

In re _____ (SHORT TITLE)	CHAPTER: CASE NO.:
Debtor(s).	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY
(MOVANT: _____)

1. **The Property at issue:** Movant moves for relief from the automatic stay with respect to following real property (the "Property"):

Street Address:
Apartment/Suite no.:
City, State, Zip Code:

Legal description or document recording number (including county of recording):

See attached continuation page.

2. **Case History:**

- a. A voluntary An involuntary petition under Chapter 7 11 12 13 was filed on:
- b. An Order of Conversion to Chapter 7 11 12 13 was entered on:
- c. Plan was confirmed on (*specify date*):
- d. Other bankruptcy cases affecting this Property have been pending within the past two years. See Attached Declaration.

3. **Grounds for Relief from Stay:**

- a. Pursuant to 11 U.S.C. § 362(d)(1), cause exists to grant Movant the requested relief from stay as follows:
 - (1) Movant's interest in the Property is not adequately protected.
 - (a) Movant's interest in the collateral is not protected by an adequate equity cushion.
 - (b) The fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.
 - (c) No proof of insurance re Movant's collateral has been provided to Movant, despite borrower(s)'s obligation to insure the collateral under the terms of Movant's contract with Debtor(s).
 - (d) Payments have not been made as required by an Adequate Protection Order previously granted in this case.
 - (2) (*Chapter 12 or 13 cases only*)
 - (a) Post-confirmation plan payments have not been made to the Standing Trustee.
 - (b) Post-confirmation payments required by the confirmed plan have not been made to Movant.
 - (3) The bankruptcy case was filed in bad faith.
 - (4) For other cause for relief from stay, see attached continuation page.
- b. Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor(s) has/have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.
- c. Pursuant to 11 U.S.C. § 362(d)(3), Debtor(s) has/have not satisfied the requirements of this section because of a failure to:
 - (1) Commence payments; or
 - (2) File a reasonable Plan of Reorganization within 90 days of the petition date.

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4. Movant also seeks annulment of the stay to validate post-petition acts, as specified in the attached declaration(s).
5. **Evidence in Support of Motion:** (*Important Note: Declaration(s) in support of the Motion MUST be attached hereto.*)
 - a. Movant submits the attached Declaration(s) on the Court's approved forms (if applicable) to provide evidence in support of the Stay Motion pursuant to Local Bankruptcy Rules.
 - b. Movant submits the attached supplemental Declaration(s) under penalty of perjury, to provide additional admissible evidence in support of the Stay Motion.
 - c. Movant requests that the Court consider as admissions the statements made by Debtor(s) under penalty of perjury concerning Movant's claims and the Property set forth in Debtor(s)'s Schedules. Authenticated copies of the relevant portions of the Schedules are attached as Exhibit _____.
 - d. Other evidence (*specify*):
6. **An optional Memorandum of Points and Authorities is attached to this Motion.**

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following (*specify forms of relief requested*):

1. Relief from the Stay allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
2. Annulment of the stay to validate post-petition acts, as specified in the attached declarations.
3. Additional provisions requested:
 - a. That the Order be binding and effective in any bankruptcy case commenced by or against the above-named Debtor(s) for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property.
 - b. That the 7-day waiting period prescribed by California Civil Code Section 2924g(d) be waived.
 - c. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived.
 - d. See Extraordinary Relief Attachment (*Use Optional Court Form 350ER*).
 - e. For additional relief requested, see attached continuation page.
4. If relief from stay is not granted, Movant respectfully requests the Court to order adequate protection.

Dated:

Respectfully submitted,

Movant Name

Firm Name of Attorney for Movant (if applicable)

By: _____
Signature

Name: _____
Typed Name of Individual Movant or Attorney for Movant

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REAL PROPERTY DECLARATION
(MOVANT: _____)

I, _____, declare as follows:
 (Print Name of Declarant)

1. I have personal knowledge of the matters set forth in this declaration and, if called upon to testify, I could and would competently testify thereto. I am over 18 years of age. I have knowledge regarding Movant's interest in the Property that is the subject of this Motion because *(state title and capacity)*:

- I am the Movant and owner of the Property.
- I manage the Property as the authorized agent for the Movant.
- I am employed by Movant as *(state title and capacity)*:
- Other *(specify)*:

2. I am one of the custodians of the books, records and files of Movant as to those books, records and files that pertain to loans and extensions of credit given to Debtor concerning the Property. I have personally worked on books, records and files, and as to the following facts, I know them to be true of my own knowledge or I have gained knowledge of them from the business records of Movant on behalf of Movant, which were made at or about the time of the events recorded, and which are maintained in the ordinary course of Movant's business at or near the time of the acts, conditions or events to which they relate. Any such document was prepared in the ordinary course of business of Movant by a person who had personal knowledge of the event being recorded and had or has a business duty to record accurately such event. The business records are available for inspection and copies can be submitted to the Court if required.

