Bankruptcy Local Rule 4003-2

AVOIDANCE OF LIENS ON EXEMPT PROPERTY

(a) **Specificity.**

All 11 U.S.C. § 522(f) lien avoidance motions or requests in a chapter 12 or chapter 13 plan shall contain a specific description of the lienholder's interest to be avoided including, where applicable, the instrument number and the recording governmental unit. The motion shall also specify the statutory exemption that is impaired and the creditor's name.

Further, all attendant orders shall specifically describe the avoided lienholder's interest, the extent that the lien is avoided, and the statutory basis for the impairment. If the avoided interest is represented by a recorded document, the order shall further provide the type of recorded instrument avoided, its date of recording, the recording governmental unit, and recording instrument number.

(b) **Nature of relief.**

The language contained in such motions or requests to avoid lien and attendant orders should be substantially identical to the language of 11 U.S.C. § 522(f).

(c) **Notice.**

Notice of such a motion or request to avoid a lien pursuant to 11 U.S.C. § 522(f) need be given only to the trustee and to the creditor claiming the lien.

RELATED AUTHORITY

11 U.S.C. § 522(f)
Fed. R. Bankr. P. 4003(d), 9014

Advisory Committee Notes:

Many 11 U.S.C. § 522(f) lien avoidance motions, requests, and orders are factually incomplete, vague, or ambiguous. Additionally, the court has found that many of the proposed orders granting relief improperly recite that the lien is absolutely "void," rather than avoided "to the extent that such lien impairs an exemption to which the debtor would have been entitled."

Debtor's counsel may want to consider:

(1) attaching accurate and legible copies of all documents evidencing the lienholder's interest to be avoided, and the basis of perfection of any lien or security interest;

(2) attaching copies of recorded documents, if any documents are recorded with the county recorder, secretary of state, or other lawfully designated recording agency; and

(3) describing specifically the property upon which the lien is claimed and to be avoided.