

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, a *Chapter 13 Debtor's Certification in Opposition to Creditor's Motion or Certification of Default* on **Local Form 23** at least seven (7) days before the return date if filed in opposition to a Motion for Relief from the Automatic Stay; and within 10 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 **Local Form No. 15** ("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 No. 16** ("*Post-Petition Payment History Note and Mortgage*") or **Local Form No. 16A** ("*Post-Petition Payment History Vehicle Loan/Lease*"). **Local Form Nos. 15, 16 and 16A** shall be certified by the secured creditor.
- (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 § 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 § 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 5 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 § 362(d).

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