

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Motions for Relief from Stay Guidelines**

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*The United States Bankruptcy Court provides the following Guidelines pertaining to motions for relief from stay filed in the Eastern District of Virginia. The Court may, in certain instances, impose additional requirements if circumstances warrant.*

*The Guidelines do not alter the requirements regarding appearances at hearings pursuant to Local Bankruptcy Rule 2090-1(H).*

*Should any Guideline be construed so as to conflict with the Local Bankruptcy Rules of this Court, the provisions of the Local Bankruptcy Rules shall control.*

*Questions regarding the Guidelines may be directed to the Judge's Courtroom Deputy. Parties are reminded that the Clerk's Office is prohibited from providing legal advice.*

**Motions for Relief from Automatic Stay**

The following procedure is applicable 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 as supplemented below.

*I. Relief from the Automatic Stay under Sections 362, 1301(c)(1), or 1301(c)(3)*

The preliminary hearing dates for scheduling motions for relief from stay pursuant to §362, §1301(c)(1), and §1301(c)(3) may be obtained from

- **the Court's Internet web site at [www.vaeb.uscourts.gov](http://www.vaeb.uscourts.gov) >Hearing Information> Judges' Hearing Dates & Information; or**
- **by calling the Judge's Courtroom Deputy.**

*A. Selecting a Preliminary Hearing Date:*

The moving party (movant) must select a preliminary hearing date from the schedule of preliminary hearing dates provided by the Clerk as set forth 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 filing a motion for relief, the movant shall be deemed to have consented to a waiver of the movant's

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 movant 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, the 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 and Response Period:*

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) is not required, however, unless provided otherwise by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or order of the Court. The motion for relief from stay shall clearly state and conspicuously provide the following notice:

**NOTICE**

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 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 without further notice or hearing.

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.

(\*\***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 :*

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 a contested matter;
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 CM/ECF 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 file with the Court the items set forth in Section I.C., on a diskette or CD-ROM in Microsoft Word, WordPerfect, DOS text, or Acrobat PDF format. The filing fee shall be paid to the Clerk.
3. Movants who are individuals and unrepresented by counsel (*pro se*) shall file with the Court the items set forth in Section I.C., conventionally, on paper. The filing fee shall be paid to the Clerk.

*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 an objection or response is not filed with the Court and served upon the movant no later than 20 days from the date of the filing of the motion, the movant should submit to the Court a proposed order granting the relief being sought by the movant.

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.