

LBR 4001-1. AUTOMATIC STAY - RELIEF FROM

(a) Contents of Motions for Relief From Stay. A motion seeking relief from the automatic stay as to property of the estate shall specify the relief requested and include the following:

1. A description of the security interest(s) claimed by the movant in the subject property ("collateral").
2. The movant's estimate of value of the collateral and the basis of that valuation.
3. A statement of the indebtedness claimed to be due and owing with an itemization showing principal and advances, accrued interest, attorney fees, and costs.
4. A statement of the amount of any other secured claims against the collateral (if known), and whether any such claim is superior or inferior to the movant's claim.
5. When the relief requested is based upon a security interest in residential real property, a statement of the name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the security instrument as provided in O.C.G.A. § 44-14-162.2(a) et seq..
6. If relief is sought pursuant to § 362(d)(1) for cause, including lack of adequate protection, a factual statement of the grounds for such relief.
7. Motions seeking relief under § 362(d) shall comply with the requirements of LBR 9004-1(a)(1) and shall include a notice of hearing pursuant to LBR 9004-1(c)(6).
8. Relief from stay allowed pursuant to § 1301(d) can only be granted by order of the Court.

(b) Agreements Providing for Relief From the Automatic Stay or for the Provision of Adequate Protection. All motions for approval of an agreement to provide adequate protection, for the modification or termination of the stay provided in § 362, for the use of cash collateral, or for the approval of an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or

equal to the entity's lien or interest in such property shall require the service on or the consent of the following entities:

1. In a Chapter 11 or a Chapter 9 case, any committee appointed by the United States Bankruptcy Trustee or the authorized agent for the committee, or, if no committee has been appointed, the 20 largest unsecured creditors contained in the list filed pursuant to FRBP 1007(d), the Trustee, any individuals or entities requesting notices pursuant to FRBP 2002(g), and any other individuals or entities that the Court may direct.

2. In Chapters 7, 12, and 13, all agreements, as set out above, require the consent of the Trustee appointed in the case, unless the Trustee has been served with the agreement and the Trustee has expressly abandoned the asset, filed a report of no assets in a Chapter 7 case, or indicated in writing that the Trustee has no opposition to the motion. No further service on any other entity shall be required unless otherwise ordered by the Court.

(c) Payment of Secured Claims After Motion for Relief Is Granted or Collateral Surrendered. In a Chapter 13 case, after a motion for relief from stay has been granted, or after confirmation of a plan or a modified plan that provides for surrender of secured collateral, the Chapter 13 Trustee is authorized, following written notice to any such creditor, to suspend payments on any claim filed by such creditor. Actual possession of the collateral by the creditor is not a prerequisite for the application of this Rule. After liquidation of the collateral the creditor may reinstate its right to receive payment on the claim by notifying the Chapter 13 Trustee in writing, with a copy to the Court, that it believes it is entitled to payment under the plan, and the creditor furnishes an accounting of all proceeds, if any, received from the sale of the collateral.

(d) Ex Parte Relief From Stay to Obtain Possession of Certain Uninsured Collateral.

1. Except in Chapter 11 cases, if collateral securing a claim, including leased property, is a motor vehicle, trailer, boat, or an airplane, and if there is a contractual obligation by the debtor to provide collision and comprehensive insurance and the same is not in effect, then the creditor may file with the Court a motion for ex parte relief from the stay

pursuant to § 362(f) to obtain possession of the collateral or leased property.

2. The Bankruptcy Court may, in its discretion, apply this Rule to a Chapter 11 case.

3. Any motion for ex parte relief from the stay under this Rule shall be verified in accordance with FRBP 9011(e) and shall:

A. Include the following:

(1) A description of the collateral or leased property;

(2) A statement of the amount of the claim and the basis on which the claim is secured;

(3) An affidavit setting forth the basis on which the movant believes that the collateral or leased property is not insured with full collision and comprehensive insurance;

(4) A statement that the movant or its attorney has given or attempted to give oral notice to the debtor's attorney or the debtor, if the debtor is not represented, and to the case Trustee, that the motion is being filed, and;

(5) A statement specifying the failure, if any, of the debtor to produce proof of insurance at the time of the § 341(a) Meeting of Creditors as required by LBR 4070-1.

B. Be accompanied by a proposed order which shall provide that:

(1) 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 movant or movant's counsel;

(2) The debtor or Trustee, whichever is in actual physical possession of the collateral or leased property, shall notify the movant or movant's counsel of the location of the collateral;

(3) The debtor or Trustee, whichever is in actual physical possession of the collateral or leased property, shall surrender it to the movant within 72 hours, unless within that time the movant or movant's counsel is provided with adequate evidence of collision and comprehensive insurance or, the debtor or Trustee requests a hearing concerning same;

(4) The movant is authorized to take physical possession of collateral or leased property required to be surrendered under this Rule, and to hold same, at the movant's risk. The movant shall not dispose of the collateral or leased property unless and until the automatic stay is modified, terminated, or expires as a matter of law. If the debtor provides adequate evidence of full collision and comprehensive insurance prior to the expiration or termination of the automatic stay, then the movant shall return the property to the debtor;

(5) The movant or movant's counsel shall serve copies of the motion and proposed order promptly on the debtor, the debtor's attorney, and the Trustee, and shall provide telephonic notice to the debtor's attorney and, if the Trustee is in actual physical possession of the property, to the Trustee.

(e) Negotiation of Modifications to Mortgages on Residential Real Estate and the Automatic Stay. The stay as provided under § 362 of the United States Bankruptcy Code shall not operate to prevent debtors and creditors from voluntarily re-negotiating the terms of an existing mortgage on residential property in a ~~Chapter 13~~ case in this court. The debtor or creditor is free to decline entering into any such negotiations and is empowered to terminate the negotiations at any time invoking the full protection of the stay under § 362. **In a Chapter 13 case, any** modification **may be** agreed to by the debtor and the creditor **without Court approval, but** shall be immediately reported to the case Trustee and the debtor shall file a modified plan as needed or as requested by the Trustee.

(f) Automatic Termination of the Stay Pursuant to Section 362(c)(3). Upon the filing of a motion by a party in interest pursuant to Section 362(c)(3)(B), the court hereby authorizes the extension of the stay until the court enters

a final order on the motion. The notice of the motion shall be deemed completed upon service on all parties in interest, and said notice shall be prepared, filed, and served pursuant to LBR 9004-1(c)(5). A party at interest may request an expedited hearing at any time following service of the motion.