

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

LOCAL GENERAL ORDER NO. 14

PROCEDURE FOR MOTIONS TO AVOID JUDICIAL LIENS

Pursuant to 11 U.S.C. § 522(f)(1), a judicial lien on an individual debtor's exempt property (other than one securing a domestic support obligation) may be avoided. This section does not apply to statutory liens, e.g., liens held by the Internal Revenue Service. The following procedures apply:

1. The motion shall:
 - (i) Clearly identify the party that holds the lien sought to be avoided in both the title and the body of the motion;
 - (ii) Describe when and where the lien is recorded in the official records, i.e., book and page or instrument numbers;
 - (iii) Clearly identify the property that the debtor has claimed as exempt, including the legal description and street address of any real property and the VIN of any vehicle;
 - (iv) Certify proper service in accordance with Bankruptcy Rule 7004 (including, if applicable, the requirement of Bankruptcy Rule 7004(h) that depository institutions be served by certified mail); and
 - (v) Be docketed in CM/ECF using the "Motion to Avoid Judicial Lien" docket event.

2. If the movant contends that there is no non-exempt equity in the property which is the subject of the motion and that the judicial lien should be avoided in its entirety, the motion and proposed order should conform to the samples attached as Exhibits A and B.

Dated:

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE

JERRY C. OLDSHUE
U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: _____,
Debtor(s).)
)
) Case No. _____
)
)

MOTION TO AVOID JUDICIAL LIEN
OF [LIENHOLDER] ON EXEMPT PROPERTY

Debtor(s) moves the Court, pursuant to Bankruptcy Code § 522(f), to avoid the judicial lien of [Lienholder] and, as grounds, shows:

1. Debtor(s) filed a petition for relief under Chapter ____ of the Bankruptcy Code on [petition date].

2. Debtor(s) seeks to avoid the judicial lien (the “Judicial Lien”) of [Lienholder] created by the recordation of a certificate of judgment on [recording date] at [recording information] in the Probate Court of _____ County, Alabama.

3. The Judicial Lien impairs the exemptions to which Debtor(s) is entitled in the following property, which Debtor(s) has claimed as exempt:

[Describe property, including legal description and street address of real property and VIN number of any vehicle]

4. There is no non-exempt equity in the property described above and the Judicial Lien should be avoided in its entirety.

Wherefore, the Debtor(s) requests that the Court enter an order avoiding the Judicial Lien and for such other and further relief as the Court deems appropriate.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: _____,)
)
) Case No. _____
)
 Debtor(s).)

ORDER GRANTING MOTION TO AVOID
JUDICIAL LIEN OF [LIENHOLDER] ON EXEMPT PROPERTY

This case is before the Court on the Motion to Avoid Judicial Lien of [Lienholder] (doc. no. ____). No party in interest has objected, and the Court considers the motion to be uncontested. Upon consideration of the motion, it is ordered:

1. The motion to avoid judicial lien is granted.

2. Because the lien of [Lienholder] created by the recordation of a certificate of judgment on [recording date] at [recording information] in the Probate Court of _____ County, Alabama (“the Judicial Lien”) impairs the exemptions to which Debtor(s) is entitled and there is no non-exempt equity in the property, the Judicial Lien is hereby avoided in its entirety pursuant to 11 U.S.C. § 522(f) as to the following property:

[Real property -- street address and legal description]

[Personal property -- describe, including VIN of motor vehicles]

3. Upon discharge of Debtor(s) in this bankruptcy case and the recordation of this order in probate court along with an order of discharge entered in this bankruptcy case, the Judicial Lien is hereby extinguished and shall not survive the bankruptcy nor affix to or remain enforceable against the property of Debtor(s) described above.

4. Any proof of claim filed by the lienholder which claims secured status based upon the Judicial Lien shall be treated as unsecured.