

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

**HOW TO FILE A
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

What is the Automatic Stay?

Once a Debtor has filed Bankruptcy, most proceedings against him are stayed, 11 USC Section 362 (a). - In order for a party to continue a proceeding against the debtor that was stayed because of the filing of the Bankruptcy and the Automatic Stay, he must file with the Bankruptcy Court a Motion for Relief from the Automatic Stay, or a Stipulation for Relief from the Automatic Stay if the other parties, the debtor and the trustee agree.

Rules for reference

11 USC Section 362(a)
Bankruptcy Rule 4001
Bankruptcy Rule 9014
Local Rule 4001-1

How is a Motion for Relief from the Automatic Stay Commenced?

A motion is a written formal statement in which the party who is requesting the relief, the Movant, sets forth the legal basis, citing the applicable sections of the Bankruptcy Code and the Bankruptcy Rules, for the relief requested. The party against whom the relief is requested, the debtor and the trustee, if one has been appointed, are the Respondents. Each motion shall be supported by all documents which assert a valid perfected security interest and all documents which support an assertion of lack of adequate protection or of equity in the property.

Is there a specific form provided by the Court for the Motion for Relief from the Automatic Stay?

Each Motion for Relief from the Automatic Stay is unique and there is no specific form provided by the court for the motion.

Motion for Relief from the Automatic Stay on a Chapter 13 Co-Debtor

A Motion for Relief from the co-debtor stay is governed by 11 USC Section 1301. There is no filing fee for this type of motion.

Is there a filing fee?

Currently the filing fee for a Motion for Relief from the Automatic Stay is \$188.00. (cashiers check or money order - no personal checks). This filing fee applies to all parties, including the debtor, if the debtor is filing the motion. If the party filing the motion is a creditor owed child support by the debtor or such creditor's representative, the filing fee is not due provided the creditor or representative files Form B2810 Appearance of Child Support Creditor or Representative (a copy of which is included.)

What is required when filing a Motion for Relief from the Automatic Stay?

1. Filing fee \$188.00, cashiers check or money order (except when the filing fee is not required);
2. An original of the Motion for Relief from the Automatic Stay;
3. An original of the Notice of Motion for Relief from the Automatic Stay (a Form for this notice is included); and
4. A form of Order granting the motion needs to be served on the parties, however, it is not filed with the Court.

What is a Notice of Motion for Relief from Automatic Stay?

This is a notice (a Form for this notice is included) providing the details of the motion and stating that any party wishing to file an objection to that motion must do so in writing and file the original with the Bankruptcy Court and serve a copy on the Movant, within 14 days of service of the motion upon them.

Who notices out the Motion, Notice and Order?

The Movant is responsible for noticing out the Motion, Notice and Order.

Who should the Motion, Notice and Order be served on?

In all bankruptcy Chapters a copy of the motion, notice and order must be served on the parties involved; Debtor, Debtor's attorney, Trustee (if one has been appointed), and any other party known to claim an interest in the property, rents, issues, profits, or proceeds. In a Chapter 11 case, the notice, motion and form of order must also be served on the Unsecured Creditors Committee, or on the 20 Largest Unsecured Creditors.

How do I make Service?

Service may be done in a variety of ways, however, the easiest method of service is for the motion, notice and form of order to be served by mailing first class postage prepaid to

the party's residence, or to the place where the party regularly conducts business. Service is complete upon mailing.

What do I do after service has been made of the Motion, Notice and Order?

File with the Court a Certificate of Service.

What happens if no objection is filed? What do I do?

You would follow Local Rule 4001, and would submit a Certificate of Service and No Objection and the original of the Order, copies of which you have served on the parties. An original and one copy must be provided to the Court. (A copy of Local Rule 4001 is included) Submit a self-addressed and stamped envelope for copies to be returned to you.

Once the Order is signed, who serves the Order on the Respondent and the Respondent's attorney?

You do. Again, service can be made by mail.

What happens if an Objection is filed to the Motion for Relief from the Automatic Stay?

Once an objection is filed, procedures for setting a Hearing differ depending upon the Judge and Location. You will be notified of the date and time of any hearing.

Once the hearing is set by the Court, you must appear at the hearing. What happens once the hearing is set?

The Motion for Relief from the Automatic Stay would then go through its course until the Judge renders a decision, lifts the Automatic Stay, or the parties reach a stipulation.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In Re	Chapter
	Case No.
Debtor(s)	
Movant(s)	
v.	NOTICE OF FILING OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND REQUIREMENT TO FILE OBJECTION
Respondent(s)	

NOTICE IS GIVEN that the above movant has filed a motion requesting relief from the automatic stay, the details of which are as follows:

FURTHER NOTICE IS GIVEN that pursuant to Local Bankruptcy Rule 4001 if no written objection is filed with the Court and a copy served on movant whose address is:

WITHIN 14 DAYS of service of the motion, the motion for relief from the automatic stay may be granted without further hearing.

