**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF VERMONT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

In re:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Chapter \_\_**

**Debtor(s). Case # \_\_\_\_\_\_\_\_\_**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Debtor’s Motion to Avoid Lien**

**Pursuant to 11 U.S.C. § 522(f)(2)[[1]](#footnote-1)**

**NOW COMES** [*name of debtor*] by and through attorney, \_\_\_\_\_\_\_\_\_\_\_, pursuant to 11 U.S.C. § 522(f) and the Federal Rules of Bankruptcy Procedure 4003(d) and 9014, to request this Court enter an order avoiding the [*judicial lien(s) and/or nonpossessory, non-purchase-money security interest*] held by [*name of creditor*] (the “Respondent”) on [*description of property*] (the “Property”).

In support of this Motion, the debtor states the following.

1. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1334(a). This matter is a core proceeding as described by 28 U.S.C. § 157(b)(2)(K).

2. The debtor filed a voluntary petition under chapter \_\_\_ of the Bankruptcy Code on [*date*].

3. The debtor is entitled to an exemption in the Property in the amount of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, pursuant to [*cite legal authority (e.g., 27 V.S.A. § 101)*], and has claimed that exemption on the Schedule C filed on *[date]* (doc. #\_).

4. The Property has a fair market value of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This valuation is based upon [*describe basis for valuation (e.g. grand list, real estate appraisal, other source)*].

5. The Property is subject to the following mortgages, judicial liens, and/or nonpossessory,

non-purchase-money security interests:

[*Note: Include the Respondent’s lien/interest in chart.*]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of lien/interest | Holder of lien/interest | Date lien/interest originated/arose | Original amount  of lien/interest | Outstanding balance  of lien/interest |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

6. Respondent’s interest in the Property is not a statutory lien.

7. Section 522(f)(2)(A) of the Bankruptcy Code provides:

A lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor’s interest in the property would have in the absence of any liens.

Section 522(f)(2)(B) provides that “[i]n the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (a) with respect to other liens.”

8. Following the formula set forth in § 522(f)(2)(A) for determining whether a lien impairs an exemption, the debtor:

Adds the lien being tested for avoidance: + $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Adds all other liens: + $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Adds the maximum exemption allowable in the absence of liens: + $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Totaling: = $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Then*, from this total sum,

Subtracts the value of the Property absent any liens: *less* $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To determine the extent of the impairment: = $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

9. Since the extent of the impairment of the exemption, $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, exceeds the entire value of Respondent’s lien, $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the entire lien is avoidable.

**— OR —**

1. Since the extent of the impairment on the exemption, $ \_\_\_\_\_\_\_\_\_\_, is less than the entire value of the lien, $ \_\_\_\_\_\_\_\_, the Respondent’s lien can be avoided only to the extent of the impairment of the exemption, $ \_\_\_\_\_\_\_\_\_\_, and the balance of $ \_\_\_\_\_\_\_\_ remains as a lien on the Property.

**WHEREFORE**, the debtor requests this Court enter an order

1. avoiding the [*judicial lien or nonpossessory, nonpurchase-money security interest*] held by [*name of Respondent*] on the Property, in the amount of $ \_\_\_\_\_\_\_\_; and

(B) granting other relief [*specify*].

Respectfully submitted,

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[*Signature*]

[*typed name, with address, e-mail address, and telephone number*]

1. This Form is to be used **ONLY** in chapter 7 or 12 cases. Motions to avoid a lien in a chapter 13 case must be made as part of the chapter 13 plan, using Official Form 113. See Vt. LBR 3015-1; 4003-2(b). [↑](#footnote-ref-1)