

**Proposed Amendments to Local Rules of the  
United States Bankruptcy Court for the Southern District of New York**

**Rule 4001-1 RELIEF FROM AUTOMATIC STAY**

(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 real property or 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.**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
<CASE CAPTION> CASE NO. \_\_\_\_-\_\_\_\_ (\_\_\_\_)

----- X

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RELIEF FROM STAY – REAL ESTATE AND  
COOPERATIVE APARTMENTS

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I \_\_\_\_\_ <NAME AND TITLE> OF \_\_\_\_\_ <NAME OF ORGANIZATION/CORPORATION/MOVING PARTY> (HEREINAFTER, “MOVANT”) HEREBY DECLARE (OR CERTIFY, VERIFY, OR STATE):

**BACKGROUND INFORMATION**

1. REAL PROPERTY OR COOPERATIVE APARTMENT ADDRESS WHICH IS THE SUBJECT OF THIS MOTION: \_\_\_\_\_

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2. LENDER NAME: \_\_\_\_\_

3. DATE OF MORTGAGE <MM/DD/YYYY>: \_\_\_\_\_

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4. POST-PETITION PAYMENT ADDRESS:

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**DEBT/VALUE REPRESENTATIONS**

5. TOTAL PRE-PETITION AND POST-PETITION INDEBTEDNESS OF DEBTOR(S) TO MOVANT AT THE TIME OF FILING THE MOTION: \$ \_\_\_\_\_

(Note: this amount may not to be relied on as a “payoff” quotation.)

6. MOVANT’S ESTIMATED MARKET VALUE OF THE REAL PROPERTY OR COOPERATIVE APARTMENT:  
\$ \_\_\_\_\_

7. SOURCE OF ESTIMATED VALUATION:

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**STATUS OF DEBT AS OF  
THE PETITION DATE**

8. TOTAL PRE-PETITION INDEBTEDNESS OF DEBTOR(S) TO MOVANT AS OF PETITION FILING DATE: \$\_\_\_\_\_

- A. AMOUNT OF PRINCIPAL: \$\_\_\_\_\_
- B. AMOUNT OF INTEREST: \$\_\_\_\_\_
- C. AMOUNT OF ESCROW (TAXES AND INSURANCE): \$\_\_\_\_\_
- D. AMOUNT OF FORCED PLACED INSURANCE EXPENDED BY MOVANT:  
\$\_\_\_\_\_
- E. AMOUNT OF ATTORNEYS' FEES BILLED TO DEBTOR(S) PRE-PETITION:  
\$\_\_\_\_\_
- F. AMOUNT OF PRE-PETITION LATE FEES, IF ANY, BILLED TO DEBTOR(S):  
\$\_\_\_\_\_

9. CONTRACTUAL INTEREST RATE:\_\_\_\_\_ (If interest rate is (or was) adjustable, please list the rate(s) and date(s) the rate(s) was/were in effect on a separate sheet and attach the sheet as an exhibit to this form; please list the exhibit number here: \_\_\_\_.)

10. PLEASE EXPLAIN ANY ADDITIONAL PRE-PETITION FEES, CHARGES OR AMOUNTS CHARGED TO DEBTOR'S/DEBTORS' ACCOUNT AND NOT LISTED ABOVE:

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(If additional space is needed, please list the amounts on a separate sheet and attach the sheet as an exhibit to this form; please list the exhibit number here: \_\_\_\_.)

**AMOUNT OF ALLEGED POST-PETITION DEFAULT  
(AS OF \_\_\_\_\_<MM/DD/YYYY>)**

11. DATE LAST PAYMENT WAS RECEIVED: \_\_\_\_\_  
<MM/DD/YYYY>

12. ALLEGED TOTAL NUMBER OF PAYMENTS DUE POST-PETITION FROM FILING OF PETITION THROUGH PAYMENT DUE ON \_\_\_\_\_<mm/dd/yyyy>: \_\_\_\_\_.

