# MOTIONS REQUESTING RELIEF FROM THE AUTOMATIC STAY

(a) **Motions.**

A request by a party in interest for relief from the automatic stay pursuant to §§ 362(d), 1201(c), or 1301(c) shall be made by filing a motion with the court, and paying the applicable fee. There is no fee for a motion for co-debtor relief under §§1201 or 1301.

(b) **Requisite information in motions.**

The motion shall:

(1) Identify the nature of the stay relief sought;

(2) Provide the details of the underlying obligation or liability upon which the motion is based;

(3) Contain an itemization of amounts claimed to be due upon the obligation;

(4) When appropriate, state the estimated value of any collateral for the obligation and the method used to obtain the valuation;

(5) Attach accurate and legible copies of all documents evidencing the obligation and the basis of perfection of any lien or security interest;

(6) Attach copies of recorded documents if any documents are recorded with the secretary of state, county recorder, or other lawfully designated recording agency and;

(7) Include the notice required by subsection (g) and the proof of service required by subsection (h).

(c) **Objections.**

Any party in interest opposing the motion must file and serve an objection thereto not later than seventeen (17) days after the date of service of the motion. The objection shall specifically identify those matters contained in the motion that are at issue and any other basis for opposition to the motion. The objection shall also contain the notice of hearing required by subsection (e)(1) and the proof of service required by subsection (h). Absent the filing of a timely objection, movant may submit a proposed order, and the court may grant the relief sought without a hearing.

(d) **Service.**

(1) Motions. If relief is sought under § 362(d), the motion shall be served upon the debtor, debtor's attorney, the trustee if one has been appointed, upon any committee or other creditors as required in Fed. R. Bankr. P. 4001(a)(1), and on any other party known to movant claiming an interest in any property subject to the motion.

(2) Motions for Co-debtor Stay Relief. If relief is sought under §§ 1201(c) or 1301(c), the motion shall be served upon the debtor, debtor's attorney, the trustee, any co-debtor affected thereby, and on any other party known to the movant claiming an interest in any property subject to the motion.

(3) Objections. If an objection is filed to a motion for stay relief, the objection shall be served upon the movant and upon all parties receiving service of the motion.

(e) **Hearings.**

(1) Scheduling. A party opposing a motion shall contact the court’s calendar clerk to schedule a preliminary hearing. The objection to a motion shall include the notice of such hearing.

(A) Upon court approval, the movant may schedule a hearing for cause shown in the motion or other submissions.

(2) Preliminary Hearing Procedure. At the preliminary hearing, the parties shall be prepared to make specific representations to the court as to the proof and evidence to be submitted at any final hearing. In particular, the parties shall advise the court with specificity as to the issues to be presented at a final hearing, the identity of any witnesses expected to testify, and a summary of the expected testimony.

(3) Final Hearing. Unless otherwise ordered by the court, the parties, not later than seven (7) days prior to any scheduled final hearing, shall;

(A) File a list of witnesses

(B) File a list of exhibits; and

(C) Exchange copies of any exhibits.

(4) Vacation of Hearings. Once scheduled, a preliminary hearing or final hearing may be vacated or continued only upon compliance with LBR 2002-2(f).

(f) **Emergency relief motions**.

This rule does not affect a motion for relief brought under § 362(f) and Fed. R. Bank. P. 4001(a)(2).

(g) **Required notice.**

In any motion filed under this rule, the movant shall include a notice of the requirements of subdivision (c), (d)(3), and (e)(1), of this rule. In addition, if relief is sought from the automatic stay against acts against property of the estate under § 362(d) and (e), the notice shall also advise the party against whom relief is sought of the requirements of § 362(e).

(h) **Proof of service**.

Any motion, objection or other pleading filed under this rule shall include an appropriate proof of service.

(i) **Sanctions.**

The court may impose appropriate sanctions against any party and/or counsel who fails to prosecute or defend the motion in good faith, contrary to the representations made in its pleadings or preliminary hearing, or violates the requirements of this rule.

(j) **Standard form order.**

If no objection is filed within the subdivision (c) objection period, the movant shall submit the standard approved order for this district with such alterations as may be appropriate in a particular case. If the moving party provides additions, deletions, or other modifications, the moving party shall clearly identify the deviation.

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**RELATED AUTHORITY**

11 U.S.C. § 362
Fed. R. Bankr. P. 4001, 9006, 9013, 9014
LBR 2002-2 9004-1

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**Advisory Committee Notes:**

This rule specifically requires certain information to be included in a motion for relief from stay. A response must fairly meet the grounds of the motion. Both of these requirements are enhanced by the requirement of specificity in representation at the preliminary hearing. The Advisory Committee considered and rejected requiring affidavits in regard to factual issues presented. ( *See, e.g.*, Fed. R. Bankr. P. 7056). However, even though the current practice of allowing representation of counsel is continued, in order to achieve the goal of productive preliminary hearings, factual detail in such representation is mandated. Failure of counsel to adhere to this standard may lead to sanction under the rule. *See* Fed. R. Bankr. P. 9011 (Fed. R. Civ. P. 11).

Notes to 2004 revisions. Under the revised rule, unless cause is shown and prior court permission is obtained, the moving party may not schedule a stay relief motion for hearing at the time of filing such a motion. Instead, a party opposing a motion must file a detailed objection, obtain a hearing date from the calendar clerk, and provide notice of both objection and hearing at the time of filing the objection. An objection without a properly noticed and timely conducted hearing will be ineffective to prevent automatic relief under § 362(e).

Notes to 2008 revisions. The Standard Form Order can be located at www.id.uscourts.gov.

Notes to 2010 revisions. Proposed Orders required by subdivision (j) must be submitted in accordance with the court's ECF Procedures. *See generally* LBR 5003-1.