

PROCEDURES FOR STAY RELIEF MOTIONS

The following procedures apply to motions for relief from stay. For Agreed orders relating to stay relief or adequate protection, see the link entitled “Stipulated Stay Relief/Adequate Protection Orders.”

1. Chapter 7, 12 and 13 Cases

(a) If Movant Knows the Motion is Opposed or Cannot Ascertain that it is Unopposed. If the movant has contacted the debtor and the case trustee, and either of them opposes the motion, or if movant is unable to ascertain whether the debtor and the case trustee oppose the motion, despite reasonable efforts, the movant may file the stay motion and (i) prepare a notice specifying an objection period (usually 21 days, unless shortened by the Court), and serve the motion and notice as required by Bankruptcy Rule 7004, or (ii) contact chambers staff when the motion is filed, request a preliminary hearing, and serve the motion and notice of hearing as required by Bankruptcy Rule 7004. If a notice specifying an objection deadline is served and no objection is filed, the movant should submit an order granting the motion. The relief granted in the default order should not differ from the relief sought in the motion. Forms of default orders applicable to enforcement of liens against real property, vehicles and mobile homes are available on this web page. Ordinarily, submitted default orders granting such relief should be substantially in those forms.

(b) If Movant Knows the Motion is Unopposed. If the movant is aware that the debtor and case trustee do not oppose the relief requested by the motion, it may submit to the Court for entry a stipulated order granting such relief approved by the debtor and case trustee. Ordinarily, no additional notice or hearing would be required.

2. Chapter 11 Cases. In chapter 11 cases, the movant should serve the motion and notice of objection deadline and preliminary hearing on the debtor (or trustee) and any entity claiming an interest in the collateral, as required by Bankruptcy Rule 7004, and serve notice of the objection deadline on counsel for each official committee appointed pursuant to 11 U.S.C. § 1102 or each committee member if the committee has not retained counsel, if there is no such committee appointed by the Court. Before serving the notice, the movant should contact Chamber’s staff to obtain a preliminary hearing on the motion. The notice should include notice of the date and time of the preliminary hearing to be held if a timely objection to the motion is filed.

3. Preliminary Hearing/Final Hearings. Generally, a preliminary hearing will be held on any opposed stay motion, and the final hearing will be scheduled during the preliminary hearing. Counsel and pro se parties may appear by telephone at preliminary hearings on stay motions. To appear by telephone, see the link entitled “Telephone Appearances” on this web page.

5. Method of Service of the Motion and Notice. Service should be by first class United States mail, or 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, unless any special rules apply for service of certain entity creditors under Bankruptcy Rule 7004 (such as the United States or its agencies or federally insured depository institutions).