13. PLEASE LIST ALL POST-PETITION PAYMENTS ALLEGED TO BE IN DEFAULT:

ALLEGED PAYMENT DUE DATE	ALLEGED AMOUNT DUE	AMOUNT RECEIVED	AMOUNT APPLIED TO PRINCIPAL	AMOUNT APPLIED TO INTEREST	AMOUNT APPLIED TO ESCROW	LATE FEE CHARGED (IF ANY)
<b>TOTALS:</b>	\$	\$	\$	\$	\$	\$

14. AMOUNT OF MOVANT’S ATTORNEYS FEES BILLED TO DEBTOR FOR THE PREPARATION, FILING AND PROSECUTION OF THIS MOTION: \$\_\_\_\_\_

15. AMOUNT OF MOVANT’S FILING FEE FOR THIS MOTION: \$\_\_\_\_\_

16. OTHER ATTORNEYS’ FEES BILLED TO DEBTOR POST-PETITION: \$\_\_\_\_\_

17. AMOUNT OF MOVANT’S POST-PETITION INSPECTION FEES: \$\_\_\_\_\_

18. AMOUNT OF MOVANT’S POST-PETITION APPRAISAL/BROKER’S PRICE OPINION: \$\_\_\_\_\_

19. AMOUNT OF FORCED PLACED INSURANCE OR INSURANCE PROVIDED BY THE MOVANT POST-PETITION: \$\_\_\_\_\_

20. SUM HELD IN SUSPENSE BY MOVANT IN CONNECTION WITH THIS CONTRACT, IF APPLICABLE: \$\_\_\_\_\_

21. AMOUNT OF OTHER POST-PETITION ADVANCES OR CHARGES, FOR EXAMPLE TAXES, INSURANCE INCURRED BY DEBTOR ETC.: \$\_\_\_\_\_

**REQUIRED ATTACHMENTS TO MOTION**

Please attach the following documents to this motion and indicate the exhibit number associated with the documents.

- (1) Copies of documents that indicate Movant’s interest in the subject property. For purposes of example only, a complete and legible copy of the promissory note or other debt instrument together with a complete and legible copy of the mortgage and any assignments in the chain from the original mortgagee to the current moving party. (Exhibit \_\_\_\_.)
- (2) Copies of documents establishing proof of standing to bring this Motion. (Exhibit \_\_\_\_.)
- (3) Copies of documents establishing that Movant’s interest in the real property or cooperative apartment was perfected. For the purposes of example only, a complete and legible copy of the Financing Statement

(UCC-1) filed with either the Clerk's Office or the Register of the county the property or cooperative apartment is located in. (Exhibit \_\_\_\_\_.)

**CERTIFICATION FOR BUSINESS RECORDS**

I CERTIFY THAT THE INFORMATION PROVIDED IN THIS WORKSHEET AND/OR ANY EXHIBITS ATTACHED TO THIS WORKSHEET (OTHER THAN THE TRANSACTIONAL DOCUMENTS ATTACHED AS REQUIRED BY PARAGRAPHS 1, 2 AND 3, IMMEDIATELY ABOVE) IS DERIVED FROM RECORDS THAT WERE MADE AT OR NEAR THE TIME OF THE OCCURRENCE OF THE MATTERS SET FORTH BY, OR FROM INFORMATION TRANSMITTED BY, A PERSON WITH KNOWLEDGE OF THOSE MATTERS, WERE KEPT IN THE COURSE OF THE REGULARLY CONDUCTED ACTIVITY; AND WERE MADE BY THE REGULARLY CONDUCTED ACTIVITY AS A REGULAR PRACTICE.

I FURTHER CERTIFY THAT COPIES OF ANY TRANSACTIONAL DOCUMENTS ATTACHED TO THIS WORKSHEET AS REQUIRED BY PARAGRAPHS 1, 2 AND 3, IMMEDIATELY ABOVE, ARE TRUE AND ACCURATE COPIES OF THE ORIGINAL DOCUMENTS.

**DECLARATION**

I \_\_\_\_\_ <NAME AND TITLE> OF \_\_\_\_\_ <NAME OF MOVANT> HEREBY DECLARE (OR CERTIFY, VERIFY, OR STATE) PURSUANT 28 U.S.C. SECTION 1746 UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT BASED ON PERSONAL KNOWLEDGE OF THE MOVANT'S BOOKS AND BUSINESS RECORDS.

EXECUTED AT \_\_\_\_\_ <CITY/TOWN>, \_\_\_\_\_ <STATE> ON THIS \_\_\_\_ DAY OF <MONTH>, 20\_\_\_\_ <YEAR>.

