

PART IV. THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1 Procedure on Request for Relief from the Automatic Stay of 11 U.S.C. § 362(a).

- (a) Service. Upon the filing of a motion seeking relief from the automatic stay under 11 U.S.C. § 362, the movant shall file and serve a notice of hearing substantially in compliance with Local Form 106A. In chapter 11 cases, an individual seeking relief from the automatic stay to pursue a personal injury or wrongful death action shall serve counsel for the debtor or trustee, counsel for all official committees, counsel for the Debtor-in-Possession financing lenders and any other party directly affected by the motion. In all other cases, the motion shall be served on counsel for the debtor, counsel for all official committees, any trustee, all parties requesting notices and all known parties having an interest in the subject property or relief requested.

- (b) Scheduling. In all chapter 11 and chapter 15 cases, the movant shall obtain a hearing date from chambers in advance of filing and serving the motion and notice of motion; provided, however, that in any cases where omnibus hearing dates have been scheduled by the Court, the movant may notice its motion for the earliest omnibus hearing date that provides sufficient notice in accordance with Local Rule 9006-1(c). If the hearing date noticed by the movant is not within twenty-eight (28) days of the filing of the motion, the movant is deemed to have consented to the stay remaining in effect until such time as the motion can be heard. If the movant consents to a continuance of the hearing on the motion, then the movant is deemed to consent to the stay remaining in effect until the adjourned hearing date on the motion. In all chapter 7 and chapter 13 cases, the movant shall obtain a hearing date from the Court's website in advance of filing and serving its motion and notice of motion.

- (c) Supporting Documentation. With respect to a motion for relief from stay where the movant is seeking to foreclose on its collateral:
 - (i) The movant shall file the following documents with the motion:

- (A) An affidavit or declaration, under 28 U.S.C. § 1746, and supporting exhibits containing the following data, if applicable:
- (1) True copies of all notes, bonds, mortgages, security agreements, financing statements, assignments and every other document upon which the movant will rely at the time of hearing;
 - (2) A statement of amount due, including a breakdown of the following categories:
 - (a) Unpaid principal;
 - (b) Accrued interest to and from specific dates;
 - (c) Late charges to and from specific dates;
 - (d) Attorneys' fees;
 - (e) Advances for taxes, insurance and the like;
 - (f) Unearned interest; and
 - (g) Any other charges;
 - (3) A current breakdown of postpetition arrears setting forth the unpaid monthly mortgage payments and any applicable late charges;
 - (4) A per diem interest factor; and
 - (5) Movant's good faith estimate of the value of the collateral as of the petition date of the respective debtor.
- (ii) At least seven (7) days prior to the hearing, any party opposing the motion shall file with the Court and serve on the movant and all parties required to be served under this Rule the following documents:
- (A) A response to the motion;

- (B) An affidavit or declaration, under 28 U.S.C. § 1746, stating the responding party's good faith estimate of (1) the amount due to the movant and (2) the value of the collateral as of the petition date of the respective debtor; and
 - (C) A statement as to how the movant can be adequately protected if the stay is to be continued.
- (iii) The hearing date specified in the notice of the motion will be a preliminary hearing at which the Court may (A) hear oral argument, (B) determine whether an evidentiary or other final hearing is necessary, (C) set a date by which the parties shall exchange supporting documentation, (D) set a date by which the parties must produce the report of any appraiser whose testimony is to be presented at the final hearing and/or (E) set a date and time for a final hearing.
- (d) Conference. The attorneys for the parties shall confer with respect to the issues raised by the motion in advance of the hearing for the purpose of determining whether a consensual order may be entered and/or for the purpose of stipulating to relevant facts, such as the value of the property and the extent and validity of any security instrument.