

Rule 4001-1

AUTOMATIC STAY

(a) ***Motions to Extend or Impose the Automatic Stay.*** A motion to extend the automatic stay under 11 U.S.C. § 362(c)(3) shall be filed and served upon interested parties within seven days of the filing of the petition. A motion to impose the automatic stay under 11 U.S.C. § 362(c)(4) shall be filed and served upon interested parties as soon as practicable after the filing of the petition.

(b) ***Motions to Confirm that No Automatic Stay Is in Effect Under 11 U.S.C. § 362(j).*** No filing fee is required for motions filed under 11 U.S.C. § 362(j) for an order confirming that the automatic stay or the codebtor stay is terminated under 11 U.S.C. § 362(c)(3) or did not become effective under 11 U.S.C. § 362(c)(4). The motion shall include the date of filing and date of dismissal of the debtor's prior bankruptcy case(s), and, if the prior bankruptcy case(s) were in another district, copies of court records reflecting this information.

(c) ***Motions for Relief from Stay.***

(1) ***Chapters 7 and 11.*** Motions for relief from the automatic stay in Chapter 7 and 11 cases shall include the following:

(A) Copies of loan documents, including filing and recording information necessary to establish a perfected security interest;

(B) If the basis for the motion is lack of equity under 11 U.S.C. § 362(d)(2)(A), evidence of value; and

(C) A statement of indebtedness, including information regarding any default under the loan.

(2) ***Chapters 12 and 13.***

(A) ***Generally.*** The Court discourages secured creditors whose claims are being paid through the debtor's Chapter 12 or Chapter 13 plan payments from seeking relief from the automatic stay based upon the debtor's default in plan payments. In most instances, the Court will rely upon the trustee to monitor payments under the plan and to file a motion to dismiss, if appropriate.

(B) ***Plan Provides for Surrender of Property, Direct Payment to Secured Creditor, or Does Not Provide for Claim.*** If the debtor's Chapter 12 or Chapter 13 plan provides for the surrender of collateral to the movant, for the debt to be paid by the debtor directly to the movant rather than through the Chapter 13 trustee's office, or does not provide for the movant's claim under the plan, the movant shall include a statement to that effect. If the statement is in the form of an affidavit or declaration by the movant's attorney, the Court's

negative notice procedures do not apply and an order granting the motion will be entered without a hearing. If the stay has terminated as a result of the treatment of the movant's claim under the plan and the Court's administrative order prescribing procedures for Chapter 13 cases, the movant may use this procedure to file a motion for an order confirming that the automatic stay is not in effect. No filing fee is required for a motion filed under this subsection.

(C) ***Motions for Relief from Codebtor Stay.*** Motions for relief from the codebtor stay imposed by 11 U.S.C. §§ 1201(a) or 1301(a) shall establish that the debtor's Chapter 13 plan does not provide for payment in full of the movant's claim or that the movant's interest will be irreparably harmed by the continuation of the codebtor stay. A request for relief from the codebtor stay may be combined with a request for relief from stay as to the debtor in a single motion for relief from the automatic stay.

(3) ***Requests for Waiver of the 14-Day Stay Under Fed. R. Bankr. P. 4001(a)(3).*** Generally, the Court will grant a request for waiver of the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) if the request is included in a motion for relief from stay as to real property. Absent compelling circumstances, the Court will deny a request for waiver of the 14-day stay with respect to motor vehicles.

(4) ***Standing.*** Unless the issue of standing is actually litigated and determined by the Court, the Court's order granting or denying a motion for relief from stay will not make a determination that the movant has standing to seek the relief requested in the motion or any related action pending in another court.

(5) ***Effect of Conversion on Pending Motion.*** If a case is converted from one chapter to another while a motion for relief from stay is pending, the Court's order of conversion will provide for the abatement of the motion until the movant files an amended motion and serves the amended motion upon all appropriate parties, including the trustee appointed in the converted case. No filing fee will be assessed for the amended motion.

(6) ***Effect of Dismissal on Pending Motion.*** If a case is dismissed while a motion for relief from stay is pending, the Court's dismissal order will confirm that the stay is terminated by operation of law upon the effective date of the dismissal order and will deny all pending motions for relief from stay. However, the Court will retain jurisdiction to consider motions for relief from stay that request an order binding upon the debtor in subsequently filed cases and to consider any pending order to show cause for dismissal with prejudice. If the motion is served using the negative notice provisions of Local Rule 2004-2, and the negative notice period expires prior to the date on which the dismissal order becomes final, the Court will process an order granting the motion in the usual course.

(7) ***Inspection of Property.*** Upon reasonable notice, the moving party shall be entitled to inspect the property that is the subject of a motion for relief from the automatic stay. The notice shall provide for inspection not less than seven days from the date of service of such notice unless the time is shortened by the Court.

(8) ***Discovery Response Time.*** For the purpose of this rule, the time for responding to discovery requests under Fed. R. Bankr. P. 7030, 7034, and 7036 is reduced to 21 days, unless otherwise directed by the Court.

(9) ***Expert Witness Testimony.*** A party who intends to introduce the testimony of an expert witness at trial shall make such witness available for deposition upon reasonable notice.

Notes of Advisory Committee

2019 Amendment

Section (b) is amended to reflect that no filing fee is required for motions to confirm the absence of the automatic stay under 11 U.S.C. § 362(j) or because the debtor's Chapter 13 plan does not provide for payments to be made through the plan. Section (c)(2)(B) is amended to provide that creditors may file a motion to confirm that there is no stay in effect as a result of a Chapter 13 debtor's treatment of the creditor's claim in the debtor's plan and the Court's administrative order governing procedures in Chapter 13 cases. (Note: as of the effective date of this amendment, the reference to the Court's administrative order prescribing procedures for Chapter 13 cases in section (c)(2)(B) is to Administrative Order No. FLMB-2018-2 dated April 23, 2018.) In addition, section (c)(2)(C) is amended to permit a request for relief from the codebtor stay to be combined with a request for relief from stay as to the debtor in a single motion for relief from the automatic stay. This amendment to the rule is effective July 1, 2019.

2017 Amendment

This rule is revised to reflect the policy of the judges of the Middle District to grant requests for a waiver of the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) with respect to motions for relief from stay as to real estate, but not for automobiles, absent compelling circumstances. Other changes are stylistic. This amendment to the rule is effective July 1, 2017.

2014

This new rule is effective July 1, 2014.