

GUIDELINES FOR VALUING COLLATERAL ~~UNDER §~~

These Guidelines set forth the procedures for valuing collateral under §506
~~AND~~and FRBP 3012 ~~IN INDIVIDUAL CHAPTER 11 CASES AND CHAPTER 13~~
~~CASES,~~ and under §522(f), and do not deal with issues of substantive law.

A debtor may be able to eliminate ~~or reduce the amount of~~ a lien on real or
personal property through a chapter ~~11~~12 or chapter 13 plan, ~~or via a motion or an~~
adversary proceeding to the extent the lien is ~~“out of the money,”~~ unsecured or
undersecured, meaning there is no value ~~(after senior liens and property taxes)~~ or there
is a lesser value 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 value collateral in order to “strip” liens exceeding the value of the collateral.~~
~~Despite the colloquial label of lien “stripping,” motions~~ after senior liens and ad
valorem property taxes are considered. ¹ The procedures described in these Guidelines
~~are~~apply to plan provisions and motions to value security under § 506 and FRBP 3012.
~~These Guidelines address questions concerning procedure and do not purport to~~
~~address questions of substantive law. These Guidelines apply to the valuation of~~
~~collateral and elimination of liens on both personal and real property~~ They also apply to
eliminate or reduce liens that impair exemptions under § 522(f) in any applicable
chapter of the bankruptcy code.

¹ An unsecured lien is sometimes informally referred to as being “out of the money.”

1. Motion or Plan. Although an adversary proceeding may be utilized under FRBP 7001(2), the ~~court will permit the~~ debtor ~~to~~may also obtain a valuation of the collateral securing a ~~secured creditor's~~ claim by motion or via a chapter 12 or chapter 13 plan served upon the affected lienholder. ² Although the actual “stripping” of the amount by which the claim of lien exceeds the value of the collateral is accomplished (except under § 522(f)) through the confirmation and performance of the ~~debtor's~~ chapter ~~11~~12 or chapter 13 plan, valuing the collateral must occur prior to or as of confirmation.

1. _____ The ~~judges of this district require the~~ debtor is required 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~~ plan and supporting papers with evidence and legal argument in support of the proposed treatment of the lien. as set forth in these Guidelines in order to provide clear notice to the affected lienholder. Oppositions to motions or objections to plan treatment are governed by applicable national and local rules of bankruptcy procedure.

2. 2. Notice and Service. Because a motion or a plan seeking to value collateral seeks relief against a specific, identifiable party, the debtor must comply with B.L.R. 9014-1(b) & (c). The debtor ~~should take care to~~must also serve the motion or the plan on

² **Exception for Secured Claim of Governmental Unit:** In accordance with FRBP 3012(c), a request to value collateral securing the claim of a governmental unit may be made only by motion or in a claim objection, and so may not be made via a chapter 12 or chapter 13 plan. For additional information on obtaining the valuation of collateral securing the claim of a non-governmental unit via a chapter 13 plan, refer to the Chapter 13 Plan Instructions.

the affected lienholder in the manner required by the FRBP, and in particular FRBP 7004(b) and 7004(h) as to certain lenders.

3. 3. Time for Filing Motion. Because a motion to value collateral is in aid of ~~the~~ confirmation of the plan and ~~works through~~ is effective initially as of the confirmation of the plan, the motion (or adversary proceeding seeking the same relief) must be resolved before the plan is confirmed. If the valuation is proposed via a plan, it must be resolved as part of the confirmation process.

4. 4. Supporting Papers. A motion or plan seeking to value collateral ~~shall~~ must be supported by a memorandum of points and authorities, and by declarations under penalty of perjury establishing all facts necessary to entitle the debtor to the relief requested. At a minimum, the required declarations must include statements by competent witnesses regarding the value of the subject collateral and the balance due on the debt(s) secured by each lien relevant to the motion, or plan (including the subject lien, senior liens and ad valorem taxes), determined as of the date relevant for such motion.