\_\_\_\_\_  
<PRINT NAME>  
<TITLE>  
<MOVANT>  
<STREET ADDRESS>  
<CITY, STATE AND ZIP CODE>

**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 cases concerning real property and cooperative apartments 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.**

**Rule 4001-2                    OBTAINING CREDIT REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT**

~~A motion pursuant to § 364(c) and (d) of the Bankruptcy Code seeking priority for obtaining credit or incurring debt shall state whether priority over any administrative expense specified in § 503(b) or § 507(a) of the Bankruptcy Code is sought.~~

**(a) Contents of Motion. The following provisions, to the extent applicable, are added to the enumerated lists of material provisions set forth in Bankruptcy Rule 4001(b)(1)(B), (c)(1)(B), and (d)(1)(B):**

- (1) the amount of cash to be used or borrowed, including any committed amount or any borrowing base formula and the availability under the formula;**
- (2) material conditions to closing and borrowing, including budget provisions;**
- (3) pricing and economic terms, including letter of credit fees, commitment fees, any other fees, and the treatment of costs and expenses of the lender, any agent for the lender, and their respective professionals;**
- (4) any effect on existing liens of the granting of collateral or adequate protection provided to the lender and any priority or superpriority provisions;**
- (5) any carve-outs from liens or superpriorities;**
- (6) any cross-collateralization provision that elevates prepetition debt to administrative expense (or higher) status or that secures prepetition debt with liens on postpetition assets (which liens the creditor would not otherwise have by virtue of the prepetition security agreement or applicable law);**

**(7) any roll-up provision which applies the proceeds of postpetition financing to pay, in whole or in part, prepetition debt or which otherwise has the effect of converting prepetition debt to postpetition debt;**

**(8) any provision that would limit the Court's power or discretion in a material way, or interferes with the exercise of the fiduciary duties of the trustee, debtor in possession, or a committee appointed under § 1102 or § 1114 of the Bankruptcy Code, or any other fiduciary of the estate, in connection with the operation of the business of the trustee or debtor in possession, the administration of the estate, or the formulation of a reorganization plan, including any provision that would result in consequences following the exercise by the Court or any fiduciary of powers under the Bankruptcy Code with respect to any of the foregoing, but excluding any agreement to repay postpetition financing in connection with a plan or to waive any right to incur liens that prime or are pari passu with liens granted under section 364;**

**(9) any limitation on the lender's obligation to fund certain activities of the trustee, debtor in possession, or a committee appointed under § 1102 or § 1114 of the Bankruptcy Code;**

**(10) termination or default provisions, including events of default, any effect of termination or default on the automatic stay or the lender's ability to enforce remedies, any cross-default provision, and any terms that provide that the use of cash collateral or the availability of credit will cease on (i) the filing of a challenge to the lender's prepetition lien or the lender's prepetition claim based on the lender's prepetition conduct; (ii) entry of an order granting relief from the automatic stay other than an order granting relief from the stay with respect to material assets; (iii) the grant of a change of venue with respect to the case or any adversary proceeding; (iv) management changes or the departure, from the debtor, of any identified employees; (v) the expiration of a specified time for filing a plan or (vi) the making of a motion by a party in interest seeking any relief (as distinct from an order granting such relief);**

**(11) any change-of-control provision, any material financial covenant, and any other covenant that materially affects or restricts the operation, financing, or use or sale of the business or property of the estate;**

**(12) any provision establishing a deadline for, or otherwise requiring, the sale of property of the estate;**

**(13) any provision that affects the debtor's right or ability to repay the financing in full during the course of the chapter 11 reorganization case;**

**(14) in jointly administered cases, terms that govern the joint liability of debtors including any provision described in subdivision (e) of the rule; and**

**(15) any provision for the funding of non-debtor affiliates with cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding.**

**(b) Disclosure of Efforts to Obtain Financing and Good Faith.** A motion for authority to obtain credit shall describe in general terms the efforts of the trustee or debtor in possession to obtain financing, the basis on which the debtor determined that the proposed financing is on the best terms available, and material facts bearing on the issue of whether the extension of credit is being extended in good faith.

**(c) Inadequacy of Notice After Event of Default.**

**(1) If the proposed order contains a provision that modifies or terminates the automatic stay or permits the lender to enforce remedies after an event of default, either the proposed order shall require at least five business days' notice to the trustee or debtor in possession, and each committee appointed under § 1102 or 1114 of the Bankruptcy Code, before the modification or termination of the automatic stay or the enforcement of the lender's remedies, or the motion shall explain why such notice provision is not contained in the proposed order.**

**(2) If the proposed order contains a provision that terminates the use of cash collateral, either the proposed order shall require at least three business days' notice before the use of cash collateral ceases (provided that the use of cash collateral conforms to any budget in effect) or the motion shall explain why such notice provision is not contained in the proposed order.**

**(d) Carve-Outs.** Any provision in a motion or proposed order relating to a carve-out from liens or superpriorities shall disclose when the carve-out takes effect, whether it remains unaltered after payment of interim fees made before an event of default, and any effect of the carve-out on any borrowing base or borrowing availability under the postpetition loan. If a provision relating to a carve-out provides disparate treatment for the professionals retained by a committee appointed under § 1102 or § 1114 of the Bankruptcy Code, when compared with the treatment for professionals retained by the trustee or debtor in possession, or if the carve-out does not include fees payable to either the Bankruptcy Court or the United States trustee, reasonable expenses of committee members (excluding fees and expenses of professionals employed by such committee members individually), and reasonable post-conversion fees and expenses of a chapter 7 trustee, there shall be disclosure thereof under subdivision (a) of this rule and the motion shall contain a detailed explanation of the reasons therefor.