3. a. The address of the real property that is the subject of this Motion is:

Street Address:
Apartment/Suite no.:
City, State, Zip Code:

b. The legal description or document recording number (including county of recording) set forth in Movant's Deed of Trust is attached as Exhibit _____.

See attached page.

4. Type of property: *(Check all applicable boxes)*

- a. Debtor's principal residence b. Other single family residence
- c. Multi-unit residential d. Commercial
- e. Industrial f. Vacant land
- g. Other *(specify)*:

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5. Nature of Debtor's interest in the Property:

- a. Sole owner
- b. Co-owner(s) (*specify*):
- c. Lien holder (*specify*):
- d. Other (*specify*):
- e. Debtor(s) did did not list the Property in the Schedules filed in this case.
- f. Debtor(s) acquired the interest in the Property by grant deed quitclaim deed trust deed

The deed was recorded on:

6. Amount of Movant's claim with respect to the Property:

- a. Principal: \$
- b. Accrued PREPETITION Payment Arrearages: \$
- c. Accrued POST-PETITION Payment Arrearages: \$
- d. Costs (Attorney's Fees, Late Charges, Foreclosure Costs): \$
- e. Advances (Property Taxes, Insurance): \$
- f. TOTAL CLAIM as of _____, ____: \$
- g. Loan is all due and payable because it matured on (*specify date*):

7. Movant holds a deed of trust judgment lien other (*specify*) that encumbers the Property.

- a. A true and correct copy of the document as recorded is attached as Exhibit _____.
- b. A true and correct copy of the promissory note or other document that evidences the Movant's claim is attached as Exhibit _____.
- c. A true and correct copy of the assignment(s) transferring the beneficial interest under the note and deed of trust to Movant is attached as Exhibit _____.

8. Status of Movant's claim relating to the Property (*fill in all applicable information requested below*):

- a. Current interest rate:
- b. Contractual maturity date:
- c. Amount of current monthly payment: \$
- d. Number of PREPETITION payments that have come due and were not made:
- e. Number of POST-PETITION payments that have come due and were not made:
- f. Date of POST-PETITION or Post-Confirmation default:
- g. Last payment received on the following date:
- h. Notice of default recorded on the following date:
- i. Notice of sale recorded on the following date:
- j. Foreclosure sale originally scheduled for the following date:
- k. Foreclosure sale currently scheduled for the following date:
- l. Foreclosure sale already held on the following date:
- m. Trustee's deed on sale already recorded on the following date:
- n. Future payments due by time of anticipated hearing date (*if applicable*):
 An additional payment of \$ _____ will come due on _____, and on the _____ day of each month thereafter.
 If the payment is not received by the _____ day of the month, a late charge of \$ _____ will be charged to the loan.

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9. (*Chapter 7 and 11 cases only*): The fair market value of the entire Property is \$ _____, established by:
- a. Appraiser's declaration with appraisal attached herewith as Exhibit _____.
 - b. A real estate broker or other expert's declaration regarding value attached as Exhibit _____.
 - c. A true and correct copy of relevant portion(s) of Debtor's Schedules attached as Exhibit _____.
 - d. Other (*specify*):

10. **Calculation of equity in Property** (*Chapter 7 and 11 cases only*):

- a. Based upon a preliminary title report Debtor's(s)' admissions in the schedules filed in this case, the Property is subject to the following deed(s) of trust or lien(s) in the amounts specified securing the debt against the Property:

	<u>Amount as Scheduled by Debtor (if any)</u>	<u>Amount Known to Declarant and Source</u>
1st Deed of Trust:		
2nd Deed of Trust:		
3rd Deed of Trust:		
Judgment Liens:		
Taxes:		
Other:		
<hr/>		
TOTAL DEBT: \$		

