

## LOCAL RULE 4001-1: PROCEEDINGS TO MODIFY STAY

This rule applies to motions for relief from the automatic stay of 11 U.S.C. § 362(a), motions to extend or impose the automatic stay pursuant to 11 U.S.C. § 362(c)(3) and (c)(4), and motions for an order confirming termination of the automatic stay pursuant to 11 U.S.C. § 362(j), 11 U.S.C. § 362(h), and 11 U.S.C. § 521(a)(6).

### (a) **Motions for Relief from the Automatic Stay Pursuant to 11 USC § 362(a).**

- (1) **Hearing date.** The movant shall select a hearing date from a list of available dates posted on the Court's website and prepare a hearing notice in substantial conformance with Exhibit A under the following guidelines.
  - (A) For all divisions, the hearing shall be scheduled before the judge to whom the case is assigned;
  - (B) If a hearing date is required within the thirty (30) day period pursuant to 11 U.S.C. § 362(e) and either the judge required to hear the motion is not scheduled for that location within that time, or the movant is unable to select a hearing date which is at least twenty-one (21) days from the date of the service/transmittal of the motion, the movant must contact a courtroom deputy for scheduling assistance which may include scheduling the motion for hearing in Columbia, if deemed necessary; and
  - (C) If the movant fails to properly select a hearing date or selects a hearing date which is more than thirty (30) days after the moving party makes its request for relief, the movant will be deemed to have waived its rights under 11 U.S.C. § 362(e) relating to the automatic lifting of the stay. In such instance, the stay shall remain in effect until further order of the Court.
- (2) **Service and transmittal of the motion.** At least twenty-one (21) days before the scheduled hearing date, the movant shall serve on the debtor, attorney for the debtor, any trustee serving in the case, any committee elected or appointed in the case, and any other party in interest entitled to notice pursuant to Fed. R. Bankr. P. 4001(a), and shall file with the Court:
  - (A) The 11 U.S.C. § 362 motion;
  - (B) The movant's completed certification of facts in substantial conformance with Exhibit B;
  - (C) The notice of hearing on the motion in substantial conformance with Exhibit A; and
  - (D) A blank certification of facts form (applicable to service on *pro se* parties only).

The moving party should determine if the case has been dismissed or closed before filing these documents. Filing fees will not be refunded for motions filed in dismissed or closed cases.
- (3) **Objections.** Any party objecting to the relief sought in the motion shall, within fourteen (14) days after service thereof, serve upon the movant and other appropriate parties and file with the Court an objection to the motion and its responding certification of facts. Failure to complete, serve and file a responding certification of facts or to complete fully the certification of facts shall be deemed an agreement to the terms contained in the movant's certification.
- (4) **Defaults.** If no objection is filed and served upon the movant within fourteen (14) days after the service of items (A)-(D), subparagraph (a)(2), the movant shall:

