

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

**Filed On
12/17/07**

In the Matter of the Adoption
of Local Bankruptcy Rules

Misc. Proceeding No. 05-60001
GENERAL ORDER NO. 2007-2

**ORDER ADOPTING AMENDMENTS TO LOCAL BANKRUPTCY RULE
4001-2 AND LOCAL BANKRUPTCY FORMS 35 AND 36,
AND ABROGATING AK LBR 9037-1**

Consistent with the recent amendment to Fed. R. Bankr. P. 4001, minor housekeeping changes to Ak LBR 4001-2(a) and (b), and to AK LBRs 35 and 36, have been recommended by the Local Rules Committee. Additionally, due to the adoption of Fed. R. Bankr. P. 9037, effective December 1, 2007, AK LBR 9037-1 will be abrogated. These are non-substantive changes to the Local Rules and Forms. Due to the housekeeping nature of these amendments, a public comment period is not needed before they can be adopted.

The rule amendments are summarized as follows:

AK LBR	Amendment
4001-2	Subsections (a) and (b) have been amended to specify that motions for use of cash collateral or for approval of cash collateral agreements must comply with Fed. R. Bankr. P. 4001(b). Also, clarifying amendments have been made to subsection (a)(1).
9037-1	AK LBR 9037-1 mirrors the provisions of new Fed. R. Bankr. P. 9037. The federal rule controls privacy protections for filings made in the bankruptcy court. As the local rule is no longer necessary, it will be abrogated.

The amendments to AK LBFs 35 and 36 are summarized as follows:

AK LBF	Amendment
35	The current form, "Notice of Cash Collateral Hearing," contains a long list of possible provisions that might be included in a cash collateral agreement. The movant was to "check the boxes" for all provisions that applied. The resulting notice was unduly lengthy and confusing because it contained several surplus provisions (the "unchecked" boxes) that were not applicable to the pending motion. LBF 35 is amended to instead require the movant to list only the provisions which are applicable to the pending motion; any surplus provisions should not be included in the notice. The amended form gives the movant two options: 1) to state that the motion for use of cash collateral does not contain any provisions enumerated in AK LBR 4001-2(f) or 2) to list only those provisions in LBR 4001-2(f) which are applicable to the motion.
36	The form "Notice of Hearing on Motion to Obtain Credit" contains the same amendments as made to AK LBF 35, described above.

In accordance with Miscellaneous General Order No. 880 of the United States District Court which delegates authority to adopt amendments to the Local Bankruptcy Rules to this court,

IT IS ORDERED that the versions of AK LBR 4001-2 and AK LBFs 35 and 36 which are attached, and which incorporate the housekeeping amendments recommended by the Local Rules Committee, are adopted effective **January 1, 2008**. These versions shall amend and supersede the former Local Rule and Forms bearing the same number.

DATED: December 17, 2007

BY THE COURT

/s/ Herb Ross
HERB ROSS
United States Bankruptcy Judge

/s/ Donald MacDonald IV
DONALD MacDONALD IV
Chief United States Bankruptcy Judge

Serve: W. Wolfe, Clerk of Court
J. Ostrovsky, Clerk Designate
C. Davidson, Librarian
T. Yerbich, Esq., Court Rules

12/17/07

Rule 4001-2 Use Of Cash Collateral and Obtaining Post Petition Credit

(a) **Motions to Use Cash Collateral.** Motions by the debtor in possession or trustee for authorization to use cash collateral must, in addition to complying with Fed. R. Bankr. P. 4001(b), contain:

- (1) the relationship to the debtor, if any, of the creditor whose cash collateral is to be utilized;
- (2) the nature or source of the cash collateral;
- (3) the estimated amount of cash collateral to be used;
- (4) a 90-day cash flow projection segregating cash receipts from cash collateral from all other sources of cash receipts;
- (5) the balance owed to the creditor, as of the date the petition was filed, including any accrued, unpaid interest, cost or fees as provided in the agreement;
- (6) an estimate of the amounts of any postpetition interest, costs and fees the creditor would be entitled to recover under § 506(b) of the Code;
- (7) if the cash collateral is rent, the amount of the gross and net rent realized each month, and the fair market value of the property from which the rent emanates;
- (8) if the collateral is receivables, an accounts receivable aging statement;
- (9) if the collateral is inventory, current book or market value, whichever is lower, of the inventory;
- (10) for any other collateral, the fair market value of the collateral;
- (11) the method or means by which the interests of the creditor are to be adequately protected; and
- (12) a statement of whether or not the debtor proposes to grant any provision contained in subsection (f) and, if so, identify the provision.

