

Motion for Relief from Stay and Motion for Relief from Co-Debtor Stay—Chapters 12 and 13

Docketing Events

Bankruptcy > Motions/Applications/Objections > Motion for Relief from Stay

Bankruptcy > Motions/Applications/Objections > Amended Motion for Relief from Stay

Bankruptcy > Motions/Applications/Objections > Motion for Relief from Co-Debtor Stay

Negative Notice: Yes

Fee: \$181

Code and Rule References

[11 U.S.C. § 101](#)

[11 U.S.C. § 362](#)

[11 U.S.C. § 1301](#)

[28 U.S.C. § 1930](#)

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

Description

Immediately upon the filing of a petition, the automatic stay goes into effect to preclude the commencement or continuation of any creditor efforts to collect or enforce a debt against the debtor or property of the estate. 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 protections of the automatic stay continue until the earliest of the time that the case is closed or dismissed or, in an individual case, until the granting or denial of the debtor's discharge. 11 U.S.C. § 362(c).

Creditors may file a Motion for Relief from the Automatic Stay, which requests the stay be lifted to allow them to pursue their legal rights. Those motions are most often titled Motion for Relief from Stay, although other titles may also be used, such as a motion to terminate, modify, annul, lift, or condition the automatic stay.

There is an exception to the general rule that the automatic stay immediately goes into effect upon the filing of the bankruptcy petition. The exception arises when an individual files a new bankruptcy petition but had two or more cases dismissed within the previous year. In that situation, the automatic stay does not take effect. 11 U.S.C. § 362(c)(4)(A)(i). Often, however, creditors will seek "comfort orders" from the Court, confirming that the stay is not, in fact, in effect. In situations where the stay does not immediately go into effect, a party in interest, including the debtor, may request to have the stay imposed pursuant to 11 U.S.C. § 362(c)(4)(B).

In situations where a debtor files a new bankruptcy petition but had one previous case dismissed within the previous year, the automatic stay is only imposed for 30 days. After the 30th day passes, the automatic stay terminates pursuant to 11 U.S.C. § 362(c)(3)(A). A party in interest, including the debtor, may file a motion to extend the automatic stay beyond that initial 30-day period pursuant to 11 U.S.C. § 362(c)(3)(B).

In a Chapter 12 or Chapter 13 case, the stay also arises with respect to any individual that is either liable on a consumer debt with the debtor or secured such a debt. This is referred to as the "co-debtor stay."

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
- Is properly served and includes a proper certificate of service;
- The motion was filed with negative notice that contains the correct language and is located on the first page;
 - ❖ **Note:** Response period is 21 days (plus 3 days for mailing) for Motions for Relief from Stay with the exception of Motions for Co-Debtor Stay, which have a 14-day response period.
- The motion does not ask for relief from both debtor and co-debtor stay (separate motions are required);
- The motion is filed with the debtor's consent: Appropriate forms of consent are:
 - Motion states its consented — no signature needed of opposing parties;
 - Consents are filed with the motion;
 - Proposed Order contains signatures of both the movant and opposing parties (or their attorneys); and
 - Proposed Order states in the first paragraph that submitting party has the consent of the opposing parties.

Upon Completion of the docketing process, ensure the filing fee (\$181) is paid. Exceptions to the payment of the filing fee include:

- Movant is an U.S. Agency (including the FDIC);
- Movant is a child support creditor or its representative, and the movant files the Appearance of Child Support Creditor or Representative Procedural form (Form 281) required by Section 304(g) of the Bankruptcy Reform Act of 1994;
- The motion is accompanied by consent to the relief requested by the debtor and the Trustee;
- Debtor is the movant;
- Motion is based on the collateral being surrendered or payments are being made outside the plan and an affidavit to that effect is included; and
- The motion seeks relief from the co-debtor stay and does not seek relief from the debtor.

Forms

[Order Granting Relief from Stay – Upon Consent – Chapter 13 Only](#)