5. 5. Actual Hearing Not Required.—The When proceeding by motion, the debtor may utilize any of the options permitted under Bankruptcy Local Rule B.L.R. 9014-1: actual hearing, notice and opportunity for hearing with tentative hearing date,

or notice and opportunity for hearing without tentative hearing date. When proceeding by plan, the debtor must give the required notice and deadlines for filing objections to confirmation.

6. 6. Initial and Evidentiary Hearing Hearings. If the affected lienholder ~~effectively~~ contests any issue of fact or law material to the motion or the valuation via the plan, the court will conduct ~~an evidentiary~~ any necessary hearing to resolve that dispute ~~of fact. If the lienholder timely files a response to the motion, that disputes with particularity the factual bases of the motion, the matter shall be set for hearing before the court. The notice of motion shall specify that, except.~~ Except as otherwise ordered ~~by the court~~, the initial hearing on the motion or plan objection will not be an evidentiary hearing, ~~and~~ but will serve as a status conference at which the court may schedule any evidentiary hearing necessary. Issues of law may be decided at that initial hearing in the same manner as described in B.L.R. 3007-1(b).

7. 7. Standard-form Order Valuing Collateral. If the court determines that a motion to value collateral should be granted, the court will employ the standard-form ORDER VALUING COLLATERAL OF [NAME OF LIENHOLDER] UNDER § 506 AND FRBP 3012, attached hereto as Appendix A. If the same is accomplished via the plan, the treatment will be as specified in the plan or the order confirming the plan, and no separate order regarding valuation will be required.

8. 8. Standard-form Final Order on Motion to Value Collateral. ~~If the debtor's on Completion of Plan Payments. Upon completion of plan is confirmed and completed or the debtor receives a discharge payments,~~ on request of the debtor the court will enter the standard-form FINAL ORDER ON ~~MOTION TO VALUE~~ VALUATION OF COLLATERAL OF [NAME OF LIENHOLDER] UNDER § 506 AND FRBP 3012, attached hereto as Appendix B, after 7 days' notice to the affected lienholder and opportunity for a hearing. ~~The debtor should promptly apply for the Final Order to avoid having their Chapter 11 the chapter 12 or Chapter chapter 13 case closed without issuance and entry of the Final Order. As a reminder, in a Chapter 11 case, the reorganized debtor shall set a hearing on an application for entry of the final decree (entry of which will close the case) on at least 28 days' notice or file a notice and opportunity for hearing pursuant to BLR 9014(b)(3).~~ In a ~~Chapter chapter 12 or chapter 13 case,~~ absent objection, the final decree (entry of which will close the case) will be issued 30 days following the filing of the ~~Chapter chapter 13 trustee's final report.~~³

9. Standard-form Order Restoring Lien. If the debtor's chapter ~~11~~12 or chapter 13 case is dismissed or converted before the debtor ~~receives a discharge or~~ completes the plan payments, on request of the affected lienholder or other party in interest, the court will

³ No such order will be required when the debtor has proceeded under § 522(f).

enter the standard-form ORDER RESTORING LIEN OF [NAME OF LIENHOLDER], attached hereto as Appendix C, after 7 days' notice to the debtor and opportunity for a hearing.

9. NOTE: The standard-form orders attached contain language typically used to identify real property collateral. Where the motion or plan concerns personal property, the ~~debtor should complete the~~ standard-form order with should include a description appropriate to the type of collateral (e.g., for vehicle, use manufacturer, model, year, and vehicle identification number).

