# Mont. LBF 8. MOTION TO MODIFY STAY; AND NOTICE.

# [Mont. LBR 4001-1(a)]

Name of Attorney

Office Mailing Address

Telephone Number

Facsimile Number

E-Mail Address

State Bar I.D. Number

(Attorney for \_\_\_\_\_\_\_\_\_)

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MONTANA

|  |  |
| --- | --- |
| IN RE:  , ,  Debtors. | Case No. **MOTION TO MODIFY STAY; AND NOTICE** |

The Motion of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Creditor”) respectfully represents:

1. The Debtor(s) filed a Petition in this Court under Chapter \_\_\_\_\_ of the Bankruptcy Code on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.
2. Creditor is the holder of a secured claim against the Debtor(s), and pursuant to Mont. LBR 4001-1, provides the following information:
3. The present balance owing to Creditor, excluding any precomputed interest or other unearned charges, is $\_\_\_\_\_\_\_\_\_\_\_\_\_.
4. The date upon which the subject debt was incurred was \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
5. Creditor holds a security interest or lien upon the following described property of the estate:
6. The nature of Creditor’s security interest, the date upon which the security interest was obtained, and the date upon which the security interest was perfected are as follows:

[Creditor has attached copies of all security agreements, financing statements, titles, and other perfection documents necessary to prove the validity of its security interest to its Proof of Claim on file herein, as required by Mont. LBR 4001-1; or if no Proof of Claim has been filed, such documents are attached to this Motion.]

1. Creditor has standing to file this motion on the following grounds:

[Creditor has attached copies of all documents necessary to establish its standing to file this motion, including all assignments of claims, as appropriate.]

1. A description of Creditor’s collateral, including its location, is as follows:
2. The fair market value of Creditor’s collateral is $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. A description of, and the amounts due upon, any other security interests which have priority over that of Creditor are as follows:
4. If the Debtor is in default, the number of defaulted installments and the total amount in default are as follows:
5. If the Creditor alleges a post-petition payment default by the Debtor, the amount and date of the payments the Debtor is alleged to have failed to make are as follows:

[Creditor attests that it responded promptly and thoroughly to the trustee’s or to the Debtor’s reasonable requests for account information.]

1. This Motion is made under and pursuant to the following subsection of 11 U.S.C. § 362\_\_\_.
2. Other facts which are relevant in determining whether relief should be granted are as follows:
3. Creditor further represents that in the event the Court grants this Motion, Creditor will seek foreclosure and liquidation of the above-described collateral in accordance with applicable non-bankruptcy law. Upon disposition of such collateral, Creditor will account for all proceeds to the Court, and trustee, if applicable, and agrees to turn over any proceeds in excess of Creditor’s allowed secured claim to the Court, and trustee, if applicable.
4. To avoid the need for a preliminary telephonic hearing, Creditor \_\_\_\_\_ does or \_\_\_\_ does not consent to waiver of the 30-day rule set forth in 11 U.S.C. § 362(e).

WHEREFORE, Creditor moves the Court to grant this Motion to Modify Stay, and to grant such other relief as the Court may deem appropriate.

DATED this \_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of attorney]

(Attorney for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

NOTICE OF OPPORTUNITY TO RESPOND

AND REQUEST A HEARING

If you object to the motion, you must file a written responsive pleading and request a hearing within fourteen (14) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

**NOTICE OF HEARING**

**Date:**

**Time:**

**Location:**

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time and location of the hearing can be obtained from the Clerk of Court or from the Court’s website at [www.mtb.uscourt.gov.](http://www.mtb.uscourt.gov/) If the motion indicates the creditor does not consent to waiver of the 30-day rule set forth in 11 U.S.C. § 362(e) and the next scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify Stay with the particularity required by Mont. LBR 4001-1(c), and request a hearing, within fourteen (14) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.

DATED this \_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of Attorney}

(Attorney for Creditor)

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under penalty of perjury that on the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, a copy of the foregoing was served by electronic means pursuant to LBR 9013-1(d)(2) on the parties noted in the Court’s ECF transmission facilities and/or by mail on the following parties:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of person certifying the mailing]

[Must comply with Mont. LBR 9013-1(d)(2), by reflecting the name and address of each party served, and by being signed “under penalty of perjury” and by identifying the document served.]