

LANGUAGE FOR LIFT STAY ORDERS IN CHAPTER 13 CASES IN THE W.D. OF VA. IN WHICH HERBERT BESKIN OR REBECCA CONNELLY ARE TRUSTEE:

1. **Where a second order is required:** If a consent order resolving a creditor's motion to lift stay requires the filing and entry of a second order to actually lift the stay, one of the orders should contain language such as the following:

“Upon entry of the order granting relief from the automatic stay of 11 U.S.C. §362, the Trustee will immediately cease making any payments on the Movant's secured claim which were required by the plan. Any amended unsecured claim for a deficiency (which claim must include documents proving that it has liquidated its collateral and applied the proceeds of sale in accordance with applicable state law) must be filed by the Movant within 120 days from the date on which the order lifting stay is entered, or such claim against the bankruptcy estate shall be forever barred.”

2. **Where creditor is required to give notice to the debtor of a subsequent default and a second order is NOT required:** If a consent order resolving a creditor's motion to lift stay does not require the filing and entry of a second order to actually lift the stay, the consent order should contain language such as the following:

“In the event that the debtor fails to (a) comply with the terms of this order, or (b) timely deliver, or cause to be delivered, any subsequent payment on or before the date required by the contract or the plan, then in such event Movant may give written notice to the Court, debtor, and Trustee of the failure to receive such payment. After such notice has been given:

(1) If the debtor fails to object in writing within ** days of the date such notice is sent and to request a hearing thereon, then in such event Movant is relieved from the automatic stay provisions of 11 U.S.C. §362, such stay is rescinded without further order, notice or opportunity for hearing, and Movant is entitled to avail itself of its contractual remedies. In such event (a) 30 days after the debtor's response period has ended the Trustee will cease making any payments on the Movant's secured claim which were required by the plan, and (b) within 120 days after the debtor's response period has ended the Movant must file an amended unsecured claim for a deficiency (which claim must include documents proving that it has liquidated its collateral and applied the proceeds of sale in accordance with applicable state law) or such claim against the bankruptcy estate shall be forever barred.”

(2) If the matter is contested by the debtor, the Trustee will continue making any payments on the Movant's secured claim which were required by the plan until and unless an order modifying or terminating the automatic stay is entered by the Court.

(3) If the debtor cures the default, if the notice of default is withdrawn by the Movant, or if any other agreement is reached between the Movant and the

debtor which allows the debtor to retain the property, the Movant shall so notify the Court in writing, with a copy to the Trustee, within twenty days of such action, and the Trustee shall continue making any payments on the Movant's secured claim which are required by the plan."

3. **Where creditor is NOT required to give notice to the debtor of a subsequent default and a second order is NOT required:** If a consent order resolving a creditor's motion to lift stay does not require either further notice to the debtor or the filing and entry of a second order to actually lift the stay, the consent order should contain language such as the following:

"In the event that the debtor fails to (a) comply with the terms of this order, or (b) timely deliver, or cause to be delivered, any subsequent payment on or before the date required by the contract or the plan, such that the Movant is relieved from the automatic stay provisions of 11 U.S.C. §362, then in such event the Movant shall within twenty days of obtaining relief notify both the Court and the Trustee in writing of its intention to avail itself of its contractual remedies and proceed against the collateral. Upon the receipt of such notice the Trustee will cease making any payments on the Movant's secured claim which were required by the plan, and within 120 days of giving the above-described notice the Movant must file an amended unsecured claim for a deficiency(which claim must include documents proving that it has liquidated its collateral and applied the proceeds of sale in accordance with applicable state law) or such claim against the bankruptcy estate shall be forever barred."

If after the Movant has given the above-described notice the debtor is allowed by the Movant to cure the default, or if any other agreement is reached between the Movant and the debtor which allows the debtor to retain the collateral, the Movant shall so notify the Court in writing, with a copy to the Trustee, within twenty days of such action, and the Trustee shall resume making any payments on the Movant's secured claim which are required by the plan."

- (Notes: 1. 12/05/06 update changed the language in the last line of option 1, the last line of paragraph (1) in option 2, and the last line of the first paragraph in option 3 to clarify that the claim is barred only against the assets of the bankruptcy estate. If the creditor wants to also add that the barring is only effective "upon discharge of the debtor," we will review such language and, unless totally inaccurate, not object to it.)
2. 01/14/09: Paragraph 2. (3) and 3, 3rd para., changed to state that any notice that the Trustee is to resume making payments after the stay has been lifted must be sent to the Court, with a copy to the Trustee, and not just to the Trustee.
3. 02/09/10: Judge Anderson wants language added to every order to the effect that: "Any amended unsecured claim for a deficiency (**which claim must include documents proving that it has liquidated its collateral and applied the proceeds of sale in accordance with applicable state law**) must be filed by the Movant within 120 days from the date on which the order lifting stay is entered, or such claim against the bankruptcy estate

shall be forever barred.”

4. 07/27/11: option #3, line 5: added that written notice must be to both the Trustee and the Court