- (A) File a certificate stating that no objection has been served upon the movant or filed with the Court; and
  - (B) Submit a proposed order granting the relief sought in the motion.
- (5) **Form of motion.** Any motion for the approval of an agreement pursuant to Fed. R. Bankr. P. 4001(d) should be prepared using a form in substantial conformance with the form approved by the Court (see Exhibit A to SC LBR 4001-4).
- (6) **General matters.** Neither consent/settlement orders nor default orders should contain provisions which attempt to make the order binding upon a trustee or creditors in the event of the conversion of the case to another chapter or provisions which purport to limit the effect of the automatic stay in the event of a dismissal and refiling of the case. Such provisions may require a showing of cause before the Court after a hearing.
- (b) **Motions to Extend the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3).**
- (1) **Hearing date.** Motions pursuant to 11 U.S.C. § 362(c)(3) shall be scheduled to be heard prior to the expiration of thirty (30) days following the filing of the case. The movant shall select a hearing date from a list of available dates posted on the Court’s website and prepare a hearing notice attached as Exhibit A under the following guidelines.
- (A) Motions under paragraph (b) are to be scheduled before the judge to whom the case is assigned;
  - (B) The hearing shall first be scheduled when motions to extend or impose the automatic stay pursuant to 11 U.S.C. § 362(c)(3) and (c)(4) are specially designated to be heard;
  - (C) If a hearing date set forth in subparagraph (1)(B) is unavailable, then the hearing shall be scheduled when motions for relief from the automatic stay are being heard in the same division as the case;
  - (D) If a hearing date set forth in subparagraphs (1)(B) or (C) is unavailable, then the hearing shall be scheduled in any division where motions for relief from the automatic stay are being heard; and
  - (E) If none of the above-referenced hearing dates are available, then the movant must contact a courtroom deputy for scheduling assistance.
- (2) **Filing, service, and transmittal of the motion.** All motions filed by the debtor pursuant to 11 U.S.C. § 362(c)(3) must be filed with the petition; all motions filed by parties in interest, including any trustee serving in the case, must be filed within seven (7) days following the filing of the case. All motions must clearly set forth specific and detailed grounds in support of the motion. At least fourteen (14) days before the scheduled hearing date, the movant shall serve on all creditors sought to be stayed, the United States Trustee, and any trustee serving in the case, and shall file with the Court:
- (A) The 11 U.S.C. § 362 motion; and
  - (B) The notice of hearing on the motion in substantial conformance with Exhibit A.

- (3) **Objections.** Any party objecting to the relief sought in the motion shall, within fourteen (14) days after service thereof, serve upon the movant and other appropriate parties and file with the Court an objection to the motion.
- (c) **Motions to Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4).**
- (1) **Hearing date.** If time permits, the movant shall follow the procedures set forth in subsection (b) for selection of a hearing date. As an alternative to the procedures set forth in subsection (b), the movant may request a hearing on an emergency basis pursuant to SC LBR 9013-1(d) and in the manner posted on the Court's website pursuant to the Chambers Guidelines set forth therein for each Judge. Such motions, if granted, shall be scheduled subject to the availability of the Court.
- (2) **Filing, service, and transmittal of the motion.** All motions filed by the debtor pursuant to 11 U.S.C. § 362(c)(4) must be filed with the petition; all motions filed by parties in interest, including any trustee serving in the case, must be filed within seven (7) days following the filing of the case. Any objection shall be filed within the time period required by SC LBR 4001-1(b)(3). All motions must clearly set forth specific and detailed grounds in support of the motion. Motions sought to be scheduled on an emergency basis must also be accompanied by items (A)-(B), subparagraph (b)(2) and, if granted, shall be served on an expedited basis. Motions not scheduled on an emergency basis shall be filed and served and objections shall be made in accordance with the procedures set forth in paragraph (b).
- (d) **Motion for an Order Confirming Termination of the Automatic Stay Pursuant to 11 U.S.C. § 362(j), 11 U.S.C. § 362(h), and 11 U.S.C. § 521(a)(6).**
- (1) **Hearing date.** It is not necessary to select a hearing date as motions for an order confirming termination of the automatic stay may be considered on an *ex parte* basis.
- (2) **Filing of the motion.** Motions for an order confirming termination of the automatic stay shall specifically recite facts and the applicable statutory authority upon which the stay has been terminated.
- (3) **Order.** The order confirming termination of the automatic stay will be served upon all creditors and parties in interest.

**Notes:**

(2008) Former paragraphs (a)(6), (7), (8), (10), (13), and (14) were deleted based upon similar provisions in the Chambers Guidelines. Former paragraphs (a)(4) and (11) and (b)(2)(B) were deleted. Former paragraphs (a)(1)(D), (b)(1)(F), and (e) were deleted based upon SC LBR 9011-3. Former paragraphs (a)(2)(E) and provisions in other paragraphs were removed because certificates of service are now addressed by SC LBR 9013-3. Other paragraphs were renumbered and restyled based upon these changes. Paragraphs (a)(3), (a)(4), and (b)(3) were amended to extend the objection period from 10 to 14 days.

