

PART IV

THE DEBTOR: DUTIES AND BENEFITS

RULE 4001-1. RELIEF FROM THE AUTOMATIC STAY

- (a) Title; Requirement of Separate Motion. In addition to complying with Fed. R. Bankr. P. 4001(a), each motion under 11 U.S.C. § 362(d) for relief from the automatic stay:
 - (1) must be filed separately from any other motion (other than a motion for relief from the co-debtor stay);
 - (2) must bear a title clearly identifying it as a motion for relief from the automatic stay;
 - (3) must bear a title that identifies any property involved, with (A) the street address of real property or (B) the make and model of motor vehicle or other tangible personal property;
 - (4) must be submitted with a proposed order that identifies any property involved as in the case of the motion itself.
- (b) Discovery in Automatic Stay Litigation. The time to respond to a motion to shorten the time for responses to discovery requests shall be 7 days after the filing of a motion to shorten time, but conspicuous notice of that response time must be included with any such motion.
- (c) Obtaining a Hearing Date for § 362(d) Motion.
 - (1) General. Prior to filing a motion for relief from the stay, the moving party must contact the Courtroom Deputy Clerk or consult the Court's website to obtain a date and time for the hearing from the dates that are available.
 - (2) Preserving Right to Insist That Hearing Date be Within 30 Days of Filing of Motion. If the moving party believes that a hearing date within 30 days of the intended date of the filing of the motion is not being made available, and the moving party will not consent to the hearing date being held on an available date that is beyond that 30 days, then:

- (A) the moving party must file and serve with its motion for relief from the automatic stay a notice certifying (subject to the requirements of Fed. R. Bankr. P. 9011(a)) that the Clerk failed to make available a hearing date within the 30-day period specified by 11 U.S.C. § 362(e) and demanding that the Court make available a hearing date, of the Court's choosing, that is within 30 days of the date on which such motion for relief from stay is filed;
 - (B) the Clerk must, on such written notice being filed, make available at least one hearing date and time of the Clerk's choosing that is within the indicated 30-day period; and
 - (C) upon the Clerk's issuing notice of the hearing date and time chosen by the Clerk, the moving party must within 1 day thereafter file and serve on the other parties to the motion a notice that the hearing on its motion will be held on the date and at the time specified by the Clerk.
- (d) Filing of Notice of § 362(d) Hearing with Motion. Except as provided in paragraph (c)(2) above, the moving party must file and serve, with the motion, a notice of the hearing (in addition to the notice required by [LBR 9013-1](#)). The moving party will be deemed to have waived the 30-day automatic termination rule of 11 U.S.C. § 362(e) if the hearing date chosen by the moving party is more than 30 days after the motion is filed with the Court or if the moving party fails to file the required notice of hearing.
- (e) Conditions to Granting Motion as Unopposed in a Chapter 7 Case. In a Chapter 7 case, when the movant seeks to enforce a security interest in collateral, and the Chapter 7 Trustee has not consented to the motion or filed a report of no distribution, the motion will not be granted against the Chapter 7 Trustee as not timely opposed by the Chapter 7 Trustee unless the movant has included proof of perfection with the motion.
- (f) Obligation to Disclose Payment History. If a motion seeking relief from the automatic stay includes as a ground for relief failure to make post-petition payments, then at least 7 days prior to the hearing, the movant shall file and serve upon the debtor's counsel (or the debtor, if pro se) a statement showing a history of payments received post-petition.
- (g) Inapplicability of Rule 55 and the Servicemember's Civil Relief Act. Unless the Court otherwise directs, neither Rule 55 nor the Servicemember's Civil Relief Act of 2003

applies with respect to the granting of an unopposed motion for relief from the automatic stay.

- (h) **Cross-References.** [Local Bankruptcy Rule 9013-1](#) sets forth the general requirements for motions, which are applicable as well to motions under Fed. R. Bankr. P. 4001(a) (and other motions under Fed. R. Bankr. P. 4001). Local Bankruptcy Rules [5070-1](#), [5071-1](#), [9070-1](#), and [9073-1](#) govern hearings. [Local Bankruptcy Rule 9014-1](#) makes certain [Part VII \(Adversary Proceedings\)](#) rules applicable.

Note: Paragraph (e) governs unopposed lift stay motions in Chapter 7. It contemplates that the movant will provide the Chapter 7 Trustee with a title report or some other evidence of a perfected security interest. Paragraph (g) recognizes that the automatic stay is akin to a preliminary injunction having been granted against certain entities. Accordingly, the party seeking relief from the automatic stay is akin to an entity against whom a judgment has been imposed, and ordinarily is not viewed as akin to a plaintiff to whom Rule 55 and other provisions regarding default judgments apply when seeking to have the motion for relief from the automatic stay granted as unopposed.

RULE 4003-1. OBJECTIONS TO EXEMPTIONS

- (a) Any party objecting to exemptions must file a certificate of service reflecting service of a copy of the objection to exemptions and memorandum in support, if any, and the proposed order required by [LBR 9072-1](#) upon the debtor, the debtor's counsel, the trustee, and, in a case under Chapter 7 or 11, the United States Trustee. The objection must include a notice substantially conforming to Official Form 420A, advising the debtor conspicuously that:
- (1) within 21 days of filing of the objection, the debtor must file and serve an opposition to the objection, which may include supporting documents and other evidence, together with the proposed order required by [LBR 9072-1](#);
 - (2) an interested party may request a hearing, which may be held in the Court's discretion; and
 - (3) if no opposition is filed, the Court may sustain the objection.
- (b) Notice is sufficient if substantially in the form of [Local Official Form No. 7](#).
- (c) A reply to an opposition may be filed within 7 days after the filing of the opposition.