

Judge Donovan's Chapter 13 Lien Stripping Motion Suggestions

We receive many lien stripping motions in chapter 13 cases. The process can be more successful for movants if the following considerations are kept in mind:

Notice: Be sure the affected junior lien creditor is served properly under the rules. Serving a personally-named officer of a bank is best. Mail sent to a street address generally is better than to a post office drop box. Service in accordance with Rule 7004 is the safest. Service addressed as requested in a proof of claim may suffice as well.

Motion: Be sure to attach credible, persuasive evidence of (1) the property value as of the petition date and (2) the current principal balance owed to the senior lien holder. Bank statements reflecting current principal balances are more persuasive than most debtors' conclusory statements.

Prayer: This should be limited and explicit. You may want the following: (1) the second deed of trust (for example) to be deemed unsecured for purposes of chapter 13; (2) to treat any proof of claim filed by the holder of the second to be deemed an unsecured claim within the debtor's chapter 13 plan; (3) upon completion of the chapter 13 plan and entry of a chapter 13 discharge, the second to be treated as void and no longer an encumbrance against the debtor's property; and (4) to add a request that upon completion of the chapter 13 plan and discharge, the holder of the second reconvey the second deed of trust.

In every prayer, you must specify that should the case be dismissed or converted to any other chapter prior to completion of the plan and entry of a chapter 13 discharge, the lien will remain valid.

Points and Authorities generally are not necessary because the court is familiar with current governing lien stripping appellate decisions.