- b. Evidence establishing the existence of the above deed(s) of trust and lien(s) is attached as Exhibit _____, and consists of:
- Preliminary title report
 - Relevant portions of Debtor(s)'s Schedules as filed in this case
 - Other (*specify*):
- c. Subtracting the deed(s) of trust and other lien(s) set forth above from the value of the Property as set forth in Paragraph 9 above, the Debtor(s)'s equity in the Property is \$ _____ (§ 362(d)(2)(A)).
- d. The value of the "equity cushion" in the Property exceeding Movant's debt and any lien(s) senior to Movant is \$ _____ (§ 362(d)(1)).
- e. Estimated costs of sale: \$ _____ (Estimate based upon ____% of estimated fair market value)

11. (*Chapter 12 and 13 cases only*) Chapter 12 or 13 case status information:

- a. 341(a) Meeting currently scheduled for the following date:
 Confirmation hearing currently scheduled for the following date:
 Plan confirmed on the following date:
- b. Post-petition payment history:
- (1) Post-petition payments due BUT REMAINING UNPAID since the filing of the case:
- | | | |
|---|---|----------|
| (Number of) _____ payment(s) due at \$ _____ each = | = | \$ _____ |
| (Number of) _____ payment(s) due at \$ _____ each = | = | \$ _____ |
| (Number of) _____ late charge(s) at \$ _____ each = | = | \$ _____ |
| (Number of) _____ late charge(s) at \$ _____ each = | = | \$ _____ |
- (2) Advances or other charges due but unpaid: \$ _____
 (See attachment for details of types and amount)

TOTAL POST-PETITION DELINQUENCY: \$ _____

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- c. The claim is provided for in the Chapter 12 or 13 Plan. Plan payment history is attached as Exhibit _____.
- d. See attached Declaration(s) of Chapter 12 or 13 Trustee regarding receipt of payments under the plan (*Attach Court Form 350.13*).

- 12. Movant has not been provided with evidence that the Property is currently insured, as required under the terms of the loan.

- 13. The Property qualifies as single asset real estate and
 - a. More than 90 days has passed since the filing of the petition and Debtor(s) has/have not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or
 - b. Debtor(s) has/have not commenced the monthly payments to Movant as required by 11 U.S.C § 362(d)(3)(B).

- 14. Other bankruptcy cases that have prevented Movant from recovering possession of this Property include the following:
 - a. Case Name: _____
 Case Number: _____ Chapter: _____
 Date Filed: _____ Date Dismissed: _____
 Relief from stay re this property was was not granted.
 - b. Case Name: _____
 Case Number: _____ Chapter: _____
 Date Filed: _____ Date Dismissed: _____
 Relief from stay re this property was was not granted.
 - c. See attached continuation page for more information about other cases.

- 15. Movant seeks annulment of the automatic stay and validation of any and all of the enforcement actions set forth in paragraph 8 above that were taken after the filing of the bankruptcy petition in this case.
 - a. These actions were taken by Movant without knowledge of the bankruptcy filing, and Movant would have been entitled to relief from stay to proceed with these actions.
 - b. Although Movant knew about the bankruptcy filing, Movant had previously obtained relief from stay to proceed with these enforcement actions in prior bankruptcy cases affecting this Property as set forth in paragraph 14 above.
 - c. For other facts justifying annulment, see attached continuation page.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on _____, _____, at _____ (city, state).

Print Declarant's Name

Signature of Declarant

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PROOF OF SERVICE

STATE OF CALIFORNIA
 COUNTY OF _____

1. I am over the age of 18 and not a party to the within action. My business address is as follows:

2. **Regular Mail Service:** On _____, pursuant to Local Bankruptcy Rule 9013-1, I served the documents described as: NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 and MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (including supporting declarations) on the interested parties at their last known address in this action by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail at _____, California, addressed as set forth on the attached list.

Note: *If the Notice and Motion have been served pursuant to an Order Shortening Time ("Order"), you must file a Proof of Service that indicates that the notice and service requirements contained in the Order have been met.*

3. **See attached list for names and addresses of all parties and counsel that have been served** *(In the manner set forth in Local Bankruptcy Rule 7004-1(b), specify capacity in which service is made; e.g., Debtor, Debtor's Attorney, Trustee, Trustee's Attorney, Creditors Committee or 20 largest unsecured creditors, etc.)*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated:

Typed Name

Signature