**(e) Joint Obligations.** In jointly-administered cases, if one or more debtors will be liable for the repayment of indebtedness for funds advanced to or for the benefit of another debtor, the motion and the proposed order shall describe, with specificity, any provisions of the agreement or proposed order that would govern the nature and priority, if any, of any interdebtor claims that would result if a debtor were to repay debt incurred by or for the benefit of another debtor.

**(f) Investigation Period Relating to Waivers and Concessions as to Prepetition Debt.** If a motion seeks entry of an order determining or stipulating to the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim, either the proposed order shall include a provision



that permits a committee appointed under § 1102 of the Bankruptcy Code and other parties in interest to undertake an investigation of the facts relating thereto, and proceedings relating to such determination, or the motion shall explain why the proposed order does not contain such a provision. The minimum time period for such committee or other party in interest to commence, or to file a motion to obtain authority to commence, any related proceedings as representative of the estate shall ordinarily be 60 days from the date of entry of the final order authorizing the use of cash collateral or the obtaining of credit, or such longer period as the Court orders for cause shown prior to the expiration of such period.

(g) *Content of Interim Orders.* A motion that seeks entry of an emergency or interim order before a final hearing under Bankruptcy Rule 4001(b)(2) or (c)(2) shall describe the amount and purpose of funds sought to be used or borrowed on an emergency or interim basis and shall set forth facts to support a finding that immediate or irreparable harm will be caused to the estate if immediate relief is not granted before the final hearing.

(h) *Adequacy of Budget.* If the debtor in possession or trustee will be subject to a budget under a proposed cash collateral or financing order or agreement, the motion filed under Bankruptcy Rule 4001(b), (c), or (d) shall include a statement by the trustee or debtor in possession as to whether it has reason to believe that the budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget.

(i) *Notice.* Notice of a preliminary or final hearing shall be given to the persons required by Bankruptcy Rules 4001(b)(3) and 4001(c)(3), as the case may be, the United States trustee, and any other persons whose interests may be directly affected by the outcome of the motion or any provision of the proposed order.

(j) *Presence at Hearing.* Unless the court directs otherwise,

(1) counsel for each proposed lender, or for an agent representing such lender, shall be present at all preliminary and final hearings on the authority to obtain credit from such lender, and counsel for each entity, or for an agent of such entity, with an interest in cash collateral to be used with the entity's consent shall be present at all preliminary and final hearings on the authority to use such cash collateral; and

(2) a business representative of the trustee or debtor in possession, the proposed lender or an agent representing such lender, and any party objecting to the motion for authority to obtain credit, each with appropriate authority, must be present at, or reasonably available by telephone for, all preliminary and final hearings for the purpose of making necessary decisions with respect to the proposed financing.

(k) *Provisions of the Proposed Order.*

(1) *Findings of Fact.*

(i) A proposed order approving the use of cash collateral under § 363(c) of the Bankruptcy Code, or granting authority to obtain credit under § 364

of the Bankruptcy Code, shall limit the recitation of findings to essential facts, including the facts required under § 364 of the Bankruptcy Code regarding efforts to obtain financing on a less onerous basis and (where required) facts sufficient to support a finding of good faith under § 364(e) of the Bankruptcy Code, and shall not include any findings extraneous to the use of cash collateral or to the financing.

(ii) A proposed emergency or interim order shall include a finding that immediate and irreparable loss or damage will be caused to the estate if immediate financing is not obtained and should state with respect to notice only that the hearing was held pursuant to Bankruptcy Rule 4001(b)(2) or (c)(2), that notice was given to certain parties in the manner described, and that the notice was, in the debtor's belief, the best available under the circumstances.

(iii) A proposed final order may include factual findings as to notice.

(iv) To the extent that a proposed order incorporates by reference to, or refers to a specific section of, a prepetition or postpetition loan agreement or other document, the proposed order shall also include a statement of such section's import.

(2) *Mandatory Provisions.* The proposed order shall contain all applicable provisions included in the enumerated lists of material provisions set forth in Bankruptcy Rule 4001(b)(1)(B), (c)(1)(B), and (d)(1)(B), as supplemented by subsection (a) of this rule.