(b) **Cash Collateral Utilization Agreements.** Motions or applications for the approval of an agreement for use of cash collateral must, in addition to complying with Fed. R. Bankr. P. 4001(b), set forth in the body of the motion or application the information required by paragraphs (a)(1) through (a)(10), inclusive, and whether or not the agreement contains any provision contained in subsection (f) and, if so, identify the provision.

(c) **Postpetition Financing.** Motions by the debtor in possession or trustee for authorization to obtain postpetition credit or for approval of a postpetition financing agreement must contain, as a minimum:

- (1) identity of the lender and relationship, if any, of the lender to the debtor;
- (2) the amount of credit to be obtained or, in the case of line of credit financing, the maximum amount the lender is to advance;
- (3) if funding is to be incremental, timing of funding or method by which funding is to be determined;
- (4) a 90-day cash flow projection showing all sources of cash receipts other than the amounts to be borrowed;
- (5) if the lender is a prepetition creditor the following information—
 - [A] the balance owed to the creditor, as of the date the petition was filed, including any accrued, unpaid interest, cost or fees as provided in the agreement,
 - [B] if the lender is secured by receivables, an accounts receivable aging statement,
 - [C] if the lender is secured by inventory, current book or market value, whichever is lower, of the inventory,
 - [D] if the lender is secured by real property, the current fair market value of the property and, if income producing, the gross and net rents produced by the property, and
 - [E] if the lender is secured by any other property, the fair market value of the property;
- (6) a description of the collateral, if any, to secure the postpetition financing;

(7) the current fair market value of the collateral, if any, to secure the post petition financing;

(8) if any other entity has, or claims, a security interest in the collateral to secure the postpetition financing, set forth—

[A] identity of the entity, including any relationship to the debtor,

[B] the balance owed that entity,

[C] whether the interest of that entity is to be subordinated to the postpetition financing and if so—

(i) whether the subordinated entity has consented, or

(ii) in the absence of consent, how the interest of that entity is to be adequately protected; and

(9) whether or not the financing agreement contains any provision contained in subsection (f) and, if so, identify the provision.

(d) Motions Heard on Shortened Time.

(1) Unless otherwise ordered by the court, emergency motions or applications for interim relief made under subsections (a), (b), and (c), may be heard upon twenty-four (24) hours notice by telephonic or personal delivery to the entities identified in the applicable provision of Rule 4001, Federal Rules of Bankruptcy Procedure.

(2) All requests for hearings on shortened time, must set forth with specificity:

[A] the immediate and irreparable harm the estate will suffer if relief is not immediately granted;

[B] the extent of the relief required to prevent such immediate and irreparable harm to the estate; and

[C] contain as much of the information required by subsection (a), (b), or (c), as applicable, as may be necessary to establish the necessity to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) Unless otherwise specifically ordered by the court, any interim order entered under this subsection will expire not later than twenty (20) days after the motion under subsection (a), (b), or (c) is filed.

(4) [A] The court may, at its discretion, hold emergency hearings telephonically.

[B] The moving party is responsible for providing the court with the telephone numbers at which interested parties, or their representatives, may be reached.

(e) Provisions Normally Approved. The court will normally approve inclusion of the following provisions in any order or agreement for the use of cash collateral or any postpetition financing agreement:

(1) withdrawal of consent to use cash collateral or termination of further financing, upon occurrence of a default or conversion to chapter 7;

(2) securing any postpetition diminution in the value of the secured party's collateral with a lien on postpetition collateral of the same type as the secured party had prepetition, if such lien is subordinated to the compensation and expense reimbursement allowed to any trustee thereafter appointed in the case;

(3) securing new advances or value diminution with a lien on other assets of the estate, but only if the lien is subordinated to all the expenses of administration of a superseding chapter 7 case;

(4) reservation of rights under Bankruptcy Code § 507(b), unless the provision calls for modification of the Code's priorities in the event of conversion to chapter 7;

(5) reasonable reporting requirements;

(6) reasonable budgets and use restrictions; and

(7) expiration date for the stipulation.

