UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
FRANK T. BOW FEDERAL BUILDING
201 CLEVELAND AVE., S.W.
CANTON, OHIO 44702

RUSS KENDIG
BANKRUPTCY JUDGE

PHONE (330) 489-4430
FAX (330) 489-4558

TO: Interested Counsel

FROM: Russ Kendig

DATE: October 5, 2001

RE: Motions for Relief From Stay

This memorandum accompanies Administrative Order 01-13, which changes the administration of motions for relief from stay and/or for abandonment filed in the United States Bankruptcy Court for the Northern District of Ohio, Canton Division.

Prior to October 15, 2001, when a moving party filed a motion, the movant was required only to file the motion, serve the same in compliance with the rules and pay the fee. The clerk's office scheduled a preliminary hearing on the motion, prepared notice of the hearing and served the same. This practice developed from the court's desire to reserve time for preliminary hearings on all motions, to provide consistent and adequate notice to all interested parties, and to monitor these matters.

This practice requires effort by the clerk's office not only to prepare and serve the hearing notices, but also to monitor the pending hearings. Substantial increases in case filings caused this procedure to become difficult for the clerk's office. The process was possible only due to the service available from the Bankruptcy Noticing Center ("BNC"). Recently, several courts experienced situations in which BNC either did not receive notice messages or the system failed to produce the notices. This happened with many notices in Canton. Although the court believes this method was the best, we cannot in good faith rely upon it or require you to use it with the risk of potential harm. We make this change because we must and with some regret.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	) ADMINISTRATIVE ORDER
	) NO. 01-13
PROCEDURE REGARDING MOTIONS	)
FOR RELIEF FROM STAY AND/OR	) JUDGE RUSS KENDIG
FOR ABANDONMENT	)

* *

Dated at Canton, Ohio this 5th day of October, 2001.

This order changes the administration of motions for relief from stay and/or for abandonment ("motion(s)") filed in the United States Bankruptcy Court for the Northern District of Ohio, Canton Division.

The following procedure applies in administering these motions filed on or after October 15, 2001, arising in chapters 7, 11, 12 and 13 of title 11:

1. The moving party must file and serve the motion with an appropriate Form 20A notice indicating the manner in which objections are to be filed and served and indicating the exact calendar date (month, day, year; not a generic number of days from receipt or service) by which objections are to be filed and served which is seven (7) days before the date set for hearing, which objection deadline shall be not less than twenty (20) days from mailing. Saturdays and Sundays are to be counted, but mailings may only be made on days the court is scheduled to be open. If a deadline falls on a Saturday, Sunday or federal holiday then the deadline is extended to the next business day. A sample notice of motion (Form 20A) is attached as Exhibit A. A preliminary hearing date is to be reserved and noticed in the body of the 20A form. The available dates

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may be obtained from the courtroom deputy.[1] In the future, these dates may be available from the court's website and counsel will be encouraged to use this source. Absent an objection and request for hearing, no hearing will be held and an order may be submitted by the moving party following the expiration of the objection period.

2. Any objecting party must file and serve its objection and request for hearing within the objection period described in paragraph 1. The objection must state the specific grounds for the objection. This administrative order constitutes the court's authority pursuant to FED. R. BANKR. P. 4001(d)(2) for fixing the time in which objections may be filed and served.

3. The judge's courtroom deputy presides over preliminary hearings. Parties need not attend the preliminary hearing as it will function primarily to schedule the final hearing. If parties choose not to attend, they must call the courtroom deputy within two (2) business days before the preliminary hearing to advise the deputy of their absence and to be told the date of the final hearing as the final hearing is announced at the preliminary hearing and no further notice will be given. Unless an expedited hearing is requested, this order constitutes the authority for the final hearing to be conducted beyond the thirty (30) day time period pursuant to 11 U.S.C. § 362.

4. Any interested party may request an expedited hearing from the court or may request a formal preliminary hearing conducted before a bankruptcy judge.

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1 The judge's courtroom deputy, Karen Rupert, may be reached at (330) 489-4431, extension 6128. The judge's law clerks may be reached at (330) 489-4430.

