

Motion to Avoid Lien

Docketing Event

Bankruptcy > Motions/Applications/Objections > Motion to Avoid Liens

Negative Notice: Yes.

Accompanying Orders: N/A.

Code and Rule References:

[28 U.S.C. § 1746](#)

[11 U.S.C. § 522\(f\)\(1\)](#)

[Fed. R. Bankr. P. 4003\(d\)](#)

[Fed. R. Bankr. P. 9011\(e\)](#)

[Local Rule 4003-2](#)

Fee: N/A

Applicable Chapters: 7, 11, 12, 13

Implemented: 2/9/2016

Last Revision: 7/9/2020 8:49:26 AM

Description

A lien on an individual debtor's allowed exempt property may be avoided if it is: (1) a judicial lien other than one that secures a debt of the kind specified in Section 523(a)(5) (for a domestic support obligation); or (2) a non-possessory, non-purchase money security in certain listed items, including but not limited to household furnishings, professional tools of trade, or professionally prescribed health aids. 11 U.S.C. § 522(f)(1). This section does not apply to statutory liens, e.g., liens held by the Internal Revenue Service.

Filing Checklist

Local Rule 4003-2 provides specific instructions on lien avoidance.

Local Rule 4003-2(a) provides: "The title of the motion shall identify the creditor whose lien is sought to be avoided. The motion shall be verified or accompanied with an affidavit and shall describe with specificity the nature of the lien, recording information, if applicable, and the property affected with legal description, as appropriate."

Local Rule 4003-2(b) provides: "A separate motion is required for each creditor whose lien is sought to be avoided."

Local Rule 4003-2(c) provides: "A motion to avoid lien under 11 U.S.C. § 522(f) shall be served in accordance with Fed. R. Bankr. P. 7004 and 9014."

Review the motion to determine if it:

- Includes a signed and dated affidavit, declaration, verification, or certificate indicating it is signed under penalty of perjury;

- ❖ **Note:** Must be signed by the debtor. In a joint case, only one debtor is required to sign; and
- ❖ **Note:** Verification language should comply with 28 U.S.C. § 1746, e.g., “I declare (or certify, verify, or state) under penalty of perjury [if executed outside the U.S., include ‘under the laws of the United States of America’] that the foregoing is true and correct. Executed on (date).
- Is properly served and includes a proper certificate of service;
- Has the attorney’s name and address complete and consistent with the filing attorney’s name and address in CM/ECF;
- Is filed with negative notice that contains the correct language and is located on the first page;
 - ❖ **Note:** Response period is 21 days (plus an additional three days for service if any party was served by U.S. Mail).
- Includes the following in the motion:
 - ❖ For motions requesting avoidance of a judicial lien: a description including Official Record book and page number, a judgment lien certificate document number, **or** an instrument number when appropriate;
 - ❖ Clear description of the party that holds the lien sought to be avoided (must be included in both the title and the body of the motion);
 - ❖ Legal description and street address of real property;
 - ❖ For a vehicle: property description must list VIN;
 - ❖ For other property, a clear description of property; and
 - ❖ **Note:** for example, “Household Goods” is acceptable.
 - ❖ Property in motion is listed on Schedule C or Amended Schedule C.
- Does not request relief for more than one creditor.

Forms

[Motion to Avoid Judicial Lien on Exempt Property](#)

[Order Granting Motion to Avoid Judicial Lien on Exempt Property](#)