

N.D.W.V. LBR 4003-2

Lien Avoidance.

A motion to avoid a lien shall, in addition to counsel's signature, be signed and verified by the debtor(s), (See N.D.W.V. LBR 5005-4.09 re: electronic signatures filing) and, to be deemed sufficient, shall set forth the following:

(a) Judicial Liens.

1. The market value of the debtor(s)'s real estate, the principal and interest due and owing on all valid and perfected deeds of trust against the subject real estate, and the amount of the exemption claimed by the debtor(s) in the real property;
2. That the holder of the lien sought to be avoided is not an infant or incompetent person; and,
3. That the lien in question was obtained and perfected subsequent to November 6, 1978.

(b) Nonpossessory, nonpurchase-money security interests in household goods, etc.

1. That the lien sought to be avoided is nonpossessory, nonpurchase-money security interest in household goods, etc., which the debtor(s) claimed as exempt in Schedule C;
2. That the holder of the lien sought to be avoided is not an infant or incompetent person; and,
3. That the lien in question was obtained and perfected subsequent to November 6, 1978.

(c) Counsel for the movant(s) shall file the paper original or the electronic equivalent of the motion to avoid lien and the appropriate order and notice (see N.D.W.V. LBR 9013-1).

Upon receipt of said motion and accompanying papers, the Clerk of the Bankruptcy Court shall issue a negative Notice of Motion and Order to the lienholder named in the motion at the address set forth, together with the motion to the creditor(s) affected thereby. Said Notice and Order will

provide that the named lienholder shall serve upon the Clerk of the Bankruptcy Court and upon counsel for the movant(s) a written request for a hearing by a time specified in said Notice and Order. In the event that no written request for hearing is filed by the lienholder by the date specified, said Notice and Order shall provide that the relief requested by the movant(s) shall be granted effective as of the date specified in said Notice and Order. In the event the named lienholder shall request a hearing within the time so specified, the motion to avoid lien shall be set for a telephonic prehearing conference.

(d) In the event a Chapter 13 plan proposes a lien avoidance, the appropriate pleading shall be filed before the meeting of creditors. In the event that counsel fails to comply with this rule, and the motion or adversary proceeding remains unfiled as of the date of the filing of the trustee's recommendation regarding confirmation, the Court shall enter an order denying confirmation and the debtor(s) shall file an amended plan with appropriate lien avoidance pleadings within fifteen days of the entry of the order denying confirmation. Failure to file the amended plan with appropriate lien avoidance pleadings may result in the petition being dismissed.

Cross Reference

11 U.S.C. 522(f)
Bankruptcy Rules 4003(d), 9014
Appendix H, Forms H-1, H-1a, H-2, H-2a
N.D.W.V. LBR 9013-1
N.D.W.V. LBR 9011-4 (signatures)
N.D.W.V. LBR 5005-4.09 (electronic signatures)