(2009) The periods in paragraphs (a)(1)(B), (a)(2), (b)(2), and (c)(2) were amended to multiples of seven as part of time computation amendments.

**EXHIBIT A TO SC LBR 4001-1**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

CASE NO:  
CHAPTER:

NOTICE OF: MOTION FOR  
RELIEF FROM AUTOMATIC  
STAY (11 U.S.C. § 362(a)) / MOTION TO EXTEND OR  
IMPOSE AUTOMATIC STAY (11 U.S.C. § 362(c)(3); 11  
U.S.C. § 362(c)(4))

DEBTOR(S)

**TO: DEBTOR, TRUSTEE (if applicable), AND THOSE NAMED IN THE ATTACHED MOTION**

PLEASE TAKE NOTICE THAT a hearing will be held on the attached motion on:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: [location including building and street address and city]

Within fourteen (14) days after service of the attached motion, the notice of motion, the movant's certification of facts, (and a blank certification of facts form, applicable only to motions for relief from the automatic stay and for service on *pro se* parties only), any party objecting to the relief sought shall:

- (1) File with the Court a written objection to the 11 U.S.C. § 362 Motion;
- (2) File with the Court a certification of facts (for motions for relief from the automatic stay);
- (3) Serve on the movant items 1 and 2 above at the address shown below; and
- (4) File a certificate of such service with the Court.

If you fail to comply with this procedure, you may be denied the opportunity to appear and be heard on this proceeding before the Court.

Date of Service: \_\_\_\_\_

\_\_\_\_\_  
Signature of Attorney/Movant

\_\_\_\_\_  
Typed Printed Name

\_\_\_\_\_  
Address/Telephone/Facsimile/E-mail

\_\_\_\_\_  
District Court I.D. Number

**EXHIBIT B TO SC LBR 4001-1**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

CASE NO:  
CHAPTER:

CERTIFICATION OF FACTS

DEBTOR(S)

In the above-entitled proceeding, in which relief is sought by (name of movant) from the automatic stay provided by 11 U.S.C. § 362, I do hereby certify to the best of my knowledge the following:

- (1) Nature of Movant's Interest.
- (2) Brief Description of Security Agreement, copy attached (if applicable).
- (3) Description of Property Encumbered by Stay (include serial number, lot and block number, etc.).
- (4) Basis for Relief (property not necessary for reorganization, debtor has no equity, property not property of estate, etc.) include applicable subsection of 11 U.S.C. § 362).
- (5) Prior Adjudication by Other Courts, copy attached (Decree of Foreclosure, Order for Possession, Levy of Execution, etc., if applicable).
- (6) Valuation of Property, copy of Valuation attached (Appraisal, Blue Book, etc.):  
Fair Market Value: \_\_\_\_\_  
Liens (Mortgages): \_\_\_\_\_  
Net Equity: \_\_\_\_\_  
Source/Basis of Value: \_\_\_\_\_
- (7) Amount of Debtor's Estimated Equity (using figures from paragraph 6, supra).
- (8) Month and Year in Which First Direct Post-petition Payment Came Due to Movant (if applicable).
- (9)(a) For Movant/Lienholder (if applicable): List or attach a list of all post-petition payments received directly from debtor(s), clearly showing date received, amount, and month and year for which each such payment was applied.<sup>1</sup>
- (b) For Objecting Party (if applicable): List or attach a list of all post-petition payments included in the Movant's list from (a) above which objecting party disputes as having been made. Attach written proof of such payment(s) or a statement as to why such proof is not available at the time of filing this objection.
- (10) Month and Year for Which Post-petition Account of Debtor(s) is Due as of the Date of this Motion:

<sup>1</sup> This requirement may not be met by the attachment of a payment history generated by the movant. Such attachment may be utilized as a supplement to a complete and detailed response to (9)(a) above, which should be shown on this certification.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Typed Printed Name

\_\_\_\_\_  
Address/Telephone/Facsimile/E-mail

\_\_\_\_\_  
District Court I.D. Number