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5. The following requirements apply to final hearings on motions for relief from stay in which an evidentiary hearing is held:

A. Not less than ten (10) days prior to the evidentiary hearing, movant must file with the court and serve a brief statement supporting its position, including copies of notices or correspondence relevant to debtor's account, evidence of payments made, evidence of payments or charges applied, and a payment history for debtor's account. The payment history must cover the entire period of the arrearage (i.e. cover the time period from one month before default) or from the date of any other cause supporting the modification or termination of the automatic stay to the date of the filing of the motion. Movant must file and serve a worksheet in the form of that attached as Exhibit B.[2]

B. Debtor must file and serve a statement explaining debtor's position, with a worksheet in the form of that attached as Exhibit C, not less then five (5) days prior to the evidentiary hearing. The statement and worksheet must be faxed or delivered to opposing counsel due to the short time frame.

C. Any other interested party must file and serve a statement explaining its position no later than ten (10) days following the preliminary hearing.

D. Movant may timely request continuance of the final hearing date in the event it is unable to procure the necessary information. Parties and counsel are cautioned as to the requirements of FED. R. BANKR. P. 9011.

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2 Parties may, but need not, attach supporting documentation to their statements filed with the court and served upon other interested parties, but Exhibit B must be attached. Supporting documentation must be available for the court's review at the final hearing.

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6. In chapter 13 matters, parties must serve motions and responses on the chapter 13 trustee. Parties submitting agreed orders in chapter 13 cases, other than agreed orders granting only the relief requested in the motion, must submit the order to the trustee for review and signature prior to submission to the court. In chapter 13 cases involving motions for relief concerning real estate mortgages, where present arrearages exceed the value of two regular monthly payments, the court may condition continuation or reinstatement of the automatic stay upon future payment of the mortgage by the chapter 13 trustee.

RUSS KENDIG
UNITED STATES BANKRUPTCY JUDGE

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 01-00000
	)	
JOHN DOE and	)	CHAPTER ##
JANE DOE,	)	
	)	JUDGE RUSS KENDIG
Debtors.	)	

NOTICE OF MOTION FOR RELIEF FROM STAY [AND ABANDONMENT]

_____ has filed papers with the court to [relief sought in motion]. The preliminary hearing on this matter, if any is required, is set for [date and time] at the United States Bankruptcy Court, 201 Cleveland Avenue, S.W., Canton, Ohio.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then on or before [exact calendar date], you or your attorney must:

File with the court a written request for hearing and a written response setting forth the specific grounds for objection at:

Clerk of Court
United States Bankruptcy Court
201 Cleveland Avenue, S.W.
Canton, Ohio 44702

If you mail your request and response to the court for filing, you must mail it early enough so the court will **receive** it before the date stated above.

You must also mail a copy to:

[movant's attorney's name and address]

[names and addresses of others to be served]

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: _____

Signature: _____
Printed Name:
Address:
Phone Number:

Exhibit A - Notice of Motion

Debtor's Name:				Case No.:				Note: Please provide explanatory
Movant's Name:				Account/Loan No:				comments as needed on bottom
								of page or on additional sheets
Loan Balance:				Regular Monthly Payment:				
Pre-Petition Arrearage:				Interest Rate:				
Post-Petition Arrearage:				Date Monthly Payment Due:				
		PRINCIPAL	ACCRUED	OTHER	PRINCIPAL	ACCRUED	OTHER	
		BALANCE	INTEREST	CHARGES	BALANCE	INTEREST	CHARGES	
	PAYMENT	BEFORE	BEFORE	BEFORE	AFTER	AFTER	AFTER	
DATE	AMOUNT	PAYMENT	PAYMENT	PAYMENT	PAYMENT	PAYMENT	PAYMENT	
-								-

EXHIBIT B

(Movant's Worksheet For Final Hearings On Motions For Relief From Stay)

Debtor's Name:				Case No.:				Note: Please provide explanatory			
Movant's Name:				Account/Loan No:				comments as needed on bottom			
								of page or on additional sheets			
Loan Balance:				Regular Monthly Payment:							
Pre-Petition Arrearage:				Interest Rate:							
Post-Petition Arrearage:				Date Monthly Payment Due:							
INSTRUCTIONS:											
1. In "DATE" column, start with payment as early as commencement of Exhibit A filed by movant.											
2. In "FORM OF PAYMENT" column, identify whether paid by personal check of debtor, money order, personal check of other, cash, etc.											
3. In "FORM OF DELIVERY" column, specify whether paid at counter, by mail (identify location mailed to if issue is in question), etc.											
	PAYMENT	FORM OF	FORM OF								
DATE	AMOUNT	PAYMENT	DELIVERY								
-										-	

EXHIBIT C

(Debtor's Worksheet For Final Hearings On Motions For Relief From Stay)