - (E) The order is limited to granting relief from the automatic stay and/or the codebtor stay under the Bankruptcy Code and does not determine any issues concerning any rights, claims, remedies, or defenses of the moving party, the debtor, or any other party; and
  - (F) In a chapter 13 case, as soon as practicable after the trustee receives notice of this order, the trustee shall cease making distributions on all claims secured by the property described above except for funds then being held by trustee for distribution.
- (3) **Special Provisions.** The order may include the following special provisions only if the motion specifically requested such relief and provided an adequate factual and legal basis therefore:
- (A) inapplicability of the stay provided under Bankruptcy Rule 4001(a)(3);
  - (B) "in rem" relief, where the order is binding with respect to the subject property in another bankruptcy case that has been or may be filed;
  - (C) retroactive relief or annulment of the stay; and
  - (D) with respect to relief from the codebtor stay under § 1201 or 1301, a provision for a deficiency judgment against a codebtor without further order of the court.
- (g) **Stipulations.** The court will consider granting relief from the automatic or codebtor stay, without the filing of a motion, upon submission of a stipulation for the relief if signed by the debtor, the party seeking relief, the trustee, and any party in interest, including a codebtor. In a chapter 11 case where no trustee has been appointed, the stipulation must be signed by the members of the unsecured creditors committee or its attorney. In a chapter 11 case where no trustee or unsecured creditors committee has been appointed, notice of not less than 21 days of the stipulation and an opportunity to object must be given to the holders of the 20 largest unsecured claims.

## LBR 4001-2. Cash Collateral and Postpetition Financing

- (a) **Scope of Rule.** This rule applies to all requests for authority to use cash collateral and all requests for authority to incur debt in cases under chapter 7, chapter 11, and chapter 12 ("Financing Motions").
- (b) **Contents of Motion.** All Financing Motions must include a budget covering the time period during which the order will remain in effect.
- (c) **Effect of Noncompliance.** The court may deem unenforceable any provision not described, explained, or identified as required by Bankruptcy Rule 4001(c)(1)(B).
- (d) **Interim Relief.** Absent extraordinary circumstances, the court will not approve an interim order on a Financing Motion that contains any of the provisions described in Bankruptcy Rule 4001(c)(1)(B).

## LBR 4001-4. Rent Deposit

- (a) **Deposit with Initial Statement About an Eviction.** The clerk shall not accept a deposit of rent under § 362(l)(1)(B) unless all the following requirements are met.
- (1) The debtor must file an **Initial Statement About an Eviction Judgment Against You (Official Form 101A)** with the petition at the commencement of the case.
  - (2) The debtor must attach to the Initial Statement a copy of the judgment for possession or eviction that was entered prior to the filing of the bankruptcy petition.
  - (3) The Initial Statement must be signed by the debtor(s), contain the landlord's name and mailing address, and have the boxes checked which certify that:
    - (A) under applicable state or nonbankruptcy law, the debtor has the right to stay in the residence by paying the landlord the entire delinquent amount; and
    - (B) the debtor is depositing the rent that would be due during the 30 days after filing the bankruptcy petition.
  - (4) The rent deposit must be in the form of a certified or cashier's check or money order, payable to the landlord.
- (b) **Service of Initial Statement on Landlord.** The debtor must mail a copy of the Initial Statement on the landlord by and file a certificate of service.
- (c) **Statement About Payment of an Eviction Judgment.** Upon payment in accordance with § 362(l)(1)(B)(2) of the entire amount owed as stated in the eviction judgment, the debtor must:
- (1) certify full payment of the judgment amount in a **Statement About Payment of an Eviction Judgment Against You (Official Form 101B)**, filed within 30 days after filing the bankruptcy petition;
  - (2) file a notice substantially conforming to the local form (**Notice of Deadline to Object to Certification Regarding Rent Payment**), providing the landlord notice of a 14-day objection deadline; and
  - (3) file a certificate of service on the landlord for the Statement About Payment of an Eviction Judgment and the Notice of Deadline to Object.
- (d) **Non-Compliance.** Failure to comply with the certification requirements in the relevant statutory provisions and this rule will result in the clerk's transmittal to the landlord of a certified copy of the docket indicating the absence of the debtor's certifications and a

notice regarding applicability of the automatic stay provision of § 362(b)(22).

