

Motion for Relief from Stay—Chapter 7

Docketing Event

- Bankruptcy > Motions/Applications/Objections > Motion for Relief from Stay (Not for Amended Motions)
 - Bankruptcy > Motions/Applications/Objections > Amended Motion for Relief from Stay
-

Negative Notice: Yes

Accompanying Orders: N/A

Code and Rule References:

[11 U.S.C. § 362](#)

[28 U.S.C. § 1930](#)

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

[Local Rule 4001-1](#)

Fee: \$188

Applicable Chapters: 7

Implemented: 2/9/2016

Last Revision: 12/1/2020 7:58:15 AM

Description

Immediately upon filing a bankruptcy 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 automatic stay remains in effect until the case is closed or dismissed or, in an individual case, until the granting or denial of the debtor's discharge, whichever happens first. 11 U.S.C. § 362(c).

Creditors may file a Motion for Relief from the Automatic Stay that requests lifting the stay 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 are exceptions to the general rule that the automatic stay immediately goes into effect upon the filing of the bankruptcy petition.

One 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). Creditors sometimes seek "comfort orders" from the Court confirming that the stay is not in effect. In situations where the stay does not go into effect, a party in interest, including the debtor, may request the stay be imposed. 11 U.S.C. § 362(c)(4)(B).

In situations where a debtor files a new bankruptcy petition but had **one** case dismissed within the previous year, the automatic stay is imposed for 30 days. After the 30th day passes, the automatic stay terminates. 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. 11 U.S.C. § 362(c)(3)(B).

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;
- Includes the following in the motion:
 - For vehicles, the year, make, model of vehicle and VIN number; and
 - For real property, the legal description of real property.
- Is filed with 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)

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.

Upon conclusion of the docketing process in CM/ECF, the filing fee is paid. Exceptions to the filing fee include:

- Movant is a 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 found [here](#);
- The motion is accompanied by consent to the relief requested by the debtor and the Trustee;
 - ❖ Note: If the trustee has filed a Report of No Distribution or Notice of Abandonment of the property, the trustee's consent is not required.
- Debtor is the movant.

Forms

[Motion for Relief from Stay – Chapter 7](#)

[Order Granting Relief from Stay - After Hearing](#)

[Order Granting Relief from Stay - After Negative Notice](#)