

§ 362 MOTIONS (Judge Waites)

If the settlement order in a Chapter 13 case contains an *ex parte* stay relief provision, the settlement order may be approved without a hearing if it provides for such relief for a failure to make cure payments or a failure to make future direct payments for a period of up to 1 year after the expiration of the cure period.

Prior to consenting to a settlement order, the payment obligations set forth in the order, including the amounts, method, and timing of payments, and consequences of default shall be reviewed with and agreed to by the debtor(s).

Affidavits of Default on Settlement Orders. An affidavit of default under a settlement order in a Chapter 13 case shall include an attachment which demonstrates all direct post petition payments and their application and indicate payments which have not been received since the entry of the settlement order.

Rule 4001(a)(3) Stay. If the movant/declarant seeks a finding in a proposed order granting relief from stay that the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) does not apply to the order, the attorney for the movant/declarant shall state in the affidavit of default one of the following applicable circumstances: the debtor(s) did not object to a request for a such a finding or the debtor(s) expressly agreed to such relief as a part of a previously entered settlement order. In such event, the language of a proposed order requesting that finding may indicate the stay is not applicable to the order based thereon by the following language: “Based upon the debtor(s)’ prior agreement or failure to object to the movant’s request regarding the Fed. R. Bankr. P. 4001(a)(3) stay, this order is effective immediately.”

CHAPTER 13 MATTERS (Judge Waites)

Mortgage Modification. When seeking court approval for a modification of a mortgage, the order should be titled “Order Allowing Mortgage Modification” and should contain the consent of the debtor(s)’ counsel, mortgage creditor or its counsel, and the Chapter 13 trustee. If obtaining the creditor’s express consent on the order is not practical, it may be shown on an attachment to the order, or represented to have been obtained by the movant in the proposed order.

The order may provide for relief from the automatic stay for the sole purpose of entering into the agreement; and should provide that there will be no extension of additional funds beyond what is already owed; that payments to other lien holders under the plan will not be affected; and that the proposed modification has no detrimental effect on other creditors and believed to be in the best interest of the debtor(s) and the estate. The order should also address whether any payments to the creditor, whose loan is to be modified, via the Chapter 13 Trustee will continue or terminate upon entry of the order.

If the modification to the mortgage involves an extension of new funds or credit, a motion to incur debt or obtain credit should also be filed and properly noticed to all creditors and parties in interest.

Local Rule 3015-4 Compliance. Upon the failure to timely provide to the trustee the information required by Local Rule 3015-4, the trustee shall report such deficiency to the Court at the confirmation hearing and advise counsel for the debtor(s) no later than 2 days prior to the confirmation hearing if a dismissal based solely on that failure will be requested at the hearing.

Settlements, Withdrawals & Continuances/Filing of Joint Statements of Dispute to Excuse Attendance: The deadline for reporting settlements, withdrawals, or requests for continuances in a Chapter 13 case for purposes of calendar removal shall be no later than 10 a.m. 2 business days prior to the date of the hearing. With the exception of issues raised by the Chapter 13 trustee regarding compliance with 11 U.S.C. § 1325, if any matter remains contested at that time, a joint statement of dispute, which is subject to the Court’s approval, shall be filed by 10 a.m. 1 business day before the hearing.

If the joint statement of dispute is approved as an order of the Court and the parties have so requested, the Court may continue the matter to a dispute docket or otherwise excuse attendance at the initial hearing. Upon failure to file a joint statement or failure to obtain Court approval of the proposed joint statement, all counsel for the parties to the dispute shall appear at the hearing. The hearing will be treated as a pretrial hearing unless otherwise indicated in advance by the Court.

Requirement for Confirmation: As a condition to confirmation of a plan, the debtor(s) shall represent via the plan (by the addition of nonconforming language) or other filing with the Court that they understand the following:

- (1) The obligations set forth in the plan, including the amount, method, and timing of payments made to the trustee or directly to creditors;
- (2) The consequences of any default under the plan;
- (3) That debtor(s) may not agree to sell or sell property, employ professionals, or incur debt (including modification of debt) during the term of the plan without the advance authorization of the Bankruptcy Court.

Compliance with C-I & C-II Orders: Upon recommendation of a C-I or C-II form order, the Court may continue a confirmation hearing to ensure timely compliance with the order and confirmation of the plan.