

Rule 4001-1

RELIEF FROM AUTOMATIC STAY -- Amended [August 4, 2008]

- (a) A party moving for relief from the automatic stay under § 362 of the Bankruptcy Code shall obtain a return date for the motion that is not more than 30 days after the date on which the motion will be filed.
- (b) If the debtor is an individual, the motion shall be supported by an affidavit, based on personal knowledge, attesting to the circumstances of any default with respect to an obligation related to the motion.
- (c) If the debtor is an individual, a party moving for relief from the automatic stay under § 362 of the Bankruptcy Code relating to a mortgage on real property or a security interest in a cooperative apartment shall file, as an exhibit to the motion, a completed copy of the following [form](#). Compliance with this subdivision shall constitute compliance with subdivision (b) of this rule.

Comment

This rule is derived from Former Local Bankruptcy Rule 44(a).

Bankruptcy Rule 4001(a) provides that a request for relief from the automatic stay shall be made by motion. Section 362(e) of the Bankruptcy Code contemplates that a hearing will commence within 30 days from the date of the request for relief from the automatic stay. Local Bankruptcy [Rule 9006-1](#) governs the time within which responsive papers may be served.

Subdivision (a) of this rule was amended in 2004 to put the burden of obtaining a timely return date on the movant. It does not attempt to deal with the ramifications of the movant's failure to comply with the rule.

Subdivision (b) of this rule was added in 2004 to assure the Court of the accuracy of allegations of default in cases concerning an individual debtor.

Subdivision (c) of this rule, which derives from General Order M-346 as amended by General Order [M 347](#), was added in 2008 to assure the Court of the accuracy of allegations of default in proceedings relating to a mortgage on real property or a security interest in a cooperative apartment of an individual debtor. The Court may direct the submission of the form set forth in subdivision (c) of this rule in connection with other motions, including motions for adequate protection.