(3) *Cross-Collateralization and Rollups.* A proposed order approving cross-collateralization or a rollup shall include language that reserves the right of the Court to unwind, after notice and hearing, the postpetition protection provided to the prepetition lender or the paydown of the prepetition debt, whichever is applicable, in the event that there is a timely and successful challenge to the validity, enforceability, extent, perfection, or priority of the prepetition lender's claims or liens, or a determination that the prepetition debt was undersecured as of the petition date, and the cross-collateralization or rollup unduly advantaged the lender.

(4) *Waivers, Consents or Amendments with Respect to the Loan Agreement.* A proposed order may permit the parties to enter into waivers or consents with respect to the loan agreement or amendments thereof without the need for further court approval provided that (i) the agreement as so modified is not materially different from that approved, (ii) notice of all amendments is filed with the Court, and (iii) notice of all amendments (other than those that are ministerial or technical and do not adversely affect the debtor) are provided in advance to counsel for any committee appointed under § 1102 or 1114 of the Bankruptcy Code, all parties requesting notice, and the United States trustee.

(5) *Conclusions of Law.* A proposed interim order may provide that the debtor is authorized to enter into the loan or other agreement, but it shall not state that the Court has examined and approved the loan or other agreement.

(6) *Order to Control.* The proposed order shall state that to the extent that a loan or other agreement differs from the order, the order shall control.

(7) *Statutory Provisions Affected.* The proposed order shall specify those provisions of the Bankruptcy Code, Bankruptcy Rules and Local Rules relied upon as authority for granting relief, and shall identify those sections that are, to the extent permitted by law, being limited or abridged.

(8) *Conclusions of Law Regarding Notice.* A proposed final order may contain conclusions of law with respect to the adequacy of notice under § 364 of the Bankruptcy Code and Rule 4001.

#### Comment

This rule is derived from Former Local Bankruptcy Rule 47.

This rule was amended in its entirety in 2008 to conform to the 2007 amendments to Bankruptcy Rule 4001 and to replace the procedures for requests for the use of cash collateral or to obtain credit that were governed by former General Order M-274. Thus, this rule should be read in conjunction with Bankruptcy Rule 4001 as the requirements contained in this rule are meant to supplement, but not duplicate, Bankruptcy Rule 4001.

As provided in former General Order M-274, a single motion may be filed seeking entry of an interim order and a final order, which orders would be normally entered at the conclusion of the preliminary hearing and the final hearing, respectively, as those terms are used in Bankruptcy Rules 4001(b)(2) and (c)(2). In addition, where circumstances warrant, the debtor may seek emergency relief for financing limited to the amount necessary to avoid immediate and irreparable harm to the estate pending the preliminary hearing, but in the usual case, only a preliminary and a final hearing will be required.

Notwithstanding the provisions of subsection (i), emergency and interim relief may be entered after the best notice available under the circumstances; however, emergency and interim relief will ordinarily not be considered unless the United States trustee and the Court have had a reasonable opportunity to review the motion, the financing agreement,

and the proposed interim order, and the Court normally will not approve provisions that directly affect the interests of landlords, taxing and environmental authorities and other third-parties without notice to them.

As suggested in former General Order M-274, prospective debtors may provide substantially complete drafts of the motion, interim order, and related financing documents to the United States Trustee in advance of a filing, on a confidential basis. Debtors are encouraged to provide drafts of financing requests, including proposed orders, to the United States trustee as early as possible in advance of filing to provide that office with the opportunity to comment.

The hearing on a final order for use of cash collateral under § 363(c) of the Bankruptcy Code, or for authority to obtain credit under § 364 of the Bankruptcy Code will ordinarily not commence until there has been a reasonable opportunity for the formation of a creditors committee under § 1102 of the Bankruptcy Code and either the creditors committee's appointment of counsel or reasonable opportunity to do so.

Reasonable allocations in a carve-out provision may be proposed among (i) expenses of professionals retained by committees appointed in the case, (ii) expenses of professionals retained by the debtor, (iii) fees payable to either the Bankruptcy Court or the United States trustee, (iv) the reasonable expenses of committee members, and (v) reasonable post-conversion fees and expenses of a chapter 7 trustee, and the lender may refuse to include in a carve-out the costs of litigation or other assertions of claims against it (but not the costs of investigating whether any claims or causes of action exist).

As provided in former General Order M-274, non-essential facts regarding prepetition dealings and agreements may be included in an order approving the use of cash collateral or granting authority to obtain credit under a heading entitled "stipulations between the debtor and the lender" or "background."

