

Guidelines for Requests Related to Termination or Absence of Automatic Stay, or Requests for Extension/Imposition of Automatic Stay Pursuant to 11 U.S.C. §362(c), (h) and (j)

Pending promulgation of a new local rule regarding such matters, the following guidelines are offered to parties seeking an order regarding termination, absence or extension of the automatic stay pursuant to 11 U.S.C. § 362(c), (h) and (j).

A. When Relief Is Requested Pursuant to 11 U.S.C. § 362(j) to Confirm Termination of the Automatic Stay Under Section 362(c)(3)(A) or for Confirmation that Stay not in effect Under Section 362(c)(4)(A)(ii): The movant must file a verified motion, mail copies to the debtor, debtor's counsel and case trustee, and plead the following with specificity:

- (1) the requirements of 11 U.S.C. § 362(c);
- (2) the facts supporting the requested relief including the following information regarding the previous case or cases:
 - (a) case name,
 - (b) case number,
 - (c) court where filed,
 - (d) date filed,
 - (e) date dismissed,
 - (f) whether the dismissal was pursuant to 11 U.S.C. §707(b),
 - (g) as to a request under Section 362(c)(3)(A), describe any pre-petition action commenced by the movant; and
 - (h) any additional relevant information.

B. When Relief Is Requested Pursuant to 11 U.S.C. § 362(h) to Terminate the Stay for Failure to Comply with Duties Under 11 U.S.C. § 521(a) with Respect to Personal Property: Motions requesting a declaration that the Section 362(a) stay is terminated with respect to personal property of the estate or of the debtor and that such property is no longer property of the estate must be verified; with copies mailed to the debtor, debtor's counsel and case trustee, and must plead the following with specificity:

- (1) recital of the facts supporting the requested relief pursuant to the terms of 11 U.S.C. § 362(h); and
- (2) a detailed description of the property interest securing the debtor's obligation to the movant.

C. **Debtor's or Party in Interest's Request to Extend the Stay Pursuant to 11 U.S.C. § 362(c)(3)(B), Impose the Stay Pursuant to 11 U.S.C. § 362(c)(4)(B) or Motion to Determine Personal Property is of Consequential Value under Section 362(h)(2):**

- (1) A Motion to Extend the Stay under Section 362(c)(3)(B) should be filed with the petition or promptly thereafter.
 - (a) The Motion must be verified, explain why this later case is filed in good faith as to the creditors to be stayed, and specify whether the request extends to all creditors or only specified creditors.
 - (b) Unless ordered otherwise, the movant must give at least 10 days notice (7 calendar days notice plus 3 days for mailing) of the objection date by mail of the date by which an objection must be filed to the case trustee, debtor and debtor's attorney and all creditors affected. **The form of notice to be used is modeled from L.B.R. 401 and is attached to these guidelines.** The notice must include a copy of the motion.
 - (c) The movant should provide a date of the hearing on the notice selected from the assigned judge's relief from stay calendar, which date shall not exceed **27 days from the date of filing of the case.**
 - (d) If the movant seeks to extend the stay to certain property of the estate, service of the motion and notice must also comply with the requirements of Fed. R. Bankr. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.
 - (e) The movant must submit a certificate on uncontested motions no sooner than two court days before the scheduled hearing date.
- (2) A Motion for Imposition of the Stay under Section 362(c)(4)(B) must be filed within **30 days after the filing of the petition.**
 - (a) The Motion must be verified, explain why this later case is filed in good faith as to the creditors to be stayed, and specify whether the request extends to all creditors or only specified creditors.
 - (b) Unless ordered otherwise, the movant must give at least 10 days notice (7 calendar days notice plus 3 days for mailing) by mail of the date by which an objection must be filed to the case trustee, debtor and debtor's attorney, and all creditors affected. **The form of notice to be used is modeled from L.B.R. 401 and is attached to these guidelines.** The notice must include a copy of the motion.
 - (c) The movant should provide a date of the hearing on the notice selected from the assigned judge's relief from stay calendar, which date shall not exceed **27 days from the date of filing of the motion.**

