

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO  
Bankruptcy Judge Sid Brooks**

**In re:** )  
**MOTION PRACTICE STANDARDS IN** ) **AMENDED**  
**ADVERSARY PROCEEDINGS AND** ) **STANDING ORDER 2006-1-SBB**  
**CONTESTED MATTERS** )

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**AMENDED STANDING ORDER 2006-1-SBB REGARDING MOTIONS FOR RELIEF  
FROM AUTOMATIC STAY UNDER 11 U.S.C. § 362(d)(1) and/or (2)**

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THIS MATTER comes before the Court *sua sponte* and on consideration of the need for an effective method of dealing with motions for relief from automatic stay. In order to better serve the public and the bar,

IT IS ORDERED that the following procedures shall apply to all motions for relief from automatic stay:

**I. Introduction**

**A. Purpose and Authority**

Consistent with Fed.R.Civ.P. 1, these motion practice standards are adopted to secure the just, speedy, and inexpensive determination of relief from automatic stay matters. These standards shall apply to all motions for relief from automatic stay filed on or after **June 1, 2009**. This Standing Order may be revised from time to time, if need so arises, and may be revised without notice and may be modified by orders entered in specific proceedings/cases.

**B. Scope**

These motion practice standards supplement and do not supplant or supercede the Federal Rules of Bankruptcy Procedure (Fed.R.Bankr.P.), Bankruptcy Official Forms, and/or Local Bankruptcy Rules (L.B.R.). They govern only relief from automatic stay motion practice and procedure before Judge Sidney B. Brooks, United States Bankruptcy Court for the District of Colorado.

**II. Motion Practice Requirements**

**A. Generally**

Our division strictly adheres to L.B.R. 401 in conducting relief from automatic stay hearings. The motion for relief from automatic stay shall be filed together with a legally sufficient notice pursuant to L.B.R. 401, a certificate of service, and a proposed Order.

## **B. The Contents of the Motion for Relief from Automatic Stay**

### **1. General Requirements:**

- a. The motion for relief from automatic stay must set forth the specific grounds upon which relief is being requested.
- b. In a motion seeking relief from automatic stay under 11 U.S.C. § 362(d)(1), the movant must be specific in identifying the “cause” for granting relief from automatic stay.
- c. If the “cause” for granting relief from the automatic stay is failure to make payments, in whole or in part, then the movant must specifically allege the total amount and components of the pertinent default or arrearage, on the debt, and provide a legible and cogent statement of payments made under the loan, not made, or not made in full, for the relevant time-frame giving rise to the motion.
- d. If the “cause” for granting relief from the automatic stay is “lack of adequate protection of an interest in property,” the movant must specifically allege the nature of the inadequacy of the protection in the movant’s interest in property. *See, e.g.*, 11 U.S.C. § 361 (which sets forth examples of adequate protection).
- e. The requirements of this Order are a predicate for the filing of a motion for relief from automatic stay so as to put the responding part(ies) on notice of the basis(es) for the relief requested. It does not supercede the burdens of proof set forth in 11 U.S.C. § 362(g), which provides that:

In any hearing under subsection (d) or (e)  
[11 U.S.C. § 362] concerning relief from the  
stay of any act under subsection (a) of [11  
U.S.C. § 362]:

(1) the party requesting such relief  
has the burden of proof on the issue  
of the debtor’s equity in property;  
and

(2) the party opposing such  
relief has the burden of proof  
on all other issues.

*See also, In re Anthem Communities/RBG, LLC*, 267 B.R. 867 (Bankr. D.Colo. 2001).

