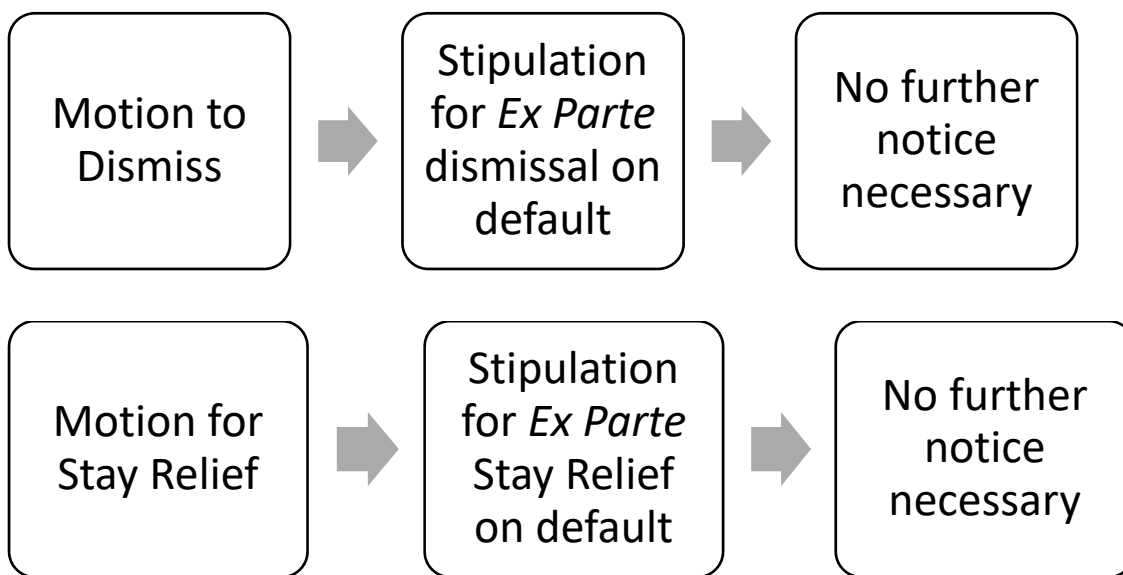


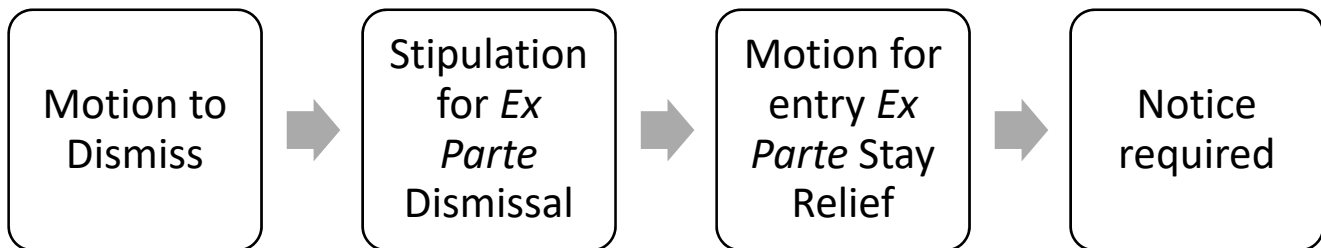
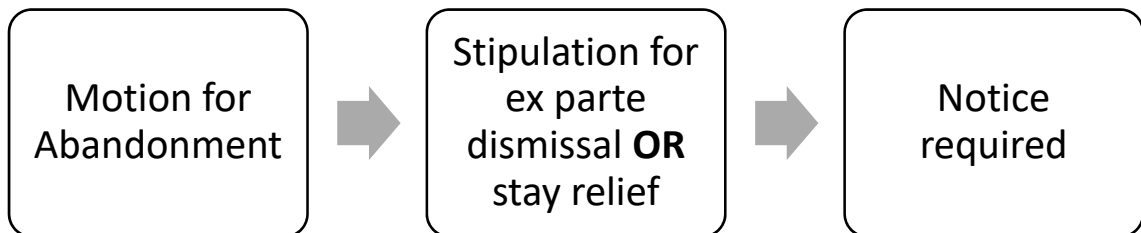
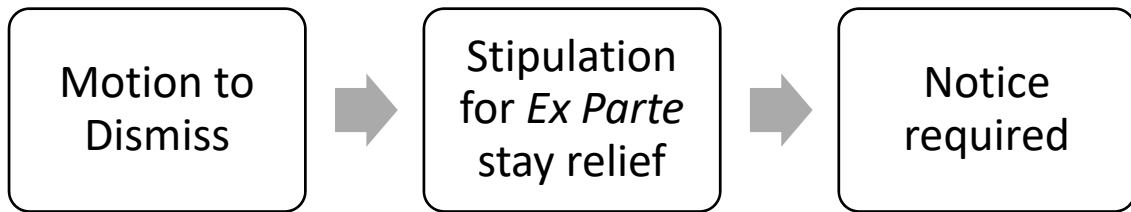
- **Stipulations Resolving Motions to Dismiss, Motions for Stay Relief, and Motions for Abandonment**

When chapter 13 debtors default on postpetition secured debt payments, secured lenders have a number of options available to them, such as a motion for stay relief, a motion to dismiss, or a motion to abandon. Often after filing these types of motions, the parties will enter into a stipulation to cure the defaults. Typically, the stipulation will include a “drop dead” provision, meaning that, if the debtor fails to adhere to the cure arrangement, then the secured lender may obtain “ex parte” relief from the court. In this context, ex parte relief means that the movant will not be required to prove entitlement to the relief in a court hearing.

A problem that often arises with these stipulations is that the form of ex parte relief agreed to is different from the form of relief originally sought in the motion. Third parties might be impacted by the new form of relief but they have not been given notice of it. For example, if the creditor filed a motion to dismiss but the stipulation provides for stay relief, then a junior lien creditor might be affected. With dismissal as the original remedy, the junior lien claimant would also be able to pursue its lien rights against the property because no stay remains in effect as to any creditor. When the stipulation allows stay relief instead, the junior lien claimant remains bound by the stay and is probably unaware that the movant is proceeding with foreclosure. That is why Fed. R. Bankr. P. 4001(d) requires notice of a stipulation for stay relief.

As a result, when the form of ex parte relief differs from the form of relief sought in the original motion, additional notice of the stipulation may be required. The following flow charts illustrate when additional notice is or is not required.





Alternatively, the creditor may be able to demonstrate that additional notice is not necessary. For example, if the creditor is able to demonstrate that there are no other affected parties who need to receive notice, or that the circumstances described in Fed. R. Bankr. P. 4001(a)(2) exist, then the Court may be willing to grant stay relief without further notice. Where applicable, the creditor should state that these conditions exist in its request for *ex parte* relief to avoid a hearing and/or deficiency notice.