

### **Rule 4001-1. Automatic Stay - Relief From**

- A. Notice; Default.** When a motion for stay relief is filed, the Court will issue an order setting an answer date and a hearing date if an answer is filed. The motion and order must be served pursuant to Fed. R. Bankr. P. 7004, 9006 and 9014. If the respondent(s) fail(s) to timely file an answer, the motion is deemed admitted and the Court may enter a final order. If the movant fails to file a certificate of service with the Court showing that the order setting an answer date and a hearing date was served on parties not receiving electronic notice, the Court may deny the motion.
- B. Motion for Stay Relief; Contents.** A motion for relief from the automatic stay shall state the amount of the balance due of principal and interest as of the date of the bankruptcy petition. In addition, the motion shall state the following:
1. In Chapter 7 cases, if the motion is filed prior to the §341 Meeting of Creditors, the motion shall state an estimate of the value of the collateral.
  2. In Chapter 13 cases, where the movant is seeking relief from the stay for failure to make post-petition payments on a claim secured by real property that is the Debtor's principal residence or is treated by the Debtor's Chapter 13 Plan pursuant to § 1322(b)(5), then the motion, or attachments thereto, shall contain a legible post-petition payment history (**Local Form - MOW 4001-1.1**). The payment history shall set forth the date each post-petition payment was received, the amount of each post-petition payment received, and how each post-petition payment was applied by movant. Pursuant to § 362(g)(2), the Debtor has the burden to prove any post-petition payment(s) alleged to have been made but not set forth in the motion, or attachments thereto.
- C. Exhibits; Witnesses.** Three days before the hearing, parties shall mark and exchange all exhibits which may be offered and exchange a list of witnesses who may be called. Movant's exhibits should be marked with numbers, and respondent's with letters. An Exhibit Index on the Court form (**See Local Form - MOW 7016-1.1**) must be submitted at the hearing.
- D. Order.** Proposed orders shall be submitted by e-mail or as the Court may direct.
- E. Adequate Protection.** If debtor intends to make an offer of adequate protection, it shall be set out in the answer.
- F. Trustee; Service of Documents.** A trustee is a party in interest and must be timely served with the motion for relief and all documents supporting the motion. Movant shall serve legible paper copies of all documents evidencing perfection of security interests on the trustee and debtor's counsel at the time of the filing of the motion for relief or promptly thereafter. In the alternative, as to mortgages and deeds of trust only, the movant may file

the page of the document, showing recording information, and the signatures of the borrowers. If such alternative is used movant shall promptly provide paper copies of the entire document upon specific request from the trustee or debtor's counsel. Service shall be certified on the motion for relief. Movant's failure to serve the trustee, debtor and debtor's counsel under this rule may result in delay in the hearing on the motion for relief or denial of the motion.

- G. Mechanics' Liens.** The stay is modified without motion or order to allow filing of a notice to preserve a mechanic's lien. Before proceeding with further action thereafter, the party must file a motion and obtain an order modifying the stay.
- H. Negotiations with Governmental Agencies.** If a farm debtor borrowed from a governmental agency, the stay is modified without motion or order to allow debtor and that agency to negotiate and submit applications for loan servicing options pursuant to agency regulations. Debtor shall file and serve on all creditors a Notice of Intent to Enter Into Loan Service Agreement, with the opportunity to object, stating the terms of the proposed agreement, at least 21 days before entering into such agreement.
- I. Conditional Orders Granting Relief from Stay.** In Chapter 7 or 13 cases, an order that resolves a motion for relief from stay that, *inter alia*: (i) conditionally denies the motion; (ii) provides for future payment of some or all of the post-petition arrearage; (iii) contains a "drop dead" clause; and/or (iv) contains a grace period for curing a default of the term(s) of the order, shall be known as a conditional order granting relief from stay.

If the movant alleges that the debtor has defaulted on any term of a conditional order granting relief from stay, movant shall give the debtor 10 days written notice to cure. The notice shall include the payment history from the date of the conditional order. After such ten-day period has expired, without cure, the movant shall submit a final order setting out the terms of the alleged breach and granting the relief requested.