2. Motion for Relief from Automatic Stay Involving a Security Interest in Property:

In a motion seeking relief from automatic stay with respect to a stay of an act against property wherein the movant holds a security interest, under 11 U.S.C. § 362(d)(2), the movant shall attach to the motion seeking relief from automatic stay:

- a. a statement identifying the current amount of the secured claim and unsecured portion, if any;
- b. the amount of any other known liens against the property, the estimated value of the property subject to the movant's lien, and a statement regarding how that value has been determined;
- c. a statement of how the lien was established and, if by loan, a legible and cogent history of payments made under the loan, and payments not made, or not made in full, for the relevant time frame giving rise to the motion;
- d. if the movant is not the original party whose interest is secured by the lien, the movant shall set forth by exhibits, affidavits, or other legally sufficient proof that it is now the proper party to enforce the lien; and
- e. the movant shall also specify the reasons that the property is not necessary to an effective reorganization.

3. Motion for Relief from Automatic Stay with Respect to Leases:

In a motion seeking relief from automatic stay with respect to a stay of an act against property wherein the movant is the lessor of the property, the movant shall attach to the motion seeking relief from automatic stay:

- a. a copy of the lease agreement;
- b. a statement or ledger sheet identifying the lease payment amount, the arrearage, and any attendant fees or costs attributable to any default under the terms of the lease;
- c. if the movant is not the original lessor, the movant must set forth by exhibits, affidavits, or other legally sufficient proof that it is now the proper party to enforce the lease; and

- d. the movant shall also specify the reasons that the property is not necessary to an effective reorganization.

4. Motions for Relief from Automatic Stay with Respect to Pursuing Litigation to Establish Liability

In a motion seeking relief from automatic stay with respect to pursuing litigation to establish liabilities, the movant shall attach to the motion seeking relief from automatic stay:

- a. a copy of the principal relevant pleadings filed in the litigation including the Complaint or Petition, Answer, and any other pleadings to facilitate the Court's ruling on the motion; and
- b. any other pertinent exhibits to establish "cause" under 11 U.S.C. § 362(d)(1).

**C. Responses to Motions for Relief from Automatic Stay**

1. A response to the motion for relief from automatic stay **must** be filed within the time set forth in the motion for relief from automatic stay. In accordance with L.B.R. 401 and L.B.F. 401.1, this is within five (5) court days before the hearing on the motion for relief from automatic stay or as otherwise specified in the notice. **If there is no timely response to the motion for relief from the automatic stay, the hearing set on the motion for relief from automatic stay will be vacated and an order granting the relief requested may be granted without further notice or hearing.**
2. If a response is filed, the hearing set on the notice will be a "preliminary hearing." A final evidentiary hearing may be set thereafter if "there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing." 11 U.S.C. § 362(e). Local Rule 401 contemplates the use of detailed offers of proof and no live witnesses. The Court, however, may dispose of the motion for relief from automatic stay at the preliminary hearing.
3. If a response is filed, the parties must exchange exhibits and prospective witness lists with opposing party/counsel **prior to the preliminary hearing**. Failure to identify an expert witness, and to tender a list of the expert's qualifications and a written summary of the expert's expected testimony and opinions, may result in the preclusion of such testimony at the final hearing on the motion for relief from automatic stay.
4. Relief from stay proceedings are "summary proceedings" in nature. While parties need to present detailed offers of proof at the preliminary hearing,

the Court may not “finally determine” and fully dispose of all factual issues raised. It will only make summary determinations as to whether the statutory grounds for relief have been satisfied.<sup>1</sup>

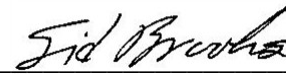
IT IS FURTHER ORDERED that failure to comply with this Order and/or the procedures identified herein may result in denial of requested relief.

IT IS FURTHER ORDERED that this Order shall become effective **June 1, 2009**.

IT IS FURTHER ORDERED that, effective June 1, 2009, Standing Order 2006-1-SBB, is hereby MODIFIED and is REPLACED by this Amended Standing Order 2006-1-SBB.

Dated this 29th day of April, 2009.

BY THE COURT:



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Sidney B. Brooks,  
United States Bankruptcy Judge

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<sup>1</sup> Nevertheless, all relief from stay matters shall be deemed by this Court as evidentiary hearings and the record will reflect that the hearing is considered evidentiary for the purpose of collecting and reporting certain statistics to the Administrative Office of the U.S. Courts.