

LOCAL BANKRUPTCY RULE 4001-1
RELIEF FROM AUTOMATIC STAY

(a) Motions for Relief From Automatic Stay Under 11 U.S.C. § 362(d) Against Debtor:

(1) Selection of Hearing Date: Each division maintains a separate motion for relief from stay calendar. Information as to the time and dates of each division's calendar may be obtained from the assigned judge's staff or the court's website at www.cob.uscourts.gov. All motions for relief from stay must be set for hearing on the calendar of the division to which the case is assigned. A party desiring to file a motion for relief from stay in a bankruptcy case will select from the calendar of available hearing dates a proposed hearing date, which must be the latest hearing date available on the assigned judge's calendar which is not more than thirty (30) days from the date the motion for relief from stay is filed with the court.

(2) Waiver of Rights under 11 U.S.C. § 362(e): In the event the movant sets a hearing date beyond thirty (30) days, the movant is deemed to have waived its right under 11 U.S.C. § 362(e) to automatic relief after thirty (30) days.

(3) Notice of Hearing and Time to Object: Subject to the provisions of this L.B.R., the movant must comply with the provisions of L.B.R. 9013-1. In addition to the parties specified in FED. R. BANKR. P. 4001, the notice and motion must be served on the debtor and debtor's counsel, the United States Trustee, the case trustee, and any party with an interest, such as a party claiming lien rights in property against which the movant seeks relief. The notice of hearing must provide that any objection and request for hearing must be filed by a specific date that is at least seven (7) days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing.

(4) Mandatory Motion Requirements: In addition to complying with L.B.R. 9013-1, the movant must:

(A) plead with specificity facts supporting the requirements of 11 U.S.C. § 362(d);

(B) if, as a basis for relief, a default is alleged as to payment on a business or consumer debt, attach a detailed, understandable payment history regarding the debt and arrearages;

(C) file and serve a notice in substantial conformity with [L.B. Form 4001-1.1](#);

(D) if the debtor or co-debtor is an individual, file a Servicemembers Civil Relief Act (“SCRA”) Affidavit pursuant to L.B.R. 4002-2(c);

(E) file and serve a proposed order in substantial conformity with [L.B. Form 4001-1.3](#); and

(F) pay the prescribed filing fee.

The motion must include the type of information, as applicable, outlined in the Guidelines for Motions for Relief from Stay L.B. Rule 4001-1App. The failure to provide such detail may result in the denial of the motion without prejudice and without further notice or hearing.

(5) No objections: If no objections are filed and the Movant wants an order granting the requested relief, the Movant may file a certificate of non-contested matter, [L.B. Form 4001-1.2](#), no sooner than the day of the scheduled hearing.

(b) Motions for Relief from Stay Under 11 U.S.C. §§ 1201 or 1301 Against Co-Debtor: The procedures for seeking relief from the co-debtor stay are the same as that specified in (a) above except:

(1) the party must select a hearing date that is not more than twenty (20) days from the date of the motion, and

(2) the notice of hearing must provide that any objection and request for hearing must be filed by a specific date that is at least seven (7) days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing.

In the event that the movant sets a hearing date beyond twenty (20) days, the movant is deemed to have waived its right to relief within twenty days under 11 U.S.C. § 1201(d) and 1301(d). If the movant files a combined motion under 11 U.S.C. § 362(d) and § 1201 or 1301, the movant will be deemed to have waived their rights under § 1201(d) or § 1301(d) to automatic relief after twenty (20) days.

(c) Procedures for Preliminary Hearings: The following procedures apply at preliminary hearings on motions for relief from stay:

(1) No testimony will be taken. Evidence will only be accepted by way of an oral offer of proof and exhibits. Such offers must provide sufficient detail to enable the court to make specific findings based thereon and must include the identity of the witnesses available to testify at an evidentiary hearing and an explanation of their expected testimony. Written summaries of witnesses’ testimony are not required but may be submitted.

(2) Parties must exchange all exhibits they intend to use, or may reasonably anticipate using, no later than 24 hours prior to the preliminary hearing. The exhibits must be tendered to the court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.

(3) Objections to tendered evidence should be made at the conclusion of each party's declaration. Any objection must identify the evidence objected to and specify the grounds for the objection.

(4) The court will treat the hearing as a preliminary hearing and, based on the proffers of evidence, if there is a reasonable likelihood that the party opposing relief will prevail at a final hearing, may set the matter over for a final hearing. In the alternative, the court may consider the offers of proof and, absent the need for an evidentiary hearing, grant or deny the request for relief from stay.

(5) Expert Witnesses: Any party anticipating the use of an expert witness for a final hearing will, at the initial hearing, comply with FED. R. BANKR. P. 7026(a)(2).

(d) Telephonic Hearings: Telephonic appearances may be permitted in accordance with the information on chambers' procedures for the presiding judge located on the court's website at www.cob.uscourts.gov. Any party appearing telephonically must exchange witness lists and exhibits with the other parties and file them with the court no later than 24 hours prior to the hearing.

Commentary

[Source: L.B.R. 401 and GPO 2005-2]

See FED. R. BANKR. P. 4001 and 9014.

Parties are advised to use the proper forms applicable to this L.B.R. 4001-1 (relief from stay) and not those applicable to L.B.R. 4001-2 (termination/absence of stay).

See Servicemembers Civil Relief Act of 2003 ("SCRA"), 50 App. U.S.C. § 501 et seq. and L.B.R. 4002-2 for further information on SCRA.