

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, unless the motion requests prospective relief.

Accompanying Orders: Yes, if the debtor and the trustee consent or the trustee has filed the TRND or Notice of Abandonment of the subject property.

Code and Rule References:

[11 U.S.C. § 362](#)

[28 U.S.C. § 1930](#)

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

[Fed. R. Bankr. P. 9014](#)

[Fed. R. Bankr. P. 7004](#)

[Local Rule 2002-4](#)

[Local Rule 4001-1](#)

Fee: \$199

Applicable Chapters: 7

Implemented: 2/9/2016

Last Revision: 2/13/2024 9:20:36 AM

Description

Under 11 U.S.C. § 362(a), the filing of a bankruptcy petition operates as a stay (the “automatic stay”) of all actions to collect or enforce a debt against the debtor or property of the estate. The automatic stay remains in effect as to property of the estate until the Trustee has abandoned the property or filed the TRND or the case is closed or dismissed; the automatic stay as to individual debtors remains in effect as to the debtor until the granting or denial of the debtor’s discharge, whichever happens first. 11 U.S.C. § 362(c).

Creditors may file a motion seeking relief from the automatic stay. The motion is 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.

Note: §§ 362(c)(3) and (c)(4) apply to individual debtors who had one or more pending bankruptcy cases in the preceding year. Those debtors are required to file a motion to extend or to impose the automatic stay within 30 days from the date of the petition. After the expiration of the 30-day period, creditors may move for a “comfort order” to confirm that the automatic stay is not in effect.

Filing Checklist

Review the motion to determine if it:

- Is signed by the filing attorney (may be “scanned in signature” or “/s/” signature block);
- Includes attorney’s complete name and address, consistent with the filing attorney’s name and address in CM/ECF;
- If the Motion requests prospective relief, then the title of the Motion includes the word “Prospective”;
- Includes
 - For real property, the legal description of the property.
 - For vehicles, the year, make, model, and VIN number; and
- If filed with negative notice, includes the correct Negative Notice Legend on the first page of the Motion;

Note: Response period is 21 days (plus an additional three days for service if any party was served by U.S. Mail) Note: Negative Notice does not apply to Motions for Prospective Relief from Stay.

- Is properly served and includes a proof of service on Debtor, Debtor’s attorney, and Trustee. *See* Rules 4001(a)(1), 9014(b), 7004(b)(9) and (g).

If Debtor and the Trustee have consented to the Motion, appropriate forms of consent include:

- Motion states it is consented (signature of opposing parties is not necessary);
 - 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.
- ❖ Note: The debtor and the Trustee must both consent to the relief requested. However, if the Trustee has filed a Report of No Distribution or Notice of Abandonment of the property, the Trustee’s consent is not required.

- ❖ Note: Negative notice is not required for consent motions, and a proposed order may be submitted simultaneously with the filing of the motion. See the Court's [Accompanying Orders List](#).

Upon conclusion of the docketing process in CM/ECF, pay the filing fee. A filing fee is not required if

- 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](#);
- Debtor and the Trustee both consent to the relief requested in the Motion.
- ❖ 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.

Forms

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

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

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