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The Power Behind the Throne: Law Clerks from Each District Give Advice

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INTRODUCTION

This paper briefly examines certain consumer practices and procedures that vary across the Northern, Southern, Eastern, and Western Districts of Texas. Specifically, it includes a discussion as to how each district conducts motions to lift the automatic stay, motions to extend or impose the automatic stay, and Chapter 13 plan confirmation, to name a few. In addition, this paper will address differences in court procedures across each district—both prior to and during the COVID-19 pandemic. The authors hope this paper serves as a useful reference to consumer insolvency professionals who practice across Texas.

NORTHERN DISTRICT OF TEXAS

I. Relief from the Automatic Stay

- A. Check the Local Rules. Motions for relief from the automatic stay are governed by Local Bankruptcy Rule 4001-1. The local rules for the Northern District of Texas became effective September 10, 2010 and were revised on December 1, 2019. The rules are available online: <https://www.txnb.uscourts.gov/court-info/local-rules-and-orders/local-rules>.
- B. L.B.R. 4001-1. The following are a few key provisions highlighted from our local rules.
 - a. *Service and Notice.* The movant shall file a certificate of service attached to the motion, and the motion shall be served on the following parties: (1) the debtor, and if the debtor is represented by an attorney, the attorney; (2) any attorney for a committee appointed or elected to the case, and if no committee attorney, than its members, or if there is no committee, the creditors on the list filed pursuant to Bankruptcy Rule 1007(d); (3) any party

in the case scheduled as holding a lien, with respect to a motion seeking relief from the stay of an act against property; (4) the United States Trustee; (5) any trustee or examiner appointed in the case; and (6) all parties requesting notice pursuant to Local Bankruptcy Rule 2002-1(j). *See* L.B.R. 4001-1(a).

- b. *Preliminary Hearings and Affidavits.* Importantly, and absent “compelling circumstances,” evidence presented at preliminary hearings in the Dallas and Fort Worth Divisions on motions for relief from the automatic stay will be by affidavit only. Except as to (i) a motion filed by the holder of a claim secured by a debtor’s principal residence and (ii) expedited settings, the movant shall serve evidentiary affidavits at least 7 days in advance of the hearing. “The failure of a respondent to file an evidentiary affidavit, or the failure of an attorney to attend a scheduled and noticed preliminary hearing, shall be grounds for granting the relief, regardless of the filing of a response to the motion.” *See* L.B.R. 4001-1(e)(1).
- c. *Special Affidavits and Requirements for Holders of Mortgages on Debtor’s Principal Residence.* Whenever there is a motion for relief or motion for agreement regarding the automatic stay on a debtor’s principal residence, an affidavit shall be filed and served within 7 days of filing the motion, regardless of the hearing date and regardless of whether any opposition to the motion is expected. *See* L.B.R. 4001-1(e)(2). The affidavit must include certain information, as provided in this specific subsection of the local rule.

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