MOTIONS FOR RELIEF FROM STAY

Scheduling:

This Court generally holds preliminary hearings on motions for relief from automatic stay on Wednesday mornings at 9:30 a.m. **All preliminary hearings are held by telephone.** To aid in the selection of a hearing date as required by Local Bankruptcy Rule 4001-1, please refer to this Court's calendar under Calendar/Relief from Stay on this website. **All 4001-1 Notices must provide telephonic hearing information.**

Note to Debtors without attorneys:

If you have not filed a response to the Motion, **there will not be a hearing on the motion.** The notice sent to you with the motion requires that if you wish to contest the relief sought in the motion, you must file a written response with the Court within seven (7) days before the hearing and serve this response on the opposing party. This usually translates into the filing and mailing your response one calendar week prior to the hearing, absent holidays and other unusual circumstances. Thus, in the typical case, if the hearing is set on a Wednesday, your written response must be received by the Court and mailed or hand-delivered to the opposing party by the Wednesday before the hearing. If you fail to file a response, it is likely that the requested relief sought in the Motion will be granted.

Drafting Issues**:**

As part of its review process in connection with filed Motions for Relief from Stay, the Court looks for compliance with the following requirements:

1. The packet must contain:
   a. The Motion for Relief from Stay;
   b. The Affidavit regarding compliance with the Servicemembers Civil Relief Act of 2003 (L.B.R. 4002-2(c))
   b. Notice in substantial conformity with L.B.F. 4001-1.1;
   c. The Certificate of Service; and
   d. A proposed Order.

2. Does the Motion state ***sufficient*** grounds for relief under Section 362(d)? If one of your grounds for relief is lack of equity, then you should identify the current amount of your lien (and the amount of any other known liens against the property), the estimated value of the property subject to your lien and how that value has been determined. If you are asserting that you are not adequately protected, please specify why not. **DO NOT** simply assert that the debtor lacks equity in the property or generally claim you are not adequately protected. Such statements do not give this Court the basis to enter the requested relief, even if uncontested. The result may be that your motion will be denied without prejudice.

3. Does the Motion contain suitable evidence that a lien was actually recorded or perfected pursuant to State law? If the underlying obligation has been assigned to you, did you provide evidence of that assignment?

Preliminary Hearings:

The originally scheduled hearing will be conducted as a "preliminary hearing." At this preliminary hearing, Local Bankruptcy Rule 4001-1 contemplates the use of detailed offers of proof and no live witnesses. The Court will set the matter for a final evidentiary hearing only if the offers of proof demonstrate a genuine issue of material fact. **DO NOT** assume that you can make general statements of what you hope you can prove by the time of a final hearing, or else the motion may be denied at the preliminary hearing!

Common mistakes to avoid at the preliminary hearing:

- Failure to exchange exhibits and witness lists with opposing party/counsel 24 hours prior to the hearing.

- Failure to identify any expert witnesses, and to tender a list of the expert's qualifications and a written summary of the expert's expected testimony and opinions. Failure to comply with this requirement of Local Bankruptcy Rule 4001-1 may result in your inability to use any expert at the final hearing (if such a hearing is required).

- This Court views the movant's burden of proof in a relief from stay hearing in a similar fashion as Judge Brown as set forth in her opinion in *In re Anthem Communities/RBG, LLC*, 267 B.R. 867 (Bankr. D. Colo. 2001).

- Remember that relief from stay proceedings are "summary proceedings" in nature. While you need to present detailed offers of proof, keep in mind that the Court will not "finally determine" any of the factual issues raised. It will only make summary determinations as to whether the statutory grounds for relief have been satisfied.