

Motions to Void Liens

Our Courtroom reviews Motions to Void Judicial Liens under 11 U.S.C. § 522(f) for compliance with the following requirements:

Caveat: this checklist is not intended to be an exhaustive list of all requirements of Section 522(f).

1. The packet must contain:
 - a. The Motion to Void Lien;
 - b. The Rule 202 Notice;
 - c. The Certificate of Service; and
 - d. A proposed Order.
2. The Certificate of Service must indicate the affected Lien Creditor received a copy of *both* the Rule 202 Notice and the Motion.
3. The Notice *and* Motion must specifically identify the Lien Creditor (i.e. did the caption, the title of the pleading, or the introductory paragraph clearly identify which lien creditor's rights were to be affected?). It is not sufficient to attach a copy of a transcript of judgment without also identifying the affected creditor in the body of the pleadings.
4. The Motion must state grounds for relief under Section 522(f). For example, does the motion state that the lien impairs the debtor's exemption? Does it state the amount of the lien which is the subject of the motion? Does it state the purported value of the property and how was that value determined? Does it state the amount of the various liens filed against the property? Does it indicate that the debtor claimed a homestead exemption on his/her Schedule C and in what amount?
5. The Motion must contain suitable evidence that a lien was actually recorded against the homestead. Does the Motion contain recording information *or* did the debtor attach a copy of the transcript of judgment? Our Courtroom does not enter orders when the Motion merely states, "on information and belief, the Creditor has recorded a judgment" or "the Creditor may have recorded a judgment."
6. The 202 Notice must give 14 days (plus 3 for mailing) for the filing of an objection.
7. The proposed Order must not purport to do anything more than declare the lien void. For example, it should not place an affirmative duty on the Lien Creditor to file something to remove the lien from the chain of title.

8. If the case is closed, the debtor must file a motion to reopen and remit the appropriate fee (\$260 for Chapter 7; \$235 for Chapter 13).

9. Service of the Motion and Notice on the Lien Creditor must conform with Bankruptcy Rule 7004(b). Common service errors Include:

a. Service on an entity, that does not *name* an officer/managing agent or registered agent. It is not sufficient to say, "President, ABC Corporation" or "Registered Agent, ABC Corporation." Our Courtroom interprets the Rule's requirements to mean that the debtor must actually name an individual who serves in a representative capacity, as well as to list the title they hold. The name of a registered agent must be given, such as "The Corporation Company, Registered Agent for ABC Corporation." Registered agents can be found at:
www.sos.state.co.us/biz/inquiry/menu.do.

b. The address for service should also reflect the official address given for the officer or registered agent, not simply list the post office box that the debtor formerly used for sending payments.

c. Service on an insured depository institution (defined in 11 U.S.C. § 101(35)) must be in accordance with Rule 7004(h), which requires *certified mail* on a *named* officer of that institution. There are exceptions in Rule 7004(h), but our Courtroom does *not* construe the filing of a proof of claim to be a waiver of this Rule's requirement of special service. To determine whether an institution is an insured depository institution, see:
www2.fdic.gov/structur/search/findoneinst.asp.

d. Naming an attorney for the Lien Creditor is only sufficient if that attorney has entered a general appearance in the *bankruptcy* case. Often times the Lien Creditor was represented by an attorney at the time it obtained a judgment and the transcript of judgment may reflect that attorney's name. However, the attorney's representation may have ended at the time it obtained the judgment and the Lien Creditor may not have hired the attorney to represent it in connection with the bankruptcy case.

e. Service on a governmental agency must be in accordance with Rule 7004(b)(4)-(6).

10. Do not forget that we will not act on a motion until a party has filed a either a "Certificate of Non-Contested Matter" or "Certificate of Contested Matter" pursuant to Local Rule 202(d). It is not sufficient to include a "request for a hearing" in your pleading.