Dated:

Movant

Copies of the foregoing mailed on _____ to:

By: _____

Rule 4001-1

Automatic Stay - Relief From

(a) Form. A motion or stipulation for relief from the automatic stay shall be in the form as required by Local Rule 9004-1. The caption shall contain a brief description of the property, and the nature of the relief requested. The motion or stipulation and notice provided for in this Local Rule together shall constitute a request for relief from the automatic stay and such request shall be deemed to have been made after completion of service of the motion or stipulation and notice.

(b) Residential Property Pre-Filing Certification. Unless the movant is seeking emergency relief under Bankruptcy Code § 362(f), a motion seeking relief as to the debtor's residence must be accompanied by a certification that: (i) movant's counsel sent a letter seeking to resolve the issues necessitating the motion to debtor's counsel or the debtor, if the debtor is without counsel, and that after sincere effort the parties have been unable to resolve the matter, and (ii) the letter was sent at least seven days prior to the filing of the motion. In the absence of such certification the court may deny the inclusion of attorney's fees as part of the secured debt or as part of the allowed claim.

(c) Service.

(1) **Motions.** A motion for relief from the automatic stay, a proposed form of order, and the notice required by subsection (d) shall be promptly served by movant upon:

(A) The debtor;

(B) The debtor's counsel;

(C) The case trustee, if any; and

(D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured creditors' committee and counsel for any committee appointed under the Code.

(2) **Stipulations.** A stipulation for relief from the automatic stay entered into by the parties before the filing of a motion, a proposed form of order, and the notice required by subsection (d) shall be promptly served by movant upon:

(A) The debtor;

(B) The debtor's counsel;

(C) The case trustee, if any; and

(D) In a chapter 11 case, the twenty largest unsecured creditors listed by the debtor, or the unsecured creditors' committee and counsel for any committee appointed under the Code.

(3) **Additional Notice.** The notice required by subsection (d) of this rule shall be promptly served by movant upon:

(A) Any other party known to movant to claim an interest in the property that is the subject of the motion; and

(B) Any other person or entity required by law or the court.

(4) **Stipulated Order.**

Upon proper notice, the movant may upload a Stipulated Order Modifying the Automatic Stay without the necessity of filing a motion for relief and without incurring a filing fee should the parties resolve the matter without court action.

(d) Notice of Motion or Stipulation. Contemporaneously with the motion or stipulation, movant will serve and file a form of notice providing the details of the motion or stipulation and that if no objection is served on movant and filed within 14 days of service, the motion or stipulation may be approved by the court.

(e) Movant's Supporting Documents. Each motion shall be supported by legible copies of:

(1) All documents asserted to establish a valid, perfected security interest; and

(2) All documents that movant contends support an assertion of a lack of adequate protection or equity in property, including appraisals or summaries thereof, currently in movant's possession or control upon which it intends to rely at final hearing.

(f) Entry of Order. If an objection to the motion or stipulation is not timely filed and served, the proposed form of order may be lodged and served with a certification of service and of no objection, which certification may not be made until the expiration of three business days after the last day for objection. If the court determines that the movant filed improperly or in bad faith a certification of no objection, the movant may be subject to sanctions.

(g) Form of Order. The order lodged with the court shall not grant relief greater than that requested in the motion or stipulation.

(h) Objection. An objection to the motion or stipulation for entry of an order for relief from stay shall be supported by specific facts. The objection shall be supported by

legible copies of all documents that the objector contends supports an assertion of adequate protection or equity in property, including appraisals or summaries thereof, currently in the objector's possession or control, which the objector intends to rely on at a final hearing.

(i) Procedure Upon Objection.

(1) If a timely objection is filed and served, the court shall issue an order establishing the procedures for adjudication of the motion, including the procedures for the movant to obtain and notice a date, time, and place for a preliminary hearing in the matter or setting a preliminary or final hearing.

(2) Relief may be granted or denied at the preliminary hearing based upon the affidavits, declarations, and other supporting documentation filed as part of the motion or objection if the opposing party's affidavits, declarations and supporting documentation fail to establish the existence of a material issue of fact that requires an evidentiary hearing.

(j) Separate Litigation File. Upon request or sua sponte, the court may order the clerk to establish a separate contested matter litigation file.

Committee Notes 2009: Time deadlines have been amended to be consistent with amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2009.

United States Bankruptcy Court

_____ District Of _____

In re _____, Case No. _____
Debtor(s)

APPEARANCE OF CHILD SUPPORT CREDITOR* OR REPRESENTATIVE

I certify under penalty of perjury that I am a child support creditor* of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name:
Organization:
Address:

Telephone Number:

_____ X _____
Date Child Support Creditor* or Authorized Representative

<u>Summary of Child Support Obligation</u>	
Amount in arrears: \$ _____	If Child Support has been assigned: Amount of Support which is owed under assignments: \$ _____
Amount currently due per week or per month: on a continuing basis: \$ _____ (per week) (per month)	Amount owed primary child support creditor (balance not assigned): \$ _____
Attach an itemized statement of account. Do not disclose the name of a minor child. See 11 U.S.C. § 112. If a social security number or a taxpayer identification number is included, set out only the last four digits of the number. Judicial Conference Privacy Policy (09/01).	

* Child support creditor includes both creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a)(26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.