As provided in former General Order M-274, an interim order will not ordinarily bind the Court with respect to the provisions of the final order provided that (i) the lender will be afforded all the benefits and protections of the interim order, including a lender's § 364(e) and § 363(m) protection

**with respect to funds advanced during the interim period, and (ii) the interim order will not bind the lender to advance funds pursuant to a final order that contains provisions contrary to or inconsistent with the interim order.**

\* \* \*

**Rule 4001-3            REQUESTS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT – Repealed [ \_\_\_\_\_, 2008]**

~~A request for use of cash collateral under § 363(c) of the Bankruptcy Code, or for authority to obtain credit under § 364 of the Bankruptcy Code, shall conform to any applicable standing order issued by the Court.~~

**Comment**

~~Procedures for requests for the use of cash collateral or to obtain credit are governed by General Order M-274 and any amendments or supplemental standing orders of the Court. Copies of General Order M-274, as well as any amendments or subsequent standing orders on this subject, may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).~~

**This rule was repealed in 2008 because of the amendments to Local Bankruptcy Rule 4001-2 made in 2008, which govern cash collateral and financing motions.**

\* \* \*

**Rule 7024-1            NOTICE OF CLAIM OF UNCONSTITUTIONALITY – Repealed [ \_\_\_\_\_, 2008]**

~~(a) *Acts of Congress.* If, at any time prior to the trial of an adversary proceeding to which neither the United States nor any agency, officer, or employee thereof (other than the United States Trustee) is a party, a party raises a question concerning the constitutionality of an act of Congress affecting the public interest, such party shall notify the Judge in writing of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and proceeding.~~

~~(b) *State Statutes.* If, at any time prior to the trial of an adversary proceeding to which neither a state nor any agency, officer, or employee thereof is a party, a party raises a question concerning the constitutionality of a statute of such state affecting the public interest, such party shall notify the Judge in writing of the existence of the question, identifying the~~

statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and proceeding.

#### Comment

~~This rule is derived from Former Local Bankruptcy Rule 15 and Civil Rule 24.1 of the Local District Rules. Subdivision (b) of this rule is new.~~

~~The purpose of this rule is to enable the Court to comply with 28 U.S.C. § 2403(a) and (b). Section 2403(a) requires notice to the United States Attorney General. Section 2403(b) requires notice to the attorney general of the state.~~

~~Local Bankruptcy Rule 9014-1 makes this rule applicable in contested matters.~~

**This rule was repealed in 2008 as unnecessary because of the adoption in 2008 of Bankruptcy Rule 9005.1, which makes Rule 5.1 of the Federal Rules of Civil Procedure applicable to cases under the Bankruptcy Code. Rule 5.1 accomplishes the same objective as former Local Bankruptcy Rule 7024-1.**

\* \* \*

#### **Rule 9004-1            FORM OF PAPERS**

(a) *Papers Submitted for Filing.* Papers submitted for filing shall

- (1) be plainly typed or printed;
- (2) not be bound or stapled;
- (3) have no erasures or interlineations which materially deface them; and
- (4) state on the face of the document:

(A) the name of the attorney for the filing party, ~~followed by the initials of the attorney's first and last name, followed by the last four digits of the attorney's social security number or the four digit number that the attorney has duly registered with the District Clerk pursuant to Civil Rule 11.1(b) of the Local District Rules;~~

(B) the attorney's office and post office addresses; and

(C) the attorney's telephone number.

(b) Chambers copies and copies for the United States Trustee shall be bound or stapled and submitted in accordance with Local **Bankruptcy** Rule 9070-1.

### Comment

This rule is derived from Former Local Bankruptcy Rule 9(b) and is an adaptation of Civil Rule 11.1 of the Local District Rules.

The general rules for form of papers are set forth in Bankruptcy Rule 9004 and Official Bankruptcy Forms 16A, 16B, 16C, and 16D.

This rule was amended in 2004 to conform to Civil Rule 11.1(b) of the Local District Rules to allow attorneys to use an identification number issued by the District Court instead of the last four digits of the attorney's social security number.

This rule was also amended in 2004 to clarify that pleadings no longer require litigation backs or covers.

