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Guidelines for Valuing and Avoiding Liens In Individual [Chapter 11](#) Cases and [Chapter 13](#) Cases

## **GUIDELINES FOR VALUING AND AVOIDING LIENS IN INDIVIDUAL CHAPTER 11 CASES AND CHAPTER 13 CASES**

A [debtor](#) may be able to eliminate a [lien](#) through a chapter 11 or chapter 13 [plan](#) to the extent the lien is "out of the money", meaning there is no value (after senior liens and property taxes) to secure the amount owed to the lienholder. Counsel for debtors have raised various questions regarding the procedure to be employed when the debtor seeks to "strip" liens exceeding the value of the collateral. Despite the convenient label of lien "stripping", motions described in these Guidelines are motions to value security under [FRBP 3012](#) [1]. These guidelines address questions concerning procedure and do not purport to address questions of substantive law. These guidelines apply to the valuation and avoidance of liens on both personal and real property.

1. **Motion.** Although an [adversary proceeding](#) may be utilized under [FRBP 7001\(2\)](#) [2], the court will permit the debtor to obtain a valuation of a [secured creditor's claim](#) by motion served upon the affected lienholder. Although the actual "stripping" of the amount by which the lien exceeds the value of the collateral is accomplished through the [confirmation](#) and performance of the debtor's chapter 11 or chapter 13 plan, valuing the lien must occur first. The court requires debtor to file and serve a separate motion in order to provide clear notice to the affected lienholder, and to specify a well-established way for the debtor to submit evidence and legal argument in support of the proposed treatment of the lien.

2. **Notice.** Because a motion to strip lien seeks relief against a specific, identifiable party,

debtor must comply with [B.L.R. 9014-1\(b\) & \(c\)](#). [3] Debtor should take care to serve the affected lienholder in the manner required by the FRBP, and in particular [FRBP 7004\(b\)](#) [4] and [7004\(h\)](#) [4] as to certain lenders.

**3. Time for Filing Motion.** Because a motion to strip lien is in aid of the confirmation of the plan and works through the confirmation of the plan, the motion must be resolved before the plan is confirmed.

**4. Supporting Papers.** A motion to strip lien shall be supported by a memorandum of points and authorities, and by declarations under penalty of perjury establishing all facts necessary to entitle debtor to the relief requested. At minimum, required declarations include statements by competent witnesses regarding the value of the collateral and the balance due on each lien relevant to the motion.

**5. Actual Hearing Not Required.** Debtor may utilize any of the options permitted under [Bankruptcy Local Rule 9014-1](#) [3]: actual hearing, notice and opportunity for hearing with tentative hearing date, or notice and opportunity for hearing without tentative hearing date.

**6. Evidentiary Hearing.** If the affected lienholder effectively contests any issue of fact material to the motion, the court will conduct an evidentiary hearing to resolve that dispute of fact. The notice of motion shall specify that, except as otherwise ordered by the court, the initial hearing on the motion will not be an evidentiary hearing, and will serve as a status conference at which the court may schedule any evidentiary hearing necessary.

**7. Standard-form Orders.** If the court determines that a motion to strip lien should be granted, the court will employ the standard-form ORDER VALUING LIEN OF [NAME OF LIENHOLDER], attached hereto as Appendix A. If the debtor's plan is confirmed and completed or debtor receives a [discharge](#)<sup>i</sup>, on request of debtor the court will enter the standard-form JUDGMENT VOIDING LIEN OF [NAME OF LIENHOLDER], attached hereto as Appendix B, after 10 days notice to the affected lienholder and opportunity for a hearing. If the debtor's chapter 11 or chapter 13 case is dismissed or converted before debtor receives a discharge or completes the plan, on request of the "stripped" lienholder or other [party in interest](#)<sup>i</sup>, the court will enter the standard-form ORDER RESTORING LIEN OF [NAME OF LIENHOLDER], attached hereto as Appendix C, after 10 days notice to debtor and opportunity for a hearing. NOTE: The standard-form orders attached contain language typically used to identify real property collateral. Where the motion concerns personal property, the debtor should complete the standard-form order with a description appropriate to the type of collateral (e.g., for vehicle, use manufacturer, model, year, and vehicle identification number).

**8. Questions of Substantive Law.** As these guidelines do not purport to decide questions of substantive law, the language in paragraph 7, and in the standard-form orders set forth below, stating that judgment voiding a lien may be entered when debtor either completes plan payments or receives a discharge should not be construed as a ruling that entry of judgment voiding a lien is appropriate where debtor is barred from receiving a discharge or where debtor receives a discharge without completing plan payments.

