

## **JUDGE BAUER'S GUIDELINES FOR VALUING AND AVOIDING LIENS IN CHAPTER 13 CASES:**

**1. Motion:** Although an adversary proceeding may be utilized under FRBP 7001(2), the court will permit the debtor to obtain a valuation of a secured creditor's claim by motion brought under the requirements of LBR 9013-1 through LBR 9013-4. Such motion should be conspicuously captioned as a lien stripping motion or Lam motion, and served upon the affected lienholder. Although the actual "stripping" of the amount is accomplished through the confirmation and performance of the debtor's chapter 13 plan, valuing the lien must occur first. The court requires the debtor to file and serve a separate motion in order to provide clear notice to the affected lienholder, and to specify a well-established way for the debtor to submit evidence and legal argument in support of the proposed treatment of the lien.

Please note:

*Evidence:* 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.

**2. Supporting Papers:** Points and Authorities generally are not necessary because the court is familiar with governing lien stripping appellate decisions. However, *Evidence* is necessary (see above).

**3. Notice:** Because a motion to strip lien seeks relief against a specific, identifiable party, debtor must comply with LBR 9013-1. Debtor should take care to serve the affected lien holder in the manner required by the Federal Rules of Bankruptcy Procedure ("FRBP"), and in particular FRBP 7004(b) and 7004(h) as to certain lenders.

**4. Evidentiary Hearing:** If the affected lienholder effectively contests any issue of fact material to the motion, the court will conduct an evidentiary hearing to resolve that dispute of fact. The notice of motion shall specify that, except as otherwise ordered by the court, the initial hearing on the motion will not be an evidentiary hearing, and will serve as a status conference at which the court may schedule any evidentiary hearing necessary.

**5. Standard-form Orders:** If the court determines that a motion to strip lien should be granted, the court will employ the standard-form ORDER ON MOTION TO AVOID JUNIOR LIEN ON REAL PROPERTY (MS Word). A blank copy of which may be downloaded from the Judge's form section on the court's website.