

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

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### 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
  - Bankruptcy > Motions/Applications/Objections > Motion for Relief from Co-Debtor Stay
  - Bankruptcy > Motions/Applications/Objection > Motion for Order Confirming Absence or Termination of Automatic Stay (362(c) and (j))
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**Negative Notice: Yes, for Motions for Relief from Stay (but not on motions that request prospective relief), Motions for Relief from Co-Debtor Stay, and Motion for Order Confirming the Automatic Stay is Terminated (362(c) and (j)).**

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**Accompanying Orders: Yes, for Motions for Stay Relief after the Debtor defaults on Adequate Protection Order (if the Adequate Protection Order so provides).**

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### 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](#)

[Local Rule 4001-1](#)

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**Fee: \$188**

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**Applicable Chapters: 12, 13**

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**Implemented: 2/9/2016**

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**Last Revision: 4/26/2022 11:24:29 AM**

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### Description

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 with some limitations described in 11 U.S.C. § 362(a). The protections of the automatic stay continue until 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 that 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.

Motions requesting adequate protection based on 11 U.S.C. § 363 are treated differently procedurally. There is a separate procedure on Motion for Adequate Protection. These motions seek an order directing the debtor to do something, often to make payments, to provide the creditor with "adequate protection." Consequently, some motions for relief from stay are based on a debtor's default on a prior order entered by the court providing adequate protection to the creditor

(an “Adequate Protection Order”). These types of motions are relief from stay motions and are covered in this procedure.

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 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. 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 imposed for 30 days. After 30 days, 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).

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.” A request for relief from the co-debtor stay may be combined with a request for relief from stay as to the debtor in a single motion for relief from the automatic stay.

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## Filing Checklist

Review the motion to determine if it:

- If requesting prospective relief, then “Prospective” appears in the motion title;**
- Was filed with negative notice that contains the correct language and is located on the first page;
  - ❖ **Note:** For a Motion for Relief from Stay the Response period is 21 days (plus an additional three days for service if any party was served by U.S. Mail).
  - ❖ **Note:** For a Motion for Relief from Co-Debtor Stay the Response period is 21 days (plus an additional three days for service if any party was served by U.S. Mail).
  - ❖ **Note:** For a combined Motion for Relief from Stay and Motion for Relief from Co-Debtor Stay the 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;**
- Was filed with the debtor’s consent. Appropriate forms of consent are:
  - Motion states it is 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.
- 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;

- Is a Motion for Relief from Stay based on the debtor's default on an Adequate Protection Order;
  - ❖ **Note:** parties may submit an order simultaneously with the Motion if based on the Debtor's default on an Adequate Protection Order.

Upon Completion of the docketing process, ensure the filing fee is paid. Exceptions to the payment of 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 form found [here](#);
- The motion is accompanied by consent to the relief requested by the debtor and the bankruptcy trustee;
- Debtor is the movant;
- Motion is based on (1) the surrender of collateral (the Chapter 12 or 13 plan must provide for this), (2) payments are being made directly to the creditor outside of the plan (the Chapter 12 or 13 plan must provide for this), or (3) the plan does not provide for the claim. An affidavit to that effect, meaning one of the three items is listed, must be included;
- Motion seeks relief from the co-debtor stay and does not seek relief from the debtor.

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## **Forms**

[Motion for Relief from Stay – Chapters 12 and 13](#)

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