

Below are forms for motions and orders seeking emergency relief from the automatic stay to allow a foreclosure sale to take place.

If such an emergency motion is filed electronically, please contact the courtroom deputy clerk, Christy Lee, at 404-215-1009.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER _____
)	
_____ ,)	CASE NO. _____ - MHM
)	
Debtor.)	

)	
_____ ,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
_____ ,)	
)	
Respondent.)	

EMERGENCY MOTION FOR RELIEF FROM STAY

Comes now Movant and files this emergency motion for relief from the automatic stay of 11 U.S.C. §362(a). Movant is a secured creditor of Debtor, holding a security interest in Debtor's real property. During the month immediately prior to the date of entry of this order, as a result of Debtor's default under the security documents, Movant had advertised the property as provided by Georgia law for a non-judicial foreclosure sale. Movant discovered that Debtor has filed a bankruptcy petition, which institutes the automatic stay of 11 U.S.C. §362(a). Movant asserts Debtor's case was filed within 180

days of the dismissal of case number _____, which case was dismissed pursuant to 11 U.S.C. §109(g), prohibiting Debtor from refile for 180 days.

Movant seeks modification of the automatic stay of 11 U.S.C. §362(a) only to the extent necessary to permit Movant to cry out the foreclosure sale of Debtor's real property as scheduled. Movant will not, however, record the deed transferring title to the property, or take any further action to perfect a sale against Debtor or Debtor's property, until further order of this court. At approximately _____m. on _____ [date], Movant's attorney [CHOOSE ONE] **notified or attempted to notify** Debtor and, if Debtor is represented by an attorney, Debtor's attorney of this motion by [CHOOSE ONE] ** telephone, in person, by hand delivery, by fax, or other [specify] means**.

WHEREFORE, Movant prays:

(a) That the automatic stay be modified to permit Movant to cry out the foreclosure sale of Debtor's real property as scheduled, and

(b) For such other and further relief as this Court deems just and proper.

This the ____ day of February, 2013.

[Name and state bar number of Movant's attorney]

[Attorney's address
and telephone number]
[party represented]

UNITED STATES BANKRUPTCY COURT
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IN RE:)
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Debtor.)
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_____,)
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Movant,)
v.) **CONTESTED MATTER**
)
_____,)
)
Respondent.)

ORDER MODIFYING STAY

Movant filed an emergency motion for relief from the automatic stay, seeking emergency and limited relief from the stay to permit Movant only to cry out the foreclosure sale of Debtor's real property, but not to record a deed conveying title until a hearing on the merits of the motion could be held. The emergency is created by the filing of Debtor's petition so close in time to the scheduled date of the foreclosure sale. Action taken in violation of the automatic stay is void. *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306 (11th Cir. 1982). Movant shows that modification of the automatic stay of 11 U.S.C. §362(a) is appropriate because Debtor has filed more than one previous bankruptcy petition, so that it appears that this case was filed in bad faith as

described in *Shell Oil Co. v. Waldron*, 785 F.2d 936 (11th Cir. 1986). Movant has, at or about _____.m. on [insert date], by [specify means of notice] notified or attempted to notify Debtor and, if Debtor is represented by an attorney, Debtor's attorney of this motion. Under the facts and circumstances presented, pursuant to 11 U.S.C. §102, further notice or hearing at this time is unnecessary. Accordingly, it is hereby

ORDERED that the automatic stay of 11 U.S.C. §362(a) is *modified* only to the extent necessary to permit Movant to cry out the foreclosure sale of Debtor's real property as scheduled. Movant is prohibited, however, from recording the deed transferring title to said property or taking any other action to perfect a sale against Debtor or the property until further order of this court. It is further

ORDERED that Movant shall file, within 48 hours of the date and time of entry of this order, a motion to annul the automatic stay. Said motion must fully set forth all the facts and circumstances upon which Movant relies as grounds for relief. Said motion must be served upon Debtor and, if Debtor is represented by an attorney, upon Debtor's attorney. Hearing will be scheduled upon filing of that motion. *The limited relief granted above shall be deemed vacated 48 hours from the date and time of entry of this order unless such motion to annul stay is timely filed.*

IT IS SO ORDERED, this the ____ day of _____, 20__.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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Movant filed an emergency motion for relief from the automatic stay, seeking emergency and limited relief from the stay to permit Movant only to cry out the foreclosure sale of Debtor's real property, but not to record a deed conveying title until a hearing can be held. The emergency is created by the filing of Debtor's petition so close in time to the scheduled date of the foreclosure sale. Action taken in violation of the automatic stay is void. *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306 (11th Cir. 1982). Movant shows that modification of the automatic stay of 11 U.S.C. §362(a) is appropriate because a previous case filed by Debtor was dismissed pursuant to 11 U.S.C. §109(g) within 180 days of the date of filing this case. Movant has, at or about

_____.m. on [insert date], by [specify means of notice] notified or attempted to notify Debtor and, if Debtor is represented by an attorney, Debtor's attorney of this motion. Under the facts and circumstances presented, pursuant to 11 U.S.C. §102, further notice or hearing at this time is unnecessary. Accordingly, it is hereby

ORDERED that the automatic stay of 11 U.S.C. §362(a) is *modified* only to the extent necessary to permit Movant to cry out the foreclosure sale of Debtor's real property as scheduled. Movant is prohibited, however, from recording the deed transferring title to said property or taking any other action to perfect a sale against Debtor or the property until further order of this court. It is further

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IT IS SO ORDERED, this the ____ day of February, 2013.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE