

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk and Newport News Divisions**

**INSTRUCTIONS FOR MOTION FOR RELIEF FROM STAY PROCEEDINGS
IN THE NORFOLK AND NEWPORT NEWS DIVISIONS**

The following procedure is applicable only in the Norfolk and Newport News Divisions of the United States Bankruptcy Court for the Eastern District of Virginia with respect to motions for relief from stay under §362 and §1301 of the Bankruptcy Code. (Motions for relief from stay against a codebtor in chapter 13 cases under 11 U.S.C. §1301(c)(2) are addressed separately in Section II, below.) The provisions of Local Bankruptcy Rule 4001(a)-1 are applicable in relief from automatic stay proceedings except as modified below for the Norfolk and Newport News Divisions.

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 >Calendars>Hearing Dates under Norfolk and Newport News Divisions; or
- by calling the respective Courtroom Deputy.

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.

If the movant selects a preliminary hearing date that is more than 30 days after the moving party files its motion for relief, the moving party shall be deemed to have consented to a waiver of its rights under 11 U.S.C. §362(e)(1) 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. §362(e), and the Court may, in its discretion, either schedule a hearing on the motion or deny the relief sought.

All Amended Motions for Relief from Stay must include an appropriate hearing date. The original preliminary hearing date may only be used if sufficient notice time remains prior to the hearing date, pursuant to the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules. The failure to select an

appropriate hearing date and otherwise comply with these procedures may result in the denial of the relief sought.

For Motions for Relief from Stay filed simultaneously with a proposed consent order: **DO NOT** schedule a hearing or include a hearing date.

B. Notice of Motion for Relief from Stay:

The movant must prepare a notice of motion, which shall include notice of the appropriate response period together with notice of the date, time, and location of the preliminary hearing. A separate notice of motion (Official Form 420A)¹ is not required. The motion for relief from stay shall clearly state and conspicuously provide the following notice:

NOTICE OF MOTION

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 14 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, 600 Granby Street, Norfolk, VA 23510, and serve a copy on the movant. Unless a written response is filed and served within this 14-day period, the Court may deem 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 14-day period.

Attend the preliminary hearing scheduled to be held on: _____
at _____ a.m./p.m. in (Court location.)

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.

¹ **NEW (December 1, 2016):** The previous reference to Official Form 20A has been modified to Official Form 420A.

(****Please note:** Pursuant to Local Bankruptcy Rule 4001(a)-1(H)(2), the notice period for motions for relief from the codebtor stay filed pursuant to Sections 1301(c)(1) or (c)(3) is **14** days. The notice period for a motion for relief from the codebtor stay under Section 1301(c)(2) is **20** days.**)

C. Service and Transmittal of the Motion and Notice (if filed under Sections 362 or 1301(c)(1) or 1301(c)(3) of the Bankruptcy Code):

At least 21 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(F), and simultaneously file with the Court, in accordance with Local Bankruptcy Rule 4001(a)-1(E) and in the manner set forth in Section I.D., below, the following items:

1. The original motion for relief from stay and notice of hearing captioned as an adversary proceeding;
2. 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 Local Bankruptcy Rule 4001(a)-1(F); and
3. the proper filing fee.

D. Method of Filing:

1. Registered movant attorney users of the Electronic Case Files system must file the items set forth in Section I.C. electronically in accordance with the Court's CM/ECF Policy and the applicable Local Bankruptcy Rules. The filing fee shall be paid by the filer electronically.
2. Non-registered movant attorneys must submit to the Court the items set forth in Section I.C., along with a diskette containing the motion for relief from stay and notice of hearing in Word, WordPerfect, DOS text, or Acrobat PDF format.
3. Movants who are unrepresented by counsel (*pro se*) shall file with the Court the items set forth in Section I.C., above.

II. Relief from Codebtor 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 codebtor in a chapter 13 case under 11 U.S.C. §1301(c)(2) must follow the procedures, as set forth in Local Bankruptcy Rule 4001(a)-1(H), and file the following items in the manner set forth in Section I.D., above:

1. the §1301 motion clearly stating in the caption the subsection of 11 U.S.C. §1301 under which the party is proceeding;

2. the passive notice of motion, which shall include notice of the 20-day response period and the language set forth in Local Bankruptcy Rule 4001(a)-1(H)(2)(b); and
 3. a proof of service certifying proper service of the motion pursuant to Local Bankruptcy Rule 4001(a)-1(F).
- B. If no objection or response is filed with the Court and served upon the moving party no later than 20 days from the date of the filing of the motion, the moving party should submit to the Court a proposed order granting the relief being sought by the moving party.

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.