

**CHAMBERS PROCEDURES: JUDGE ELIZABETH E. BROWN
UNITED STATES BANKRUPTCY COURT, DISTRICT OF COLORADO**

MOTION TO AVOID JUDICIAL LIENS

This Court requires strict compliance with the procedures set forth in L.B.R. 4003-2. Please see the Chambers Checklist for Motions to Avoid Liens (attached below) for a list of some common problems with motions to void liens that may result in denial of the motion or issuance of a compliance order. Incorrect service is one of the most common missteps. Motions to avoid judicial liens are “contested matters,” under Fed. R. Bank. P. 4003(d) and 9014. Therefore, according to Fed. R. Bankr. P. 9014, the lienholder must be served with the motion in the manner provided for service of a summons and complaint by Fed. R. Bankr. P. 7004.

A closed bankruptcy case must be reopened in order to avoid a judgment lien. Debtors must file a motion to reopen and pay the reopening fee in order to reopen a case for the purpose of filing a motion to avoid a lien.

In *In re Schmidtke*, 513 B.R. 579 (Bankr. D. Colo. 2014), Judge Brown held that debtors did not need to claim an exemption in property in order to seek to avoid a judicial lien under § 522(f), nor did debtors need to have any equity in the property in order to avoid a lien under this section.

CHAMBERS CHECKLIST FOR MOTIONS TO VOID LIENS

1. The Movant has filed all necessary documents:
 - a. Motion to Void Lien
 - b. Rule 9013-1 Notice
 - c. Certificate of Service of Motion and Notice
 - d. Proposed form of Order

2. The Certificate of Service shows service of both the Motion and Notice on the lien creditor.

3. The objection date in the Rule 9013-1 Notice must not be less than 14 days from the date of mailing.

4. Service is in compliance with Fed. R. Bankr. P. 7004.
 - a. Service on an attorney for a creditor who has not entered an appearance in the bankruptcy case is not sufficient.
 - b. Service on a corporation requires first-class mailing to a named officer or registered agent. See Fed. R. Bankr. P. 7004(b)(3). Verify the name of the registered agent on Colorado Secretary of State web site: <http://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do>. It is not sufficient to say “President, ABC Corp” without including the name of the individual served. Service to a registered agent must identify both the agent and the principal. Example: “The Corporation Company, Registered Agent for ABC Corp.”

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c. Service on an “insured depository institution” (this includes federally insured banks and savings and loans) must be by certified mail addressed to a named officer of the institution. See Fed. R. Bankr. P. 7004(h). To determine whether an institution is insured by the FDIC, see <https://research.fdic.gov/bankfind>. Filing of a proof of claim by the institution does not waive Rule 7004(h) service requirements.

d. Service on the United States, a state, or other governmental organization must be in compliance with Fed. R. Bankr. P. 7004(b)(4)-(6).

5. The Motion and Rule 9013-1 Notice must specifically identify the affected lien creditor in either the caption, title, or introductory paragraph.

6. The Motion states grounds for relief under 11 U.S.C. § 522(f), including specific facts demonstrating impairment of an exemption (i.e., value of the property, amount of other liens on the property, amount of applicable exemption, debtor’s entitlement to an exemption in the property, etc.)

7. The lien is a judicial lien (see 11 U.S.C. § 101(36)) or a non-possessory, non-purchase money security interest in personal property.

8. The Motion contains sufficient evidence that a judgment was actually recorded against the homestead, either by reference to specific recording information or attaching a copy of the transcript of judgment.

9. The proposed order complies with L.B.R. 4003-2(d). The order must contain an adequate description of the property, must not purport to do anything more than declare the lien avoided, and must not place an affirmative duty on the lien creditor to file documents to remove the lien from the chain of title.