**This rule was amended in 2008 to conform to the repeal of Civil Rule 11.1(b) of the Local District Rules, which previously required that every pleading, written motion and other paper signed by an attorney include the attorney's initials and the last four digits of the attorney's social security number or any other four digit number registered by the attorney with the clerk of the court.**

\* \* \*

### Rule 9011-1 SIGNING OF PAPERS

(a) All pleadings, motions, and other papers that are submitted for filing, **except a list, schedule, or statement, or amendments thereto**, shall be signed by an attorney of record in the attorney's own name or, if there is no attorney, **all papers submitted for filing shall be signed** by the party. The name of the attorney or party shall be clearly printed or typed below the signature, together with the attorney's or party's address and telephone number. ~~If signed by an attorney, the initials of the attorney's first and last name, followed by the last four digits of the attorney's social security number or the four digit number that the attorney has duly registered with the District Clerk pursuant to Civil Rule 11.1(b) of the Local District Rules, shall appear immediately after the attorney's name.~~

(b) ~~The initials of the attorney's first and last name, followed by the last four digits of the social security number of the attorney making an electronic filing or the four digit number that the attorney has duly registered with the District Clerk pursuant to Civil Rule 11.1(b) of the Local District Rules,~~ **The signing of documents filed electronically shall be**

**governed by the applicable standing order on electronically filed cases issued by the Court.**  
An original signed copy of the filing shall be maintained in the attorney's files.

(c) Any password required for electronic filing shall be used only by the attorney to whom the password is assigned and authorized members and employees of such attorney's firm.

### Comment

This rule is an adaptation of Civil Rule 11.1 of the Local District Rules.

This rule was amended in 2004 to conform to Civil Rule 11.1(b) of the Local District Rules to allow attorneys to use an identification number issued by the District Court instead of the last four digits of the attorney's social security number.

**This rule was amended in 2008 to conform to the repeal of Civil Rule 11.1(b) of the Local District Rules, which previously required that every pleading, written motion and other paper signed by an attorney include the attorney's initials and the last four digits of the attorney's social security number or any other four digit number registered by the attorney with the clerk of the court.**

**Subdivision (a) was also amended in 2008 to conform to Rule 9011(a), which does not require an attorney's signature on lists, schedules, and statements.**

**Subdivision (b) was also amended in 2008 to provide that signing electronically filed documents is governed by the Court's standing order on electronically filed cases, which is General Order M-242, and any amendments or supplemental standing orders of the Court. Such standing orders may be obtained from the Clerk and are available on the Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).**

Attorneys who have been issued a CM/ECF system password by the office of the Clerk of the Bankruptcy Court and subsequently elect to use a four-digit number registered with the Clerk of the District Court pursuant to Civil Rule 11.1(b) of the Local District Rules should update their profile on record with the Clerk of the Bankruptcy Court by revising their attorney profile on the CM/ECF system.



**Rule 9013-1 MOTION PRACTICE**

(a) *Rule or Statutory Basis.* Each motion shall specify the rules and statutory provisions upon which it is predicated **and the legal authorities that support the requested relief, either in the motion or in a separate memorandum of law.** If such specification has not been made, the Court may strike the motion from the calendar.

~~(b) *Memorandum of Law.* Unless the Court orders otherwise, the moving party shall serve and file with any motion (including a motion brought on by order to show cause) a memorandum of law setting forth the points and authorities relied on in support of the motion, divided under appropriate headings into as many parts as there are points to be determined. Unless the Court orders otherwise, each responding party shall serve and file with its papers in response to the motion an answering memorandum of law, similarly divided, setting forth the points and authorities relied on in response. Failure to comply with this subdivision may be deemed sufficient cause for the denial of the motion or the granting of the motion by default.~~

**(b)** ~~(e)~~ *Entities to Receive Notice.* In addition to all entities otherwise entitled to receive notice, notice of a motion shall be given to any entity believed to have or be claiming an interest in the subject matter of the proposed order or who, it is believed, otherwise would be affected by the proposed order.

**Comment**

This rule is derived from Former Local Bankruptcy Rule 13.

Local Bankruptcy Rule 7007-1 provides additional requirements for discovery-related motion practice.

**This rule was amended in 2008 to delete the requirement that a separate memorandum of law be filed with every motion or responsive pleading. A discussion of the law must be included in the motion or responsive pleading if a separate memorandum of law is not filed.**

**Rule 9074-1 SETTLEMENT OR PRESENTMENT OF ORDER, JUDGMENT, OR DECREE**

(a) *Settlement of Order, Judgment, or Decree.* Unless the Court orders otherwise, if, following a hearing or decision, the Court directs a party to settle an order, judgment, or decree, the party, within 15 days of the issuance of the Court's ruling, shall deliver the proposed order, judgment, or decree directly to the Judge's chambers upon not less than two days' notice to all parties to the adversary proceeding or contested matter, except that such notice period shall not apply if all parties to the adversary proceeding or contested matter have consented in writing to the proposed order, judgment, or decree. Failure to settle an order, judgment, or decree within the 15 day period may result in the imposition of sanctions, including, without limitation, (i) dismissal for failure to prosecute or (ii) an award of attorney's fees. One day's notice is required of all counterproposals. Unless the Court orders otherwise, no proposed or counterproposed

order, judgment, or decree settled pursuant to this rule shall form a part of the record of the case, adversary proceeding, or contested matter.

