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 (362(c) and (j))

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),(c)(2)(B)
Admin. Order FLMB-2020-7

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 2/9/2016

Last Revision: 10/15/2020 12:49:24 PM

Description

Upon the filing of a petition, an automatic stay is imposed in most cases with limited 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.

The automatic stay, however, may not be imposed or could terminate for the following:

(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);

(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); or

(3)   when a **Chapter 13 case** is filed and the debtor's plan (a) provides for the surrender of collateral to the secured creditor or lessor, (b) provides for payments to be made by Debtor directly to the secured creditor or lessor, (c) provides that Debtor does not intend to make payments

to the creditor, or (d) fails to provide for the claim of the secured creditor or lessor, the automatic stay is terminated. [Admin. Order FLMB-2020-7.](#)

When there is no stay in effect or the stay has terminated, a party may ask the court to enter an order to confirm there is no stay in effect or the stay has terminated.

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)
    - ❖ **Note:** If the automatic stay terminated due to the debtor's Chapter 13 plan provisions and the motion includes an affidavit or declaration by the movant's attorney to that effect, the negative notice procedures do not apply and a proposed order granting the motion should be submitted by counsel
- ☐ Is properly served and includes a proper certificate of service;
    - ❖ **Note:** If service on the matrix, a copy of the matrix must be included.
- ☐ If the motion seeks to confirm that the automatic stay is terminated under 11 U.S.C. § 362(c)(3) or did not become effective under 11 U.S.C. § 362(c)(4), does the motion include the following:
    - o the date of filing and date of dismissal of the debtor's prior bankruptcy case(s), and,
    - o if the prior bankruptcy case(s) were in another district, copies of court records reflecting this information.
- ☐ If the motion seeks to confirm that the automatic stay terminated due to the debtor's Chapter 13 plan provisions, does the motion include a statement to that effect.

Forms
[Motion for Order Confirming Absence or Termination of the Automatic Stay](#)
[Order Granting Motion for Order Confirming Absence or Termination of the Automatic Stay](#)