



Lien avoidance is a powerful and important tool available in Chapter 7 bankruptcy. If you have liens recorded against your property, you may be able to get rid of them through lien avoidance.

What Is a Judgment Lien?

A judgment lien is created when someone wins a lawsuit against you and records the judgment against your property. A judgment lien is a type of nonconsensual lien (a lien that attaches to your property without your agreement). It is created when someone wins a lawsuit against you and then records the judgment against your property.

How Is a Judgment Lien Created?

A judgment lien can be imposed on your property only after somebody sues you and wins a money judgment against you. In Pennsylvania, a judgment is an automatic lien on real property owned by the defendant in the county in which the judgment is located. The lien of a judgment lasts for 5 years, 42 Pa. C.S.A. Sec. 5526, and execution must be issued against personal property within 20 years after entry of the judgment, 42 Pa. C.S.A. Sec. 5529. In addition, via a mechanism called a writ of execution liens can be transferred to other counties in Pennsylvania where the debtor owns property. A lien on real property means that the debtor cannot sell the property until all liens are paid.

What Judgment Liens Can You Avoid?

A nonconsensual judgment lien on property can be avoided if all of the following are true:

- The lien resulted from a money judgment issued by a court.
- You are entitled to claim an exemption in at least some of your equity in the property.
- The lien would result in a loss of some or all of this exempt equity if the property were sold. (That is, the exemption would be impaired).

If these three conditions are met, you can remove judgment liens from any exempt property, including real estate and cars.

How to Avoid a Judgment Lien in Bankruptcy?

You request lien avoidance by checking the column “Property is claimed as exempt” on the Statement of Intention, and by filing a motion with the United States Bankruptcy Court, Eastern District of Pennsylvania under 11 U.S.C. § 522 (f)(1) to avoid the judgment lien. While a Chapter 7 bankruptcy can eliminate your liability for the debt secured by property, it doesn’t eliminate any liens on the property unless you take the required steps that may be taken to reduce or eliminate the liens.

In order to avoid the security interest, counsel must file a Motion to Avoid Lien under Local Rule 9014 for the Eastern District of Pennsylvania. The Motion must be accompanied by a proposed Order for Relief, an Order Requiring Answer and Notice of Hearing on Motion and a Certification of Service.

The hearing dates are “self-scheduled” and the proper hearing date for a particular motion can be determined by checking the court’s website at <http://www.paeb.uscourts.gov/>, clicking on “court information” and looking up the dates for the judge who is presiding over the case.

Counsel must serve the Notice, proposed Order, and Motion upon all interested parties including the Trustee. If the respondent is represented by counsel who has appeared in the case, the motion will be served electronically as part of the ECF system. Most likely, in connection with a motion to avoid a lien, the party which holds the lien will not have entered an appearance through an attorney and will have to be served in the conventional manner. Service by regular mail is usually sufficient. Fed. R. Bankr. P. 9014 and 7004 should be consulted.

If no response is timely filed (and these Motions usually go unanswered and uncontested), a Certification of No Response should be filed. After filing a Certificate of No Response, counsel may contact the Judge’s courtroom deputy clerk the day before the hearing to ask that the Judge enter the proposed order or counsel may attend the hearing and inform the Court that no response has been filed. The Judge will usually then sign the avoidance order. Should a response be filed, then, of course, counsel should prepare for a full hearing on the hearing date.

How to draft a Debtor’s Motion to avoid a Judicial Lien?

The following language is a template that can be used in a Motion to avoid a Judicial Lien:

1. Debtor, (debtor’s name), commenced this action on (date of filing), by filing a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code.
2. Jurisdiction of the Bankruptcy Court to hear this motion is provided by 28 U.S.C. § 1334.
3. This motion is filed by the Debtor under 11 U.S.C. §522(f)(1)(A) to avoid and cancel a judicial lien held by (creditor) on Debtor’s property (name of property).
4. Debtor became indebted to (creditor) as a