~~10. 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 the 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 the debtor is barred from receiving a discharge or where the debtor receives a discharge without completing plan payments.~~

APPENDIX A

(Version 1: hearing held)

ORDER VALUING COLLATERAL OF [NAME OF LIENHOLDER]

UNDER § 506 AND FRBP 3012

(Revised, January 31, 2018)

On [date], the court held a hearing on the debtor's motion to value the collateral of [name of lienholder] under § 506 and FRBP 3012. The collateral secures a lien 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 the 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. (1) For purposes of the debtor's chapter ~~[1112]~~ / 13] plan only, the collateral is valued at _____, 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, ~~11231222~~(b)(~~52~~) and ~~11411227~~ / §§ 506, 1322 (b)(2) and 1327].
2. (2) This order shall become part of the debtor's confirmed chapter ~~[1112]~~ / 13] plan.
3. (3) Upon ~~entry of a discharge or~~ completion of plan payments in the debtor's chapter ~~[1112]~~ / 13] case, the Lien shall be void and unenforceable for all purposes, and upon application by the debtor, the court will enter an appropriate form of ~~Final Order on Motion to Value Collateral~~ FINAL ORDER ON VALUATION OF COLLATERAL OF [NAME OF LEINHOLDER] UNDER § 506 AND FRBP 3012.
4. (4) If the debtor's chapter ~~[1112]~~ / 13] case is dismissed or converted to one under another chapter before the 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. (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

~~A (Version 2: no hearing held)~~
(Version 2: no hearing held)

ORDER VALUING COLLATERAL OF [NAME OF LIENHOLDER]

UNDER § 506 AND FRBP 3012

On [date], the debtor filed a motion to value the collateral of [name of lienholder] (hereinafter Lienholder) under § 506 and FRBP 3012. The collateral secures a lien 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 the debtor's motion, the court hereby orders as follows.

1. (1) For purposes of the debtor's chapter [412 / 13] plan only, the collateral is valued at _____, 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, ~~11231222~~(b)(52) and ~~11411227~~ / §§ 506, 1322 (b)(2) and 1327].
2. (2) This order shall become part of the debtor's confirmed chapter [412 / 13] plan.
3. (3) Upon ~~entry of a discharge or~~ completion of plan payments in the debtor's chapter [412 / 13] case, the Lien shall be void and unenforceable for all purposes, and upon application by the debtor, the court will enter an appropriate form of ~~Final Order on Motion to Value Collateral~~ FINAL ORDER ON VALUATION OF COLLATERAL OF [NAME OF LEINHOLDER] UNDER § 506 AND FRBP 3012.
4. (4) If the debtor's chapter [412 / 13] case is dismissed or converted to one under another chapter before the 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. (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

FINAL ORDER ON ~~MOTION TO VALUE~~ VALUATION OF COLLATERAL OF [NAME OF ~~LIENHOLDER~~ LEINHOLDER] UNDER § 506 AND FRBP 3012

On [date], this court entered an ORDER VALUING COLLATERAL OF [NAME OF LIENHOLDER] UNDER § 506 AND FRBP 3012. The collateral secures a lien against certain property of the debtor for purposes of this chapter [4112 / 13] case. That order was subject to being set aside until the debtor ~~obtained a discharge or~~ completed plan payments in this chapter [4112 / 13] case. The debtor having ~~obtained discharge/~~completed plan payments, the court now therefore enters the following final order.

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 [NAME OF LIENHOLDER]

On [date], this court entered an ORDER VALUING COLLATERAL OF [NAME OF LIENHOLDER] UNDER § 506 AND FRBP 3012 against certain property of the debtor for purposes of the debtor's plan in this chapter [4112 / 13] case. That order was subject to being set aside if the debtor's chapter [4112 / 13] case was dismissed or converted to another chapter before the debtor ~~obtained a discharge or~~ completed plan payments in this chapter [4112 / 13] case. Because the debtor's chapter [4112 / 13] case was [dismissed / converted] before the debtor ~~obtained a discharge or~~ completed plan payments, the court now therefore enters the following order.

This court's [date] ORDER VALUING COLLATERAL OF [NAME OF LIENHOLDER] UNDER § 506 AND FRBP 3012 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.

~~Lien Avoidance Guidelines September 9, 2010, revised August 9, 2017.~~

(Revised, January 31, 2018)