

**PROCEDURE FOR FILING MOTION TO DETERMINE SECURED STATUS
AND TO STRIP JUNIOR LIEN ON DEBTOR'S PRINCIPAL RESIDENCE
ON NEGATIVE NOTICE**

1. Motions to value claims secured by junior liens on the debtor's principal residence and to strip off the liens may be filed on negative notice.

2. Motions to value claims secured by junior liens on the debtor's principal residence at \$0 and to "strip off" such liens shall not be filed before the earlier of the time when: (a) the affected creditor has filed a proof of claim or (b) the expiration of the time to file claims (claims bar date). A premature motion to value will be denied without prejudice.

3. The motion shall

- clearly state (a) all known parties who may have an interest in the mortgage, (b) the loan number (formatted as xxxx1234) and recording information of all mortgage lien(s) affected by the Motion, (c) the legal description and street address of the subject property, and (d) the basis of the valuation – private appraisal, county valuation, or other, (e) the balance of the first mortgage;

- be verified, or supported by an affidavit or declaration (pursuant to 28 U.S.C. § 1746) of the debtor;

- include on the first page the "negative notice" legend (below) giving interested parties 30 days to file an objection/request for hearing;

- certify service on (i) the appropriate persons required by Rule 7004 (b) (note in particular the requirement to serve insured depository institutions by certified mail), (ii) on the person who filed the mortgagee's proof of claim, (iii) the attorney, if any, for such creditor, and (iv) the Chapter 13 trustee, Chapter 7 trustee or US Trustee, as appropriate; and

- be docketed in CM/ECF using the "Motion to Determine Secured Status (and strip lien if applicable)" docket event.

4. The movant shall submit the attached form of proposed order to the Clerk's Office through its e-orders program not later than ten (10) days after the expiration of the thirty (30) day objection period. If attorney's fees are sought in the motion, then the title of the motion should reflect that, and the title of the order should reflect the awarding of fees therein.

5. The negative notice legend should read substantially as it appears in [Local Rule 2002-4](#).

6. In Chapter 13 cases, the debtor's plan shall provide for the stripping off of the lien, conditioned on the debtor's obtaining a discharge or on further order of the Court.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

DIVISION
www.flmb.uscourts.gov

In re _____)
)
,) Case No. ____:____-bk-____-____
) Chapter
Debtor.)
_____)

**MOTION TO DETERMINE SECURED STATUS OF ABC MORTGAGE COMPANY
AND TO STRIP LIEN EFFECTIVE UPON DISCHARGE**

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 30 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at [insert address] and serve a copy on the movant's attorney, [name and address], and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing, or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW John Doe (the “Debtor”) by and through his undersigned counsel, and files this Motion to Determine Secured Status of ABC Mortgage Company and to Strip Lien and states as follows:

1. The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on February 1, 2009.

2. The Debtor owns real property (the "Real Property") located at 123 Maple Street, Tampa, Florida, and more particularly described as follows:

LEGAL DESCRIPTION

3. The Real Property is encumbered by two mortgages:

(a) Lucky Mortgage, account number XXXX1234, holds the first mortgage, recorded on April 1, 2002, at Book XXXX, Pages XXXX, Instrument No. XXXX of the official records of Hillsborough County and has filed Claim No. 1 in the amount of \$250,000.00.

(b) ABC Mortgage Company, account number XXXX1234, holds a second mortgage, recorded on April 1, 2002, at Book XXXX, Pages XXXX, Instrument No. XXXX of the official records of Hillsborough County and has filed Claim No. 2 in the amount of \$75,000.00.

4. Based on the appraisal attached hereto as Exhibit 1, the value of the Real Property is \$200,000.00.

5. Accordingly, ABC Mortgage Company's second mortgage is completely unsecured.

Wherefore, the Debtor respectfully requests that the Court enter an order:

(a) granting the Motion; (b) determining the value of the Real Property to be \$200,000.00; (c) determining that ABC Mortgage Company's claim shall be treated as an unsecured claim; (d) voiding the mortgage lien of ABC Mortgage Company effective upon discharge; and (e) granting such other and further relief as the Court deems appropriate.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
_____ DIVISION
www.flmb.uscourts.gov

In re:

Case No.
Chapter 13

Debtor(s).
_____ /

**ORDER GRANTING DEBTOR'S MOTION TO
DETERMINE SECURED STATUS OF ABC MORTGAGE
COMPANY AND TO STRIP LIEN EFFECTIVE UPON DISCHARGE**

THIS CASE came on for consideration of the Debtor's Motion to Determine Secured Status of **ABC Mortgage Company** and to Strip Lien (Doc. No. XX) (the "Motion") pursuant to the negative notice provisions of Local Rule 2002-4. Having considered the Motion and the absence of any record objection to the relief requested in the Motion by any party in interest, the Court deems the Motion to be uncontested. If **ABC Mortgage Company** has not timely filed a proof of claim in this case, the Motion is not deemed to be an informal proof of claim except for the purpose of initiating the Debtor's ability to request relief pursuant to 11 U.S.C. § 506(a).

The real property (the "Real Property") that is the subject of the Motion is located at **123 Maple Street, Tampa, Florida**, and is more particularly described as follows:

[LEGAL DESCRIPTION]

Accordingly, it is

ORDERED:

1. The Motion is GRANTED.

2. If **ABC Mortgage Company** timely filed a proof of claim, the claim shall be treated as an unsecured claim in this Chapter 13 case.

3. The mortgage on the Real Property held by **ABC Mortgage Company** recorded on [date], at Book XXXX, Pages XXXX, Instrument No. XXXX of the official records of Hillsborough County, Florida, shall be deemed void, and shall be extinguished automatically, without further court order, upon the recordation in the public records of a certified copy of this Order together with (a) a certified copy of the Debtor's Chapter 13 discharge order in this case or (b) such other paper as the Court may specify by separate order. However, the Court reserves jurisdiction to consider, if appropriate, the avoidance of **ABC Mortgage Company's** mortgage lien prior to entry of the Debtor's discharge.

4. This Order is only effective if this case is not dismissed; however, if this case is dismissed, this Order is null and void.

5. This Order does not prohibit **ABC Mortgage Company** from asserting, at any time prior to entry of the Debtor's discharge, any rights it may have as a defendant in any foreclosure proceeding brought by a senior mortgagee, including the right to claim excess proceeds from any foreclosure sale.

Attorney [name of submitting attorney] is directed to serve a copy of this order on interested parties and file a proof of service within three days of entry of the order.