

D.N.J. LBR 4001-1 AUTOMATIC STAY - RELIEF FROM

- (a) No court appearances are required for uncontested motions relating to the automatic stay.
- (b) To contest a motion relating to the automatic stay in a Chapter 13 case, the Debtor shall file and serve upon the creditor and the Chapter 13 Standing Trustee, Local Form, [Chapter 13 Debtor's Certification in Opposition to Creditor's Motion or Certification of Default](#) at least seven (7) days before the return date if filed in opposition to a Motion for Relief from the Automatic Stay; and within 14 days of filing of a [Creditor's Certification of Default](#) under an [Order Resolving Motion to Vacate Stay and/or Dismiss with Conditions](#).
- (c) In addition to the requirements of [D.N.J. LBR 9013-1](#) through [9013-3](#), every motion for relief from the automatic stay shall be accompanied by a certification or affidavit and supporting exhibits which shall contain the following:
 - (1) Copies of all documents upon which the movant will rely at the time of the hearing including, where applicable, all notes, bonds, recorded mortgages with the stamped dates of recordation, security agreements, filed financing statements with the stamped dates of filing, and assignments.
 - (2) Where applicable, a statement of amount due, including a breakdown of the following categories:
 - (A) Unpaid principal.
 - (B) Accrued interest from a specific date.
 - (C) Late charges from a specific date to a specific date.
 - (D) Attorneys' fees.
 - (E) Advances for taxes, insurance and the like.
 - (F) Unearned interest.
 - (G) Per diem interest.
 - (H) Any other charges.
 - (I) Total post-petition arrearages.
 - (J) Date of last payment.
 - (3) In all cases in which the relief sought is dependent upon the secured creditor proving the amount secured by a mortgage on real estate owned by the debtor, the movant shall attach to the certification in support of its notice of motion the Local Form, [Certification Re Calculation of Amounts Due](#). In Chapter 13 cases in which the relief sought is based upon a secured creditor's claim that the debtor has failed to make all post-petition payments due under the terms of the mortgage, security agreement or lease in issue, the movant shall attach to its certification in support of its notice of motion Local Form, [Certification Re Post-Petition Payment History \(Note and Mortgage\)](#) or [Certification of Secured Creditor Regarding Post Petition Payment History \(Vehicle Loan/Lease\)](#). These Local Forms shall be certified by the secured creditor. Secured creditors shall be required to accept debtors' post petition payments, and to apply those payments to debtors' accounts; any such acceptance shall be without any prejudice to, waiver of, or estoppels as to the position of secured creditors in disputes with debtors, including payment and account disputes.
- (d) Any appraisals shall be filed and served with the moving and answering papers.

- (e) Failure to oppose a request for adjournment of a hearing on a motion for relief from the automatic stay shall be deemed to be consent to continuation of the automatic stay until the new hearing date without a Court order under section 362(e) of the Code.
- (f) Notwithstanding [D.N.J. LBR 9013-1\(j\)\(1\)](#), a consent order in lieu of a motion under Code section 362(d) in a chapter 11 case can be filed without the written consent of the 20 largest unsecured creditors if no committee of unsecured creditors has been appointed. In such event, the 20 largest unsecured creditors shall be served with the application and consent order and shall have 7 days to file and serve an objection. If a committee of unsecured creditors has been appointed, its written consent must be affixed to a consent order in lieu of a motion under Code section 362(d).

NEW JERSEY BOARD OF BANKRUPTCY JUDGES NOTES

- 1997 Comment: Subparts (a) through (d) (except (b)(3)) are former Local Rule 3 (i) (1)-(4). Subpart (e) is new and is derived from former Local Rule 3(k)(2).
- 2000 Comment: Subpart (b)(3) added.
- 2005 Comment: Subpart (a) is amended to eliminate the appearance requirement for uncontested motions relating the automatic stay. Subpart (b) was added to provide that the creditor's stay relief motion will be deemed uncontested and the creditor's appearance at the hearing will not be required unless the debtor files a *Chapter 13 Debtor's Certification in Opposition to Creditor's Motion or Certification of Default* on Local Form 23 with the time periods prescribed by this subpart. Pursuant to the Court's *General Order Relating to Motions For Relief From the Automatic Stay; and Requiring the Filing of Chapter 13 Debtor's Certification in Opposition to Creditor's Motion or Certification of Default and Related Forms* entered on January 4, 2005, secured creditors are required to accept debtors' post petition payments, and to apply those payments to debtors' accounts; any such acceptance is without any prejudice to, waiver of, or estoppel as to the position of secured creditors in disputes with debtors, including payment and accounting disputes.
- 2006 Comment: Subpart (c)(3) is amended to maintain and clarify the current requirement that the information contained in Local Forms 15 ("*Calculation of Amounts Due*"), 16 ("*Post-Petition Payment History Note and Mortgage*") and 16A ("*Post-Petition Payment History Vehicle Loan/Lease*") be certified by the secured creditor with personal knowledge of the calculation or payment history set forth therein, or a custodian of the secured creditor's records or other similarly qualified and authorized person having access to those records.
- Dec., 2009 Comment Subparts (b) and (f) are amended to conform with the March 26, 2009, Supreme Court approval of changes to Fed.R.Bankr.P. 9006 which addresses the method by which time is calculated. On May 7, 2009, the Statutory Time Period Technical Amendments Act of 2009 was enacted (Pub. L. No. 111-06). The law adjusts the time period in 28 statutes, including nine sections of the Bankruptcy Code, which are impacted by the federal rule changes. Both the statutory and rules changes take effect on the same day, December 1, 2009. Deadlines of less than 30 days have been changed to multiples of seven days so that the expiration of the deadline ordinarily would occur on a weekday. Under the revised rules: 5 day deadlines become 7 days; 10 and 15 day deadlines become 14 days; 20 day deadlines become 21 days; and 25 day deadlines become 28 days. Effective, December 1, 2009 conforming amendments to the Court's Local Rules, including the one set forth herein, have been approved by the Board of Bankruptcy Judges. Additional information concerning time computation amendments to the national rules, local rules, general orders and forms may be accessed at the one set forth herein, have been approved by the Board of Bankruptcy Judges. Additional information concerning time computation amendments to the national rules, local rules, general orders and forms may be accessed at the one set forth herein, have been approved by the Board of Bankruptcy Judges. Additional information concerning time computation amendments to the national rules, local rules, general orders and forms may be accessed at the one set forth herein,

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2010 Comment: This rule is amended to eliminate the reference to D.N.J. Local Forms 15, 16, 16A and 23, by substituting the caption of the Local Forms.

2011 Comment: The final sentence in subpart (c)(3) of D.N.J. LBR 4001-1 was previously contained in the Court's General Order Relating to Motions for Relief from the Automatic Stay (as amended November 25, 2009). In September 2009, the Judicial Conference approved a set of Guidelines for Distinguishing Between Matters Appropriate for Standing Orders and Matters Appropriate for Local Rules. In response to these Guidelines, the Board of Bankruptcy Judges concluded that the provisions of the Court's General Order cited above should be addressed in a local rule, insofar as they do not already appear in a local rule. As a result, on August 1, 2011, the Court amended D.N.J. LBR 4001-1 to include the final sentence in subpart (c)(3).

Reference: 11 U.S.C. § 361 Adequate Protection.