

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**Debtors' Assertion of an Exception
to the Limitation of the Automatic Stay
under 11 U.S.C. § 362(l) and Clerk's
Receipt and Mailing of Deposits of Rent
In Cases Filed on or after October 17, 2005**

Standing Order # 05-06

WHEREAS the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") creates limitations on the automatic stay in the context of actions to recover possession of residential property occupied by a debtor, see 11 U.S.C. § § 362(b)(22) and 362(l), and

WHEREAS the Court finds it is in the best interest of all parties for there to be a uniform procedure for implementing these provisions, regarding debtors' deposits of rent, under § 362(l)(1)(B), the Clerk of Court's transmittal of such payments to landlords of debtors, under § 362(l)(5)(D) and the applicability of the stay under § 362(b)(22):

IT IS HEREBY ORDERED that, with respect to all cases filed on or after October 17, 2005:

1. A debtor who wishes to have the benefit of an automatic stay, after entry of a Judgment of Eviction with regard to residential property in which the debtor resided as of the date of the petition must, in compliance with § 362(l)(1)(A) and § 362(l)(5)(B),
 - (a) file with the petition a certification made under penalty of perjury ("certification #1");
 - (b) file with the petition a copy of the Judgment of Eviction; and
 - (c) deliver to the Clerk of the Court, with the petition, a deposit of rent, in the form of a bank check, attorney trust account check, or money order payable to the order of the lessor.

2. Upon receipt of the bank check, attorney trust account check, or money order payable to the order of the lessor, accompanied by a copy of the Judgment of Eviction from the debtor (or debtor's agent), pursuant to § 362(l)(5)(D) and certification #1, the Clerk of the Court is directed to issue a notice to the lessor
 - (a) informing the lessor that the debtor has filed the requisite copy of the Judgment of Eviction and certification #1, and has delivered a deposit of rent to the Clerk of the Court,
 - (b) enclosing copies of all three documents,
 - (c) setting a deadline of 10 days after service for the lessor to either consent to inapplicability of the stay exception under § 362(b)(22) or object to certification #1 and request an order finding that this exception applies; and
 - (d) stating that if the lessor files a consent the Clerk will immediately transmit the deposit of rent to the lessor, and if the lessor objects the Clerk will immediately set a hearing on the objection, to be held no later than 10 days after the filing of the objection.

3. Upon receipt of the notice the lessor shall either (i) file a consent that includes the address to which the lessor wants the deposit of rent sent and verification of the amount due for the 30 day period; or (ii) file an objection specifically identifying which averments in the debtor's certification the lessor contends to be untrue.

4. Upon the lessor's filing of a consent, or the Court's entry of an Order finding that the debtor is entitled to the stay, the Clerk shall promptly transmit the deposit of rent to the lessor, at the address listed on the lessor's consent or objection.
5. In the event the debtor submits the deposit of rent in proper form but fails to file either the certification [required by paragraph 1(a) above] or a copy of the Judgment of Eviction [required by paragraph 1(b) above] the Clerk is directed to return the deposit of rent to the debtor with a notice informing the debtor that the Clerk will not accept or process the deposit of rent unless and until it is accompanied by all of the required documents.
6. In the event the debtor's bankruptcy case is filed electronically, the certification filed under § 362(l)(1)(A) shall, in addition to the statutorily mandated averments, specify that the deposit of rent will be delivered to the Clerk (either in person or by mail) within 3 days.
7. If the Clerk receives the deposit of rent within said 3-day period, the Clerk is directed to process and transmit the rent deposit pursuant to this Standing Order as if the rent deposit had been received with the petition, certification and copy of Judgment of Eviction.
8. Within 30 days of the filing of the petition, the debtor must file with the Court and serve on the lessor a certification indicating that the debtor has cured, under applicable non-bankruptcy law, the entire monetary default at issue ("certification #2"). The debtor's obligation to file certification #2 is not mitigated or extended by an objection to certification #1 or the pendency of a hearing on certification #1.
9. If the lessor files an objection to certification #2 the Court shall hold a hearing within 10 days of the filing of service of such objection, to determine the veracity of the certification(s).
10. If the debtor fails to file either certification, the Clerk of the Court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under § 362(b)(22).
11. If the debtor indicates on the petition that a Judgment of Eviction has been obtained but fails to either
 - (a) indicate that the debtor would be permitted to cure the entire monetary default which gave rise to the Judgment of Eviction, or
 - (b) deposit with the Clerk any rent that would become due during the 30-day period subsequent to the filing of the bankruptcy petition,the Clerk of the Court shall immediately serve upon the lessor and the debtor a certified copy of the docket entry indicating the debtor's failure to file the requisite certification and/or failure to deposit the rent, and applicability of the exception to stay under § 362(b)(22).
12. The Clerk shall waive the fee for certified copies of documents when issuing documents required under this Order.

SO ORDERED.

October 20, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge