

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

M E M O R A N D U M

**TO: Filer of Motion to Avoid Judicial Lien on
Residential Real Property in a Chapter 7 Case**

FROM: Clerk's Office

**RE: Requirements of Motion to Avoid Judicial Lien on
Residential Real Property in a Chapter 7 Case**

All motions to avoid judicial liens on residential real property will be noticed for a tentative hearing (hearing only if an objection), providing the motion contains the following information:

- * **A description of the residential real property subject to the lien.** The motion should include a legal description, such as a lot or plat number. However, the motion may be noticed for tentative hearing if a street address alone is provided.
- * **The value of the property.**
- * **A specific description of the judicial lien sought to be avoided.** The motion needs to include: the original amount of the judgment, the judgment book and page numbers, the date of the judgement and the amount of any attorney's fees awarded in conjunction with the original judgment.
- * **The nature and amount of all other liens on the property.**
- * **If applicable, the amount of the claimed exemption.**

If the motion does not contain this information, a hearing date will be set. If a hearing is required, the above listed information should be provided at the hearing. The order to be used if the motion is granted requires the inclusion of this information. Examples of the orders to be filled out and submitted as proposed orders (for fully avoiding a judicial lien or partially avoiding a judicial lien) are attached. These orders only apply to Chapter 7 cases.

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re: _____)
 _____) Case No.: _____
 _____)
 _____)
 Debtor(s) _____)

**ORDER ON MOTION TO AVOID JUDICIAL LIEN OF _____
PURSUANT TO 11 U.S.C. §522(f)**

This Chapter 7 case is before the court for consideration of a motion by debtor(s) to avoid a judicial lien pursuant to § 522(f) of the Bankruptcy Code; and having considered the motion and the other matters of record in this case, the court finds and concludes:

- (1) After due notice of the motion to all parties in interest, the time for objecting to the relief requested in the motion has expired without any objections being filed.
- (2) The debtor(s) exempted residential real property described as _____, North Carolina, with a value of \$ _____ as of the petition date.
- (3) Pursuant to N.C.G.S. §1C-1601(a)(1), a homestead exemption of \$ _____ has been claimed by debtor(s) in the residential real property.
- (4) The above-described residential real property is encumbered by a first deed of trust in favor of _____ which secures indebtedness with an unpaid balance of \$ _____ as of the petition date and a second deed of trust in favor of _____ which secures indebtedness with an unpaid balance of \$ _____ as of the petition date.
- (5) _____ holds a judicial lien against said real property pursuant to a judgment dated _____ and recorded in Judgment Book _____, page _____, in the _____ County Registry, in the amount of \$ _____ plus interest, and attorney fees of \$ _____.
- (6) Since the sum of the amount of the judicial lien of _____, the amount of the indebtedness secured by the deed(s) of trust and the amount of the exemption that the debtor(s) could claim if there were no liens on the property exceeds the value of the residential real property by an amount equal to or greater than the amount of the judicial lien, the judicial lien impairs an exemption of the debtor(s); therefore, the entire judicial lien is avoidable pursuant to §522(f)(2)(A) of the Bankruptcy Code.

Now, therefore, it is **ORDERED, ADJUDGED AND DECREED** that the judicial lien held by _____ and recorded in Judgment Book _____, page _____, in the _____ County Registry, is hereby avoided and canceled as to the real property described as _____, _____, North Carolina, and said judgment shall have no further force or effect as to said real property.

Date: _____

U.S. BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor(s)

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Case No.: _____

**ORDER ON MOTION TO AVOID JUDICIAL LIEN OF _____
PURSUANT TO 11 U.S.C. §522(f)**

This Chapter 7 case is before the court for consideration of a motion by debtor(s) to avoid a judicial lien pursuant to § 522(f) of the Bankruptcy Code; and having considered the motion and the other matters of record in this case, the court finds and concludes:

- (1) After due notice of the motion to all parties in interest, the time for objecting to the relief requested in the motion has expired without any objections being filed.
- (2) The debtor(s) exempted residential real property described as _____, North Carolina, with a value of \$ _____ as of the petition date.
- (3) Pursuant to N.C.G.S. §1C-1601(a)(1), a homestead exemption of \$ _____ has been claimed by debtor(s) in the residential real property.
- (4) The above-described residential real property is encumbered by a first deed of trust in favor of _____ which secures indebtedness with an unpaid balance of \$ _____ as of the petition date and a second deed of trust in favor of _____ which secures indebtedness with an unpaid balance of \$ _____ as of the petition date.
- (5) _____ holds a judicial lien against said real property pursuant to a judgment dated _____ and recorded in Judgment Book _____, page _____, in the _____ County Registry, in the amount of \$ _____ plus interest, and attorney fees of \$ _____.
- (6) Since the sum of the amount of the judicial lien of _____, the amount of the indebtedness secured by the deed(s) of trust, and the amount of the claimed exemption exceeds the value of the residential real property by \$ _____, the judicial lien impairs an exemption of the debtor(s); therefore, the judicial lien is avoidable to the extent of \$ _____ pursuant to §522(f)(2)(A) of the Bankruptcy Code.

Now, therefore, it is **ORDERED, ADJUDGED AND DECREED** that the judicial lien held by _____ and recorded in Judgment Book _____, page _____, in the _____ County Registry, is hereby avoided and canceled to the extent of \$ _____ as to the residential real property described as _____, North Carolina, and by virtue of such avoidance said judicial lien is reduced to \$ _____.

Date: _____

U.S. BANKRUPTCY JUDGE