*(b) Notice of Presentment of Order in Lieu of Hearing Where Notice and a Hearing Are Not Required.*

(1) *Use.* If notice and a hearing are not required, and a motion is not mandatory, the form set forth in subdivision (b)(3) of this rule may be used for the submission of orders to the Court.

(2) *Notice.* Unless the Court orders otherwise, notice of the presentment of an order pursuant to this subdivision shall be filed with the Clerk, and a copy shall be delivered to the Judge's chambers and served upon the debtor, the trustee, each committee, the United States Trustee, all parties who have filed a notice of appearance and request for service of documents, and all other parties in interest on not less than three days' notice.

(3) *Form.* A notice of presentment of a proposed order shall be substantially in the following form.

*(c) Notice of Motion upon Presentment and Opportunity for Hearing with Respect to Certain Motions, Applications, and Objections.*

(1) *Use.* Where it is anticipated that a motion, application, or objection of a type set forth below will be uncontested, the motion, application, or objection may be made upon notice of presentment using the form set forth in subdivision (c)(4) of this rule:

~~(A) Motion to terminate the automatic stay in a chapter 13 case pursuant to § 362 of the Bankruptcy Code;~~

~~(A)(B)~~ Application to confirm a sale pursuant to Local Bankruptcy Rule 6004-1;

~~(B)(C)~~ Motion to extend the time to assume or reject a lease pursuant to § 365(d)(4) of the Bankruptcy Code;

~~(C)(D)~~ Motion for entry of a default judgment in an adversary proceeding pursuant to Bankruptcy Rule 7055 and Local Bankruptcy Rule 7055-2;

~~(D)(E)~~ Motion to extend the time to object to discharge or dischargeability pursuant to Bankruptcy Rule 4004 or 4007;

~~(E)(F)~~ Application to avoid a judicial lien that impairs an exemption pursuant to § 522(f) of the Bankruptcy Code;

~~(F)(G)~~ Application for an examination pursuant to Bankruptcy Rule 2004 to the extent that the application is not granted ex parte;

~~(G)(H)~~ Objection to a claim of exemption pursuant to  
Bankruptcy Rule 4003(b).

(2) *Notice.* Unless the Court orders otherwise, notice of the presentment of an order pursuant to this subdivision shall be filed with the Clerk and a copy shall be delivered to the Judge's chambers and served upon the debtor, the trustee, each committee, the United States Trustee, all parties who have filed a notice of appearance and request for service of documents, and all other parties in interest. The notice shall comport with the notice requirements under the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules.

(3) *Objection; Opportunity for a Hearing.* A written objection, if any, to the proposed order, together with proof of service, shall be filed with the Clerk and a courtesy copy shall be delivered to the Judge's chambers at least three days before the date of presentment. Unless the Court orders otherwise, no hearing will be held absent the timely filing of an objection. If an objection has been timely filed, the Court will notify the moving and objecting parties of the date and time of any hearing.

(4) *Form.* A notice of presentment of a proposed order shall be substantially in the following form.

\* \* \*

#### Comment

Subdivision (a) of this rule, which is derived from Former Local Bankruptcy Rule 17 and is an adaptation of Civil Rule 77.1 of the Local District Rules, applies to the settlement of orders, judgments, and decrees following a hearing or decision. Subdivision (b) of this rule, which is derived from Former Local Bankruptcy Rule 46, applies in situations in which "notice and a hearing" are not required by the Bankruptcy Code. Subdivision (c) of this rule, which is new and is an adaptation of former Standing Order 186, applies only to the types of proceedings specified therein and where it is anticipated that the relief requested will be uncontested.

**Subdivision (c)(1) of this rule was amended in 2008 to delete from the list of motions that may be made on presentment a motion to terminate the automatic stay pursuant to § 362 of the Bankruptcy Code in a chapter 13 case. The purpose of this amendment is to assure that the Court will properly hear, and consider the accuracy of, allegations of default in cases concerning an individual debtor.**

A motion is mandatory if required by the Bankruptcy Rules, the Local Bankruptcy Rules, or an order of the Court.

Times for the presentment of and objections to proposed orders are specified in this rule to promote uniformity in practice. If notice of presentment is given by mail, three additional days must be added in accordance with Bankruptcy Rule 9006(f).