

MEMORANDUM

TO: All attorneys with bankruptcy consumer cases assigned to my docket

FROM: United States Bankruptcy Judge Pat E. Morgenstern-Clarren

DATE: 22 July 2011

SUBJECT: Proposed Agreed Orders to Resolve Motions for Relief from Stay by Requiring Extra Payments in the Immediate Short Term

Going back many years, debtors and creditors generally resolved motions for relief from stay by entering into orders with two major components: (1) in each of the next six months, the debtor would make the regular monthly payment plus an additional payment in an amount sufficient to pay the arrearage by the end of the six months; plus (2) a provision that if the debtor defaulted under the agreement, the creditor would file an affidavit of default followed by entry of an order lifting the stay. Not surprisingly, these orders resulted in a high default rate: after all, if the debtor did not have the money to make the regular payment, how was the debtor suddenly going to be able to make both the regular payment and the extra payment?

In more recent years, these six-month agreed orders fell into disuse, perhaps because of the default problem noted above. In the last month or so, however, the court has again begun to see these proposed orders. The court starts from the premise that the goal of an agreed order resolving a motion for relief from stay is to permit the debtor to remain in the family home while assuring the creditor that the missing payments will be made. To that end, if the parties propose a six- month order, or similar order, debtors should simultaneously file an amended budget or other documentation showing that they are able to make the payments.

Thank you, once again, for considering this issue.