

Bankruptcy Stay (MAG 11-07)

Purpose of form:

A state level court is required to enter a "stay in bankruptcy" order anytime the court receives reasonable information to indicate that a party to a civil lawsuit has filed for protection under the Bankruptcy Code of the United States. And, while state level courts may impose certain prerequisites for filing for a bankruptcy stay the federal courts may have differing requisites which tend to be more liberal.

The particular form provides that the magistrate may make any of 5 differing rulings regarding a request for a bankruptcy stay order.

Parties to a civil case should follow U.R.M.C. Rule 42: Bankruptcy stay. A party or attorney may file a signed notice of bankruptcy proceedings containing the bankruptcy case number; where the debtor in the bankruptcy case is the same as a party in the magistrate court, such a notice will stay proceedings in the magistrate court until further order of the court. Parties are encouraged to attach a copy of the first page of their bankruptcy filing to the notice. On the court's own motion, a judge or clerk may attempt to verify the filing with the U.S. Bankruptcy Court (which may be by telephone inquiry) and notify the parties to proceed with the case upon lack of verification.

Parties desiring to challenge the authenticity, scope, or continued duration of a bankruptcy stay shall file a written motion or request which shall be set for hearing before a magistrate. This motion need not be in a particular format but must set forth the "style of the case," which is heading on top of many courts setting forth the name of the court, state, names of the parties and case number. All motions should set forth the relief requested. All motions should be served upon the opposing party.

MAGISTRATE COURT OF _____ COUNTY, GEORGIA

Date Filed _____

Case No: _____

Plaintiff(s) Name, Address
vs

ORDER REGARDING STAY IN
BANKRUPTCY

Defendant(s) Name, Address

It appearing to the Court that the Defendant(s) _____ has/have filed a voluntary petition in bankruptcy in the United States Bankruptcy Court for the _____ District of _____, _____ Division, Case No. _____ and that said filing operates as an automatic stay of further proceedings against the bankrupt Defendant(s) in the above styled action. IT IS THEREFORE ORDERED, AS FOLLOWS:

- There is only one Defendant in this action. All proceedings against the Defendant are stayed until further order of the Court. The Clerk of this Court is hereby directed to remove this case from the pending files and close this case by administrative order upon the docket of this Court. The Clerk of this Court shall hold any funds held in the registry of the Court until an order is received from the United States Bankruptcy Court regarding the disposition of such funds.
- There is more than one Defendant in this action. The relief sought by the Plaintiff may not be granted as to any Defendant without affecting the rights of the Defendant in bankruptcy. All proceedings against all of the Defendants herein are stayed until further order of the Court. The Clerk of this Court is hereby directed to remove this case from the pending files and close this case by administrative order upon the docket of this Court. The Clerk of this Court shall hold any funds held in the registry of the Court until an order is received from the United States Bankruptcy Court regarding the disposition of such funds.
- There is more than one Defendant in this action. The relief sought by the Plaintiff may be granted against the other Defendants without affecting the rights of the Defendant in bankruptcy. The portion of the case against other co-defendant(s) shall not be stayed. However, all proceedings against the Defendant _____, debtor, are stayed until further order of the Court. The Clerk of this Court shall hold any funds paid by or on behalf of the debtor in bankruptcy held in the registry of the Court until an order is received from the United States Bankruptcy Court regarding the disposition of such funds.
- The relief sought by the Plaintiff against the Defendant(s) is for the recovery of a post-petition debt. This action is not stayed.
- A judgment has already been entered by the Court. To the limited extent that there are post trial issues in this court those matters are hereby stayed and the Clerk of this Court is hereby directed not to issue a writ of fieri facias, if a writ has not yet been entered. The parties shall not proceed with any post judgment discovery arising out of this action until further order of this Court.

Parties desiring to reopen this case or to challenge the authenticity, scope or continued duration of the underlying bankruptcy stay shall file a written motion or request pursuant to Uniform Magistrate Court Rule 42, at which time said motion shall be set for a hearing.

So ORDERED, this ____ day of _____, 20____.

Magistrate

Copies to parties or attorneys for: Plaintiff; Defendant; Garnishee.