

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

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, but not on motions seeking prospective relief.

Accompanying Orders: Yes, for Motions for Stay Relief after the Debtor defaults on Adequate Protection Order (if the Adequate Protection Order so provides) and for Motions for Stay Relief to which the Debtor and the Trustee have consented.

Code and Rule References:

[11 U.S.C. § 101](#)

[11 U.S.C. § 362](#)

[11 U.S.C. § 1201](#)

[11 U.S.C. § 1301](#)

[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: 12, 13

Implemented: 2/9/2016

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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 property is no longer property of the estate (i.e., has been abandoned) or the case is closed or dismissed; the automatic stay as to individual debtors remains in effect until the granting or denial of the debtor’s discharge, whichever happens first. 11 U.S.C. § 362(c).

Creditors may file a motion to seek 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.

In addition, under §§ 1201(a) and 1301(a), a stay protects the debtor’s codebtors on consumer debts (the “codebtor stay”). A request for relief from the codebtor 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.

Under §§ 1201(d) and 1301(d), the codebtor stay expires 20 days after the filing of a request for relief. However, if the movant combines a motion for relief from the codebtor stay with a motion for relief from stay as to the Debtor, the movant is deemed to have waived the 20-day provisions of §§ 1201(d) and 1301(d), and the standard 21-day notice period applies.

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, 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: If the Motion seeks relief from the codebtor stay only, the response period is 20 days (plus an additional three days for service if any party was served by U.S. Mail); if the Motion combines a request for relief from the codebtor stay with a request for relief from stay as to the Debtor, the standard 21-day response period applies. Note: Negative Notice does not apply to Motions for Prospective Relief from Stay.

- If the Motion is filed with Debtor and Trustee consent, appropriate forms of consent are:
 - ❖ Motion states it is consented (signature of opposing parties is not necessary);
 - ❖ Consents are filed with the motion;
 - ❖ The 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 properly served and includes a proof of service on Debtor, Debtor’s attorney, Codebtor (if applicable), and Trustee. *See* Rules 4001(a)(1), 9014(b), 7004(b)(9) and (g).

Upon completion of the docketing process, 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 form found [here](#);
- The debtor and the Trustee have both consented to the relief requested in the motion;
- 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 listed— must accompany the Motion;
- Motion seeks relief from the co-debtor stay and does not seek relief from the debtor.

Forms

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

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