

PROCEDURES RE: MOTIONS FOR USE OF CASH COLLATERAL OR TO OBTAIN CREDIT

1. **Motion.** Each motion for court approval to use cash collateral (11 U.S.C. § 363(c)(2)) or obtain credit (§ 364(b)-(d)) must:
 - a. state that it does not contain any of the provisions set forth in paragraph 5 below; or
 - b. identify which of the provisions in paragraph 5 are contained in the motion, and the justification for the provisions.

2. **Notice of Hearing on Motion.** The moving party is required to use the appropriate notice of hearing ([Local Bankruptcy Form \(LBF\) 541.1](#) for a preliminary hearing and [LBF 541](#) for a final hearing). The moving party must obtain the hearing date, time and location from the [courtroom deputy](#) before service.

Note: A preliminary hearing is required only when use of cash collateral or credit is sought within the time frame set forth in Federal Rules of Bankruptcy Procedure (FRBP) 4001(b)(2) or (c)(2), and only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

3. **Service of Motion and Notice.** The moving party must serve the motion and notice on all parties listed in paragraph 5 of the notice.

Note: Service for a preliminary hearing must be made within a reasonable time prior to the hearing by giving telephonic or other actual notice of the hearing date, time and location to all parties requiring notice (including the U.S. Trustee). Service for a final hearing must be made within 2 business days after receiving the hearing date. A moving party who cannot serve the motion and notice within these time frames must notify the court and obtain a new date. Sanctions may be imposed for failure to comply.

4. **Filing of Motion and Notice with Clerk's Office.** The motion and notice must be filed with, or mailed to, the clerk on the date of service.

5. Discouraged Provisions.

- a. The court will not normally approve the following types of provisions in motions either to use cash collateral or to obtain credit.
 - (1) Cross-collateralizing prepetition debt with postpetition assets.
 - (2) Findings of fact on matters extraneous to the approval process. (For example, in connection with an application to borrow on a secured basis, a finding that the debtor cannot obtain unsecured credit would be acceptable, whereas a finding that the lender acted in good faith in declaring the prepetition loan in default would not be acceptable.)

- (3) Provisions or findings of fact that bind the debtor, the estate and/or all parties in interest with respect to the validity, perfection, relative priority or amount of the secured party's lien or debt. This would include an order approving a provision that the secured party's lien is a "first priority" lien on the collateral.
 - (4) Any language that characterizes any postpetition payments as payments of interest, fees or costs on a prepetition loan.
 - (5) Waiver of § 506(c) right to seek to charge collateral of secured party for the trustee's expenses in preserving or disposing of assets for the benefit of the secured party.
 - (6) Granting a security interest in bankruptcy avoiding power causes of action or avoiding power recoveries.
 - (7) Waiver or release by debtor or the estate of any or all claims the debtor/estate may have against the lender/secured party, including waiver of avoiding power causes of action against the lender/secured party or against insiders of the lender/secured party.
 - (8) Waiver by debtor or the estate of the right to seek to prime the secured position of the lender/secured party under § 364(d).
 - (9) Priming any other party's lien, without that party's consent or without providing adequate protection.
 - (10) Automatic relief from the stay of § 362(a) upon the occurrence of a default, upon conversion to chapter 7 or upon appointment of a trustee, without further application to and order of the court.
 - (11) Waiver, effective on default or expiration of a prior court order, of the debtor's right to move for a court order under § 363(c)(2)(B) authorizing the use of cash collateral in the absence of the secured party's consent.
- b. Each motion must state that it does not contain any of these provisions or identify which of these provisions are contained in the motion, and the justification for the provisions.