

UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

**INSTRUCTIONS ON MOTION FOR RELIEF FROM STAY
PROCEEDINGS IN THE ALEXANDRIA DIVISION**

The following procedure is applicable only in the Alexandria Division of the United States Bankruptcy Court for the Eastern District of Virginia and applies only to motions for relief from stay under §362 and §1301(c)(1) and (c)(3) of the Bankruptcy Code. It does not apply to motions for relief from stay against a co-debtor in Chapter 13 cases under §1301(c)(2) of the Bankruptcy Code. Except as specifically modified by these instructions, the provisions of Local Bankruptcy Rule 4001(a)-(1) continue to apply to motions for relief from the automatic stay in the Alexandria Division.

The assignment of a Contested Matter (CM) number in the caption of all motions for relief from stay is being discontinued in the Alexandria Division. In addition, since the movant will be serving the notice of motion and preliminary hearing together with the motion, there is no need for stamped, addressed envelopes for each party to be submitted with the motion filed with the Clerk. The following procedure will be effective in the Alexandria Division with respect to motions for relief from stay filed on and after July 1, 2000.

I. Section 362 Relief from the Automatic Stay Motions

The preliminary hearing dates for scheduling §362 motions for relief from stay may be obtained from

- the court's Internet web site at www.vaeb.uscourts.gov under the **Alexandria button**; or
- the bulletin board in the reception area of the Clerk's Office.

A. Selecting a Preliminary Hearing Date:

The moving party must select a preliminary hearing date from the schedule of preliminary hearing dates provided by the clerk as set out above. The date should be selected according to the anticipated date of filing of the motion. (See sample dates attached.)

If the movant selects a preliminary hearing date that is more than 30 days after the moving party makes its request for relief, the moving party shall be deemed to have consented to a waiver of its rights under 11 U.S.C. Section §362(e) relating to the automatic lifting of the stay. The stay shall remain in effect until further order of the court.

If the movant fails to select a preliminary hearing date, the moving party shall be deemed to have consented to a waiver of the automatic lifting of the stay pursuant to 11 U.S.C. Section § 362(e) and the court may schedule a hearing on a date that is convenient to the court.

B. Notice of Motion for Relief from Stay:

The movant must prepare a notice of motion and hearing which shall clearly and conspicuously set forth the response period together with notice of the date, time, and location of the preliminary hearing. The notice shall be included as part of the motion and a separate notice of motion (OF20A) is not required. (See sample notice attached.) The language of the notice must conform substantially to the following.

NOTICE OF MOTION AND HEARING

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then within fifteen (15) days from the date of service of this motion, you must file a written response explaining your position with the Court at the following address: Clerk of Court, United States Bankruptcy Court, P.O. Box 19247, Alexandria, VA 22320, and serve a copy on the movant. Unless a written response is filed and served within this fifteen day period, the Court may deem any opposition waived, treat the motion as conceded, and issue an order granting the requested relief.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the fifteen day period.

In order to oppose this motion, you must also attend the preliminary hearing scheduled to be held on:

_____ at _____ a.m./p.m. in Courtroom *_____, United States Bankruptcy Court, 200 South Washington Street, Alexandria, VA 22314.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

[*Judge Mitchell cases - Courtroom I; Judge Mayer cases - Courtroom II]

C. Service and Transmittal of the Motion and Notice:

At least twenty (20) days prior to the preliminary hearing date, the movant must serve the Motion and Notice of Preliminary Hearing pursuant to Local Bankruptcy Rule 4001(a)-1(E) and simultaneously transmit to the Clerk of Court for filing:

1. the original motion for relief from stay and notice of hearing captioned as an adversary proceeding,
2. the proper filing fee,
3. one copy of the motion and notice of hearing, along with orange Notice Of Hearing cover sheet.
4. a properly completed proof of service indicating that the movant served the motion for relief from stay upon each party required to receive notice under (E)(1) of Local Bankruptcy Rule 4001(a)(1).

D. Electronic Case filing (ECF) Cases:

1. Registered movant attorney users must:
 - a. Docket the motion for relief from stay and notice of hearing,
 - b. Properly complete proof of service indicating that the motion for relief from stay was served upon each party required to receive notice under (E)(1) of Local Bankruptcy Rule 4001(a)(1), and
 - c. The filing fee will be charged to the movant attorney's credit card.
2. Non-registered movant attorneys must:
 - a. Submit on diskette in Word, WordPerfect, DOS text or Acrobat PDF format, the motion for relief from stay and notice of hearing,
 - b. Submit the proper filing fee,
 - c. Submit one paper copy of the motion and notice of hearing,
 - d. Submit a properly completed proof of service indicating that the motion for relief from stay was served by the movant upon each party required to receive notice under (E)(1) of Local Bankruptcy Rule 4001(a)(1).
3. *Pro se* movants in ECF cases should follow the instructions set forth in sections **A.**, **B.** and **C.** above.

II. Relief from Co-debtor Stay in Chapter 13 Cases under 11 U.S.C. §1301(c)(2)

A. A movant filing a motion for relief from stay against a co-debtor in a chapter 13 case under § 1301(c)(2), Bankruptcy Code, must follow the procedures as set forth in LBR 4001(a)-1(G), and transmit to the clerk of court for filing:

1. the § 1301 motion clearly stating in the caption the subsection of 11 U.S.C. § 1301 under which the party is proceeding;
2. a notice of motion setting forth the 20-day response period and including the language required by LBR 4001(a)-1(G)(2); and
3. a proof of service certifying proper service of the motion pursuant to LBR 4001(a)-1(E).

B. If no objection or response is filed and served upon the moving party within twenty (20) days from the date of service of the motion, the moving party should submit a proposed order granting the relief which the moving party seeks.

If an objection is filed to the § 1301(c)(2) motion, it will be scheduled for hearing and notice will be given by the clerk's office.