

**FOR USE IN CHAPTER 7 AND 13 CASES IN CONNECTION WITH
A DEFAULT ORDER GRANTING RELIEF FROM THE STAY TO
FORECLOSE A MORTGAGE AND ABANDON PROPERTY**

**IF AN ORDER IS NOT SUBMITTED IN SUBSTANTIALLY THIS FORM, COUNSEL
ORDINARILY WILL BE ASKED TO JUSTIFY THE CHANGES**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

(Name)

Debtor.

**DEFAULT ORDER GRANTING RELIEF FROM STAY AND
ABANDONMENT OF PROPERTY LOCATED AT**¹

This matter came before the Court on the Motion for Relief from Stay and [if applicable] to Abandon Property _____, filed on (*date*), Docket No. ____ (the “Motion”) by (*name of movant*) (“Movant”). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

(a) On (*date*), Movant served the Motion and a notice of the Motion (the “Notice”) on [*if applicable*: counsel of record for the Debtor] and the case trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtor(s) [*if applicable*, and codebtor(s)] by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

(b) The Motion relates to the following property:

[*insert description or attach an exhibit*]

[*If and to the extent applicable or desired*: including any improvements, fixtures, and

¹ If abandonment is not sought, this order should be modified to delete references to abandonment.

attachments, such as, but not limited to, mobile homes.] (the “Property”). [*If desired: If there is a conflict between the legal description and the street address, the legal description shall control.*]

(c) The Notice specified an objection deadline of 21 days from the date of service of the Notice, to which three days was added under Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on (*date*);

(f) As of (*date*), neither the Debtor nor the Trustee, nor any other party in interest, filed an objection to the Motion;

(g) The Motion is well taken and should be granted as provided herein; and

(h) [*Either*] By submitting this Order to the Court for entry, the undersigned counsel for Movant certifies [*or by an affidavit filed by Movant on (date), Movant has certified*] under penalty of perjury that, on (*date*) (*insert name of person or law firm conducting the search*) searched the data banks of the Department of Defense Manpower Data Center (“DMDC”), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), Movant and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce their rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to them under law or equity with respect to the Property.

2. [If applicable] The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Movant need not name the Trustee as a defendant in any state court action it may pursue to foreclose liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, although the Debtor can be named as a defendant in litigation to obtain an *in rem* judgment or to repossess the Property in accordance with applicable non-bankruptcy law.

4. This Order does not waive Movant's claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Movant may file an amended proof of claim in this bankruptcy case within 30 days after a foreclosure sale of the Property, should it claim that Debtors owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

7. [If desired: Movant is further granted relief from the stay to engage in loan modification discussions or negotiations or other settlement discussions with the Debtor and to enter into a loan modification with the Debtor.]

XXX END OF ORDER XXX

Submitted by:

Attorney for Movant
(signature block)

Copies to:

Debtor
(name and address)

Attorney for Debtor
(name and address)

Trustee
(name and address)