(f) Other Provisions. Inclusion of any of the following provisions in any order or agreement for the use of cash collateral may be scrutinized by the court even in the absence of an objection by a party in interest:

- (1) cross-collateralization clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement;
- (2) provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt;
- (3) provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the agreement;
- (4) clauses that prime the liens and/or security interests of secured creditors who are not parties to the agreement, unless consented to by the affected creditor;
- (5) waivers of Bankruptcy Code § 506(c), except to the extent effective only during the period in which the debtor in possession or trustee is authorized to use cash collateral or borrow funds;
- (6) provisions that preclude a future trustee with a duty to care for, preserve, and/or liquidate collateral from recovering the expenses of administration;
- (7) provisions that characterize any postpetition payments as payments of interest, fees, or costs on prepetition obligations;
- (8) provisions that operate specifically or as a practical matter to divest the debtor, or any other party in interest, of any discretion in the formulation of a plan or administration of the estate, or limit access to the court to seek any relief under applicable provisions of law;
- (9) releases of liability for the creditor's prepetition torts, breaches of contract, or lender liability, as well as releases of prepetition or postpetition defenses and/or counterclaims;
- (10) waivers of avoidance actions;
- (11) provisions that would include the recovery from avoidance actions as adequate protection or part of the secured creditor's collateral;
- (12) automatic relief from the automatic stay of Bankruptcy Code § 362(a) upon default, conversion to chapter 7, or the appointment of a trustee;
- (13) adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code;
- (14) waivers of the right to move for a court order under Bankruptcy Code § 363(c) (2) [B] authorizing the use of cash collateral in the absence of the secured party's consent;
- (15) carve outs for administrative expenses that do not treat all professionals equally or on a pro rata basis;
- (16) provisions that shorten the period of limitations any party in interest (including a successor trustee) for bringing claims or causes of action against the lender or secured creditor;
- (17) a finding without testimony to the effect that in consenting to the use of cash collateral or postpetition financing, the secured creditor or lender is acting in good faith;
- (18) waivers of the procedural requirements for foreclosure or repossession mandated under applicable nonbankruptcy law;
- (19) provisions applicable in the event of a dispute under the agreement that place venue in a foreign jurisdiction;
- (20) provisions applicable in the event of a dispute or default under the agreement wherein the debtor waives—
 - [A] service of process,
 - [B] the doctrine of *forum non conveniens*,
 - [C] notice and hearing, or
 - [D] the right to a jury trial; and
- (21) Findings of fact on matters extraneous to the approval process.

(g) Notice of Final Hearing.

(1) In addition to service of the persons specified in Rule 4001, Federal Rules of Bankruptcy Procedure, a motion for the use of cash collateral under subsections (a) or (b), or to obtain credit under subsection (c), must be transmitted to the United States trustee.

(2) In addition to the persons specified in rule 4001, Federal Rules of Bankruptcy Procedure, notice of the final hearing on a motion for the use of cash collateral under subsections (a) or (b), or to obtain credit under subsection (c), must be given in form substantially conforming to AK LBF 35 or AK LBF 36, as applicable, to:

[A] the United States trustee;

[B] any person having filed a request for special notice; and

[C] such other persons as the court may direct.

Related Provisions:

11 USC § 101(31)	Insiders
11 USC § 361	Adequate Protection
11 USC § 362	Automatic Stay
11 USC § 363	Use, Sale or Lease of Property
11 USC § 364	Obtaining Credit
11 USC § 506	Determination of Secured Status
11 USC § 507	Priorities
FRBP 4001	Relief From Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements
FRBP 9014	Contested Matters
AK LBR 9013-1	Briefs; Memoranda
AK LBF 7	Bankruptcy Court Calendar Request
AK LBF 35	Notice of Cash Collateral Hearing
AK LBF 36	Notice of Hearing on Motion to Obtain Credit

**Rule 9037-1. Privacy Protection For Filings Made with the Court. [Abrogated] [Superceded by
FED R. BANK. P. 9037]**

Related Provisions:

E-Government Act of 2002, PL 107-347, § 205 "Federal courts"

11 U.S.C. § 101(41A) "personally identifiable information"

11 U.S.C. § 112 Prohibition on disclosure of name of minor children

FRBP 9037 Privacy Protection for Filings Made with the Court

AK LBR 9004-1 Form of Pleadings and Other Papers

(Name of Attorney)
(Name of Firm)
(Address)
(Telephone)
(Fax)

AK LBF 35

(Attorney for _____)

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re)
(Name of Debtor(s)))
Debtor(s).)
_____)

Case No.
Chapter:

NOTICE OF CASH COLLATERAL HEARING

NOTICE is hereby given that the undersigned will bring on for hearing the motion/agreement for use of cash collateral by and between debtor and (name of creditor), on (*) _____, at _____ o'clock __.m. at _____.

Your rights may be affected. You should read these papers and the motion carefully and discuss them with your attorney, if you have one in this bankruptcy. (If you do not have an attorney, you may wish to consult one.)

PLEASE TAKE NOTICE that the motion/agreement for the use of cash collateral (list only the provision that applies):

Does not contain any provision enumerated in AK LBR 4001-2(f).

or

Contains the following terms (list only the terms applicable to pertinent motion/agreement):

Cross-collateralization clause that secures prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement.