## LBR 4001-5. Automatic Stay - Extending or Imposing Stay; Confirming No Stay in Effect

**(a) Motions to Extend or to Impose Stay.**

- (1) Motion Required.** A party requesting an order to extend the automatic stay under § 362(c)(3)(B), or to impose the stay under § 362(c)(4)(B), must file a motion.
- (2) Contents.** The motion must state whether relief is sought with respect to all creditors or only specified creditors, who must be identified by name. The motion must set forth facts, supported by declarations as appropriate, showing that the filing of the present case is in good faith as to the creditors to be stayed and describing the circumstances that led to dismissal of any prior case(s) by the debtor.
- (3) Notice of Hearing.**
  - (A) Motion to Extend Stay.** A party seeking to extend the stay under § 362(c)(3)(B) must obtain a hearing date that is not later than 30 days after the date of filing of the petition. A request to shorten time is not required if the motion is filed and served not less than 14 days before the hearing date. The motion must include a notice that any response to the motion must be filed and served on the moving party not less than 7 days before the hearing date. The moving party is not required to file a reply but may do so not less than 3 days before the hearing date. Absent a timely response, LBR 9013-1(c)(3) applies.
  - (B) Motion to Impose Stay.** A motion to impose the stay is governed by LBR 9013-1(c) and, if shortening of time is sought, by LBR 9006-1(b).

**(b) Motions to Confirm Termination or Absence of Stay.**

- (1) Motion Required.** Unless the court orders otherwise, a party requesting an order to confirm that the automatic stay has been terminated or is not in effect under § 362(h)(1) or (j) must file a motion.
- (2) Contents.**
  - (A) Motions Under 11 U.S.C. § 362(h)(1).** A motion to confirm termination of the automatic stay filed under § 362(h)(1) must set forth facts, supported by declarations as appropriate, describing the personal property that is the subject of the motion and the actions taken by the debtor and the moving party with respect to the debtor's statement of



intention filed pursuant to § 521(a)(2), and any proposed reaffirmation under § 524(c). A copy of the debtor's statement of intention must be attached as an exhibit to the motion.

**(B) Motions Under 11 U.S.C. § 362(j).** A motion to confirm the termination or absence of a stay under § 362(j) must set forth facts, supported by declarations as appropriate, regarding the dismissal or closing of any prior cases, the time any discharge was granted or denied, and any other facts pertinent to the motion.

**(3) Notice and Hearing.** Motions to confirm the termination or absence of a stay are governed by LBR 9013-1(c) and, if shortening of time is sought, by LBR [9006-1](#)(b).

**(c) Service.** A motion and notice governed by this rule must be served on the debtor, the debtor's attorney, any creditors or parties in interest affected by the motion, the United States Trustee, and any trustee or committee appointed in the case.

## LBR 4003-1. Exemptions

- (a) **Itemization.** The exemption list in Schedule C - Property Claimed as Exempt must itemize, describe, and separately value each item claimed as exempt, except for household goods with an aggregate value not exceeding \$500.
- (b) **Amendment of Schedule C.**
  - (1) **Amendment not Supplemental.** An amended Schedule C - Property Claimed as Exempt should replace in its entirety, not supplement, the originally filed schedule. Unless an amended Schedule C is clearly marked as supplemental, the debtor is deemed to have withdrawn any claims of exemption made in the originally filed schedule.
  - (2) **Service.** The debtor must serve a copy of any amendment to Schedule C on all creditors, and promptly file a certificate of service to show compliance.
- (c) **Objection to Claim of Exemption.** A party may object to a debtor's claim of exemption by filing and serving on the debtor, the debtor's attorney, and the trustee an objection and notice of hearing in accordance with LBR 9013-1(c).
- (d) **Extending Deadline to Object.** A party may request an extension of the deadline to object to a debtor's claim of exemption by filing and serving on the debtor, the debtor's attorney, and the trustee a motion and notice substantially conforming to the local form (**Motion to Extend Time to File Objection to Exemptions; Notice of Hearing**).
- (e) **Order Setting Apart Exempt Property.** If no objection to a claim of exemption in a chapter 7 case has been made within the time provided in Bankruptcy Rule 4003(b), the court may, at any time, without a hearing and without reopening the case, enter an order approving claimed exemptions and setting apart exempt property as claimed.

### LBR 4004-3. Discharge of Individual Debtor

(a) **Chapter 7.**

- (1) **Eligibility for Discharge.** In a case commenced on or after October 17, 2005, the court may grant a discharge to an individual chapter 7 debtor who is otherwise eligible to receive a discharge, unless a statement is filed alleging that § 727(a)(12) applies to the debtor. Such a statement must be filed no later than the deadline to file a complaint objecting to the debtor's discharge stated in Bankruptcy Rule 4004(a) or other time set by the court.
- (2) **Notice to Creditors.** The clerk will include notice of this rule in the notice given under Bankruptcy Rule 2002(a)(1) to the parties identified in the debtor's creditor matrix.

(b) **Chapter 11.**

- (1) **Discharge After Completion of All Plan Payments.** Upon completion of all payments due under a confirmed plan, a debtor in a chapter 11 case who is an individual must file and serve on all creditors a certification and notice of completion of plan payments substantially conforming to the local form (**Chapter 11 Individual Debtor's Certification of Eligibility for Discharge; Notice of Deadline to Object**). The certification must include a statement that § 1141(d)(5)(C) does not apply to the debtor. Any objection to the certification and the granting of a discharge must be filed within 30 days after the date of filing of the certification and notice.
- (2) **When Motion Required.** A debtor in a chapter 11 case who is an individual may request the granting of a discharge without completion of all payments under the plan, as provided under § 1141(d)(5)(A) and (B), by filing and serving on all creditors a motion in accordance with LBR 9013-1(c).

(c) **Chapter 12 and Chapter 13.**

- (1) **Discharge After Completion of Plan Payments.** Upon completion of all payments due under a confirmed plan, a chapter 12 or chapter 13 debtor in a case commenced on or after October 17, 2005, must file with the court a certification of eligibility for a discharge substantially conforming to Form 2830 (**Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)**). If the certification indicates that the debtor is eligible for a discharge with respect to § 1228(a) and (f) or § 1328(a) and (h), the clerk will serve on all creditors a notice that any objection to the certification and the granting of a

discharge must be filed within 30 days after the date of the notice. If a debtor fails to file the certification under this rule by 30 days after the date of filing of the trustee's final report and account, the clerk may close the case without the granting of a discharge.

- (2) When Motion Required.** A debtor in a chapter 12 or chapter 13 case may request the granting of a discharge without completion of all payments under the plan, as provided under § 1228(b) or § 1328(b), by filing and serving on all creditors a motion in accordance with LBR 9013-1(c). Unless the court orders otherwise, the granting of a discharge under this provision remains subject to the requirements to file a certification of eligibility under paragraph (1) and, in a chapter 13 case, to have completed an instructional course concerning personal financial management.

## LBR 4008-1. Reaffirmation

- (a) **Reaffirmation Agreement Deficiency.** If a reaffirmation agreement is not accompanied by the **Reaffirmation Agreement Cover Sheet (Official Form 427)** required under Bankruptcy Rule 4008(a), or if the cover sheet or the reaffirmation agreement is incomplete, the court may not consider a reaffirmation agreement for approval, or may find, without a hearing, that a presumption of undue hardship has not been rebutted to the satisfaction of the court. The cover sheet is incomplete if it does not contain the debtor's income and expenses as stated in the reaffirmation agreement and as stated in schedules I and J, together with an explanation of any differences between these amounts.
- (b) **Extension of Deadline to File Reaffirmation Agreement.** A debtor's request to defer entry of a discharge and to extend the time to file a reaffirmation agreement by filing a motion conforming to the local form (**Debtor's Motion to Defer Entry of Discharge and Enlarge Time to File Reaffirmation Agreement**), generally will be considered ex parte. A motion for such relief by a party other than the debtor must comply with LBR 9013-1(c).