

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) Notice and Service. A motion seeking relief from the automatic stay under 11 U.S.C. § 362 must be accompanied by a notice of hearing substantially conforming to Local Form 106A, and be served as follows:
 - (i) Service Generally. Except as provided in subsection (a)(ii) of this Local Rule, the motion and notice must be served on the parties listed in Local Rule 2002-1(b), including any party with an interest in the property subject to the motion.
 - (ii) Motion Related to Personal Injury or Wrongful Death Action in a Chapter 11 Case. A motion for relief from the automatic stay in a chapter 11 case to pursue a personal injury or wrongful death action need only be served on counsel for the debtor or trustee, counsel for any official committee, counsel for any lender providing postpetition financing or use of cash collateral, and any other party directly affected by the relief requested in the motion.
- (b) Scheduling.
 - (i) Chapter 11 or 15 Case. In a chapter 11 or 15 case, the movant must obtain a hearing date from chambers before filing and serving the motion and notice or schedule the motion for the next omnibus hearing date in the case that provides sufficient notice under Local Rule 9006-1(c). If the omnibus hearing date is not within 30 days of when the motion is filed, then the movant is deemed to have consented to the stay remaining in effect until the motion is heard. If the movant consents to continuing the hearing on the motion, then the movant is deemed to consent to the stay remaining in effect until the adjourned hearing.
 - (ii) Chapter 7 or 13 Case. In a chapter 7 or 13 case, the movant must obtain a hearing date from the Court's website before filing and serving the motion and notice.
- (c) Supporting Documentation for Motion Related to Exercise of Remedies Against Collateral. The following requirements apply to a motion for relief from stay to exercise remedies against collateral:
 - (i) The movant must file the following documents with the motion:
 - (A) An affidavit and supporting exhibits containing the following data, as applicable:
 - (1) True copies of any note, bond, mortgage, security agreement, financing statements, or assignment, and every other document the movant will rely on at the hearing;
 - (2) A statement of the amount due to the movant, including a breakdown of the following items:

- (a) Unpaid principal;
 - (b) Accrued interest to and from specific dates;
 - (c) Late charges to and from specific dates;
 - (d) Attorneys' fees and expenses;
 - (e) Advances for taxes, insurance, and the like;
 - (f) Unearned interest; and
 - (g) Any other charges.
 - (3) A breakdown of current postpetition arrears setting forth the unpaid loan or monthly mortgage payments and any applicable late charges;
 - (4) A per diem interest factor; and
 - (5) Movant's good faith estimate of the collateral's value as of the petition date and the date of the motion.
- (ii) A party opposing the motion must file and serve on the movant and other parties required to be served under this Local Rule the following documents at least 7 days before the hearing:
- (A) Its response to the motion:
 - (B) An affidavit stating the responding party's good faith estimate of (1) the amount due to the movant and (2) the collateral's value as of the petition date and the date of the motion; and
 - (C) A statement as to how the movant is adequately protected if the stay is not lifted.
- (iii) The hearing date 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 must exchange further 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 (E) set a date and time for a final hearing
- (d) Attorney Conference. The parties' attorneys must confer before the hearing regarding the issues raised by the motion to determine whether a consensual order may be entered, and, if not, then to attempt to agree to stipulated facts, such as the property's value and the extent, priority, and validity of any security interest.