Provision or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt.

Provision or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the agreement.

Primes the liens and/or security interests of secured creditors who are not parties to the agreement, unless consented to by the affected creditor.

Waives Bankruptcy Code § 506(c), except to the extent effective only during the period in which the debtor in possession or trustee is authorized to use cash collateral or borrow funds.

Precludes a future trustee with a duty to care for, preserve, and/or liquidate collateral from recovering the expenses of administration.

Characterizes any postpetition payments as payments of interest, fees, or costs on prepetition obligations.

Operates specifically or as a practical matter to divest the debtor, or any other party in interest, of any discretion in the formulation of a plan or administration of the estate, or limit access to the court to seek any relief under applicable provisions of law.

Releases liability for the creditor's prepetition torts, breaches of contract, or lender liability, as well as releases prepetition or postpetition defenses and/or counterclaims.

Waives avoidance actions.

Includes the recovery from avoidance actions as adequate protection or part of the secured creditor's collateral.

Automatic relief from the automatic stay of Bankruptcy Code § 362(a) upon default, conversion to chapter 7, or the appointment of a trustee.

Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code.

Waives the right to move for a court order under Bankruptcy Code § 363(c) (2) (B) authorizing the use of cash collateral in the absence of the secured party's consent.

Carve outs for administrative expenses that do not treat all professionals equally or on a pro rata basis.

That shortens the period of limitations any party in interest (including a successor trustee) for bringing claims or causes of action against the lender or secured creditor.

A finding without testimony to the effect that in consenting to the use of cash collateral or postpetition financing, the secured creditor or lender is acting in good faith.

Waives the procedural requirements for foreclosure or repossession mandated under applicable nonbankruptcy law.

In the event of a dispute under the agreement, places venue in a foreign jurisdiction.

(Name of Attorney)
(Name of Firm)
(Address)
(Telephone)
(Fax)

AK LBF 36

(Attorney for _____)

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA**

In re)	Case No.
)	Chapter:
(Name of Debtor(s)))	
)	NOTICE OF HEARING ON
Debtor(s).)	MOTION TO OBTAIN CREDIT
_____)	

NOTICE is hereby given that the undersigned will bring on for hearing a motion to obtain credit outside the ordinary course of business by and between debtor and (name of creditor), on (*) _____, at _____ o'clock __.m. at _____ . **Your rights may be affected.**

You should read these papers and the motion carefully and discuss them with your attorney, if you have one in this bankruptcy. (If you do not have an attorney, you may wish to consult one.)

PLEASE TAKE NOTICE that the motion/agreement for the use of cash collateral (list only the provision that applies):

Does not contain any provision enumerated in AK LBR 4001-2(f).

or

Contains the following terms (list only the terms applicable to pertinent motion/agreement):

Cross-collateralization clause that secures prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement.

Provision or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt.

Provision or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the agreement.

Primes the liens and/or security interests of secured creditors who are not parties to the agreement, unless consented to by the affected creditor.

Waives Bankruptcy Code § 506(c), except to the extent effective only during the period in which the debtor in possession or trustee is authorized to use cash collateral or borrow funds.

Precludes a future trustee with a duty to care for, preserve, and/or liquidate collateral from recovering the expenses of administration.

Characterizes any postpetition payments as payments of interest, fees, or costs on prepetition obligations.

Operates specifically or as a practical matter to divest the debtor, or any other party in interest, of any discretion in the formulation of a plan or administration of the estate, or limit access to the court to seek any relief under applicable provisions of law.

Releases liability for the creditor's prepetition torts, breaches of contract, or lender liability, as well as releases prepetition or postpetition defenses and/or counterclaims.

Waives avoidance actions.

Includes the recovery from avoidance actions as adequate protection or part of the secured creditor's collateral.

Automatic relief from the automatic stay of Bankruptcy Code § 362(a) upon default, conversion to chapter 7, or the appointment of a trustee.

Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code.

Waives the right to move for a court order under Bankruptcy Code § 363(c) (2) (B) authorizing the use of cash collateral in the absence of the secured party's consent.

Carve outs for administrative expenses that do not treat all professionals equally or on a pro rata basis.

That shortens the period of limitations any party in interest (including a successor trustee) for bringing claims or causes of action against the lender or secured creditor.

A finding without testimony to the effect that in consenting to the use of cash collateral or postpetition financing, the secured creditor or lender is acting in good faith.

Waives the procedural requirements for foreclosure or repossession mandated under applicable nonbankruptcy law.

In the event of a dispute under the agreement, places venue in a foreign jurisdiction.