- (d) If the movant seeks to extend the stay to certain property of the estate, service of the motion and notice must also comply with the requirements of Fed. R. Bankr. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.
 - (e) The movant must submit a certificate on uncontested motions no sooner than two court days before the scheduled hearing date.
- (3) A Motion to Determine Personal Property is of Consequential Value under Section 362(h)(2) must be filed within **30 days after the first date set** for the meeting of creditors.
- (a) The Motion must be verified, explain the basis for the belief that the property is of consequential value or benefit to the estate, describe what adequate protection is appropriate to protect the creditor's interest and whether or not the debtor has delivered the collateral to the trustee.
 - (b) Unless ordered otherwise, the movant must give at least 10 days notice (7 calendar days notice plus 3 days for mailing) by mail of the date by which an objection must be filed to the debtor and debtor's attorney, and all creditors affected. **The form of notice to be used is modeled from L.B.R. 401 and is attached to these guidelines.** The notice must include a copy of the motion.
 - (c) The movant should provide a date of the hearing on the notice selected from the assigned judge's relief from stay calendar, the date selected should be closest to, but not exceed, 27 days from the date of filing of the motion.
 - (d) Service of the motion and notice must also comply with the requirements of Fed. R. Bankr. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.
 - (e) The movant must submit a certificate on uncontested motions no sooner than two court days before the scheduled hearing date.

Commentary

A verified motion must be signed by the movant and state that the facts contained in the motion are true to the best of the movant's information and belief.

The notice procedure is modeled after L.B.R. 401.

Motions to extend the stay under 11 U.S.C. § 362 (c)(3)(B) may be summarily denied if they are not timely filed such that meaningful due process can be afforded and a hearing held before the end of the 30-day period set forth in Section 362(c)(3)(B). Typically, a motion filed within 7 to 10 calendar days of the commencement of the case can be timely prosecuted under these guidelines,

depending upon the assigned judge's relief from stay hearing dates.

Caution: do not confuse these guidelines as a substitution for circumstances when relief from the automatic stay is required under 11 U.S.C. § 362(d).

[caption as in Bankruptcy Official Form No. 16B]

Notice of Hearing

YOU ARE HEREBY NOTIFIED that a Motion to Extend/Impose the Stay or Determine Property is of Consequential Value, a copy of which is herewith served on you, has been filed with this Court. A hearing on the motion has been set for _____ at _____ o'clock __. m., in Courtroom _____, located at 721 19th Street, Fifth Floor, Denver, Colorado 80202.

If you desire to oppose this motion, you are required to file with this Court and serve upon _____, movant or movant's attorney, whose address is _____, a written response to the motion on or before three (3) court days prior to the date of the hearing. If you oppose the motion, the Court will conduct an evidentiary hearing on this date and you should be prepared to offer any testimony, exhibits, or other evidence that you wish to have the Court consider.

If you fail to file a response, an order granting the relief requested may be entered without further notice to you, upon the movant's timely filing of a certificate of non-contested matter, to be filed no later than two **court** days prior to the hearing.

Dated: _____

Signature Block of Attorney for Movant

Guidelines for Electronic Filers

Requests for termination or absence of the stay under 11 U.S.C. §§ 362 (c)(3)(A), 362 (c)(4)(A) or 362(h):

Use “**Termination or Absence of the Automatic Stay**” found under the **Motion events**

Requests to extend the automatic stay under 11 U.S.C. § 362 (c)(3)(B):

Use “**Extend Automatic Stay**” found under the **Motion events**

If you file a separate “**Debtor’s Statement of Good Faith Filing**,” not already pled or contained in the motion, use the **Miscellaneous event** called “Debtor’s Statement of Good Faith Filing”

For your **Notice**, use “**Notice (401)**” found under the **Notice events**, you will need to put in the date, time and location of the hearing.

Requests to impose the automatic stay under 11 U.S.C. § 362 (c)(4)(B):

Use “**Impose Automatic Stay**” found under the **Motion events**

If you file a separate “**Debtor’s Statement of Good Faith Filing**,” not already pled or contained in the motion, use the **Miscellaneous event** called “Debtor’s Statement of Good Faith Filing”

For your **Notice**, use “**Notice (401)**” found under the **Notice events**, you will need to put in the date, time and location of the hearing.

Requests to Determine Property is of Consequential Value under 11 U.S.C. § 362(h)(2):

Use “**Determine Value of Property** (Trustee filed)” found under the **Motion events**.

For your **Notice**, use “**Notice (401)**” found under the **Notice events**, you will need to put in the date, time and location of the hearing.