Motion for Order Confirming Absence or Termination of Automatic Stay

Docketing Event

Bankruptcy > Motions/Applications/Objections > Motion for Order Confirming Absence or Termination of Automatic Stay

Negative Notice: Chapters 7, 12, and 13 only

Accompanying Orders: N/A

Code and Rule References:

11 U.S.C. § 362(j)
Fed. R. Bankr. P. 4001
Fed. R. Bankr. P. 7014
Fed. R. Bankr. P. 9014
Local Rule 2002-4
Local Rule 4001-1(b)

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 2/9/2016

Last Revision: 1/23/2018 10:05:24 AM

Description

Upon the filing of a petition, an automatic stay is imposed in most cases with two exceptions. The automatic stay requires creditors to cease actions against the debtor and the debtor's property as described in 11 U.S.C. § 362(a). The stay continues until either the case is dismissed or closed or, in an individual case, until a discharge is granted or denied.

Creditors may file a motion pursuant to 11 U.S.C. § 362 requesting the stay be lifted to allow them to pursue a particular piece of property. Those motions are most often titled Motion for Relief from Stay.

There are two exceptions to the imposition of the automatic stay: (1) when a new case is filed and the debtor had **one** previous case dismissed within the previous year, the automatic stay is imposed for only 30 days. 11 U.S.C. § 362(c)(3)(A). The debtor may request to extend the stay by filing a Motion to Extend the Automatic Stay. 11 U.S.C. § 362(c)(3)(B); **and** (2) when a new case is filed and the debtor had **two** or more cases dismissed within the previous year, the automatic stay is not imposed. 11 U.S.C. § 362(c)(4)(A)(i). The debtor may request to have the stay imposed by filing a Motion to Impose the Automatic Stay. 11 U.S.C. § 362(c)(4)(B).

When there is no stay in effect, either due to a discharge being entered or denied, or due to a prior filing where no stay was imposed or was only imposed for 30 days and the time has expired, a party may ask the court to enter an order to confirm there is no stay in effect.

Filing Checklist

Review the motion to determine if it:
☐ Is signed;

- ☐ Has the attorney's name and address, and is consistent with the filing attorney's name and address in CM/ECF;
- ☐ Includes negative notice that contains the correct language and is located on the first page;
  - ❖ **Note:** Response period is 21 days (plus an additional three days for service if any party was served by U.S. Mail)
- ☐ Is properly served and includes a proper certificate of service;
  - ❖ **Note:** If service on the matrix, a copy of the matrix must be included.