## APPENDIX A

(Version 1: hearing held)

### ORDER VALUING LIEN OF \_\_\_\_\_

On [date], the court held a hearing on Debtor's motion to value the lien of [name of lienholder] against the property commonly known as [street address] and more fully described in Exhibit A hereto, which lien was recorded in [name of county] on or about [date] as document [number] (hereinafter the Lien).

[Name] appeared for Debtor. [Name] appeared for [name of lienholder].

The court finds that notice of the motion was proper. Upon due consideration, and for the reasons stated [on the record at the hearing / in the accompanying memorandum decision / in the accompanying opinion], the court hereby orders as follows.

(1) For purposes of Debtor's chapter [11 / 13] plan only, the Lien is valued at zero, [name of lienholder] does not have a secured claim, and the Lien may not be enforced, pursuant to 11 U.S.C. [§§ 506, 1123(b)(5) and 1141 / §§ 506, 1322 (b)(2) and 1327].

(2) This order shall become part of Debtor's confirmed chapter [11 / 13] plan.

(3) Upon entry of a discharge or completion of plan payments in Debtor's chapter [11 / 13] case, the Lien shall be voided for all purposes, and upon application by Debtor, the court will enter an appropriate form of judgment voiding the Lien.

(4) If Debtor's chapter [11 / 13] case is dismissed or converted to one under another chapter before Debtor obtains a discharge or completes plan payments, this order shall cease to be effective and the Lien shall be retained to the extent recognized by applicable

nonbankruptcy law, and upon application by the lienholder, the court will enter an appropriate form of order restoring the Lien.

(5) Except as provided by separate, subsequent order of this court, the Lien may not be enforced so long as this order remains in effect.

## **APPENDIX A**

(Version 2: no hearing held)

### ORDER VALUING LIEN OF \_\_\_\_\_

On [date], Debtor filed a motion to value the lien of [name of lienholder] (hereinafter Lienholder) against the property commonly known as [street address] and more fully described in Exhibit A hereto, which lien was recorded in [name of county] on or about [date] as document [number] (hereinafter the Lien).

The court finds that notice of the motion upon Lienholder was proper. Lienholder having failed to file timely opposition to Debtor's motion, the court hereby orders as follows.

(1) For purposes of Debtor's chapter [11 / 13] plan only, the Lien is valued at zero, [name of lienholder] does not have a secured claim, and the Lien may not be enforced, pursuant to 11 U.S.C. [§§ 506, 1123(b)(5) and 1141 / §§ 506, 1322 (b)(2) and 1327].

(2) This order shall become part of Debtor's confirmed chapter [11 /13] plan.

(3) Upon entry of a discharge or completion of plan payments in Debtor's chapter [11 /13] case, the Lien shall be voided for all purposes, and upon application by Debtor, the court will enter an appropriate form of judgment voiding the Lien.

(4) If Debtor's chapter [11 / 13] case is dismissed or converted to one under another chapter before Debtor obtains a discharge or completes plan payments, this order shall cease to be effective and the Lien shall be retained to the extent recognized by applicable nonbankruptcy law, and upon application by the lienholder, the court will enter an appropriate form of order restoring the Lien.

(5) Except as provided by separate, subsequent order of this court, the Lien may not be enforced so long as this order remains in effect.

## **APPENDIX B**

### JUDGMENT VOIDING LIEN OF \_\_\_\_\_

On [date], this court entered an ORDER VALUING LIEN OF [NAME OF LIENHOLDER] against certain property of Debtor for purposes of this chapter [11 / 13] case. That order was subject to being set aside until Debtor obtained a discharge or completed plan payments in this chapter [11 / 13] case. Debtor having [obtained discharge/completed plan payments], the court now therefore enters the following judgment.

The lien of [name of lienholder] regarding the property commonly known as [address] and more fully described in Exhibit A hereto, and which was recorded in [name of county] on or about [date] as document [number], is hereby determined to be entirely, permanently, and for all purposes void and unenforceable.

## **APPENDIX C**

### ORDER RESTORING LIEN OF \_\_\_\_\_

On [date], this court entered an ORDER VALUING LIEN OF [NAME OF LIENHOLDER] against certain property of Debtor for purposes of Debtor's plan in this chapter [11 / 13] case. That order was subject to being set aside if Debtor's chapter [11 / 13] case was dismissed or converted to another chapter before Debtor obtained a discharge or completed plan payments in this chapter [11 / 13] case. Because Debtor's chapter [11 / 13] case was [dismissed / converted] before Debtor obtained a discharge or completed plan payments, the court now therefore enters the following order.

This court's [date] ORDER VALUING LIEN OF [NAME OF LIENHOLDER] is hereby vacated. The lien of [name of lienholder] regarding the property commonly known as [address] and more fully described in Exhibit A hereto, and which was recorded in [name of county] on or about [date] as document [number] shall have the validity, [priority](#) ⓘ, and amount recognized under applicable nonbankruptcy law.

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