

Motion for Adequate Protection

Docketing Event

Bankruptcy > Motions/ Applications/ Objections > Motion for Adequate Protection

Negative Notice: Motions to Approve Agreements Providing Adequate Protection are allowed by negative notice with a 14 day notice period. Non-consensual Motions for Adequate Protection are not allowed to use negative notice.

Accompanying Orders: N/A

Code and Rule References:

[11 U.S.C. § 361](#)

[11 U.S.C. § 362](#)

[11 U.S.C. § 363](#)

[11 U.S.C. § 364](#)

[11 U.S.C. § 1205](#)

[Fed. R. Bankr. P. 4001](#)

[Fed. R. Bankr. P. 6004](#)

[Local Rule 2002-4](#)

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 4/13/2018

Last Revision: 4/13/2018 7:45:43 AM

Description

Adequate protection is a mechanism for a secured creditor to receive payments to protect its interests in collateral in the debtor's possession. Adequate protection compensates a creditor for any decline in an asset's value while in the possession of another party. Adequate Protection is not an automatic right provided to secured creditors in the Bankruptcy Code. On the contrary, a secured creditor must demonstrate a need for adequate protection. Some factors in determining a requirement for adequate protection payments is whether a creditor is over-secured, the value of the collateral exceeds the debt or is under secured, or the debt exceeds the value of the collateral. Motions for Adequate Protection generally are filed as alternative relief in a motion for relief from stay; in situations where the debtor or trustee will use, sell, or lease property; or when a debtor is seeking some sort of post-petition financing.

11 U.S.C. § 361 specifies the key provisions of adequate protection.

Chapter 12 cases differ slightly in that § 1205 does not require payment in indubitable equivalent as part of adequate protection.

Filing Checklist

Review the motion to determine if it:

- Is signed;
- Has the attorney's name and address complete and consistent with the filing attorney's name and address in CM/ECF; and

- Is properly served and includes a proper certificate of service.

Review the motion to determine if it is consented. Appropriate forms of consent include:

- Motion states it is consented. No signature needed of opposing parties;
- A consent is filed with the motion;
- Proposed order contains signatures of both the movant and opposing parties (or their attorneys);
- Proposed order states in the first paragraph that submitting party has the consent of the opposing parties;
- Response filed indicating consent.
- If the Motion is consented, it may be filed by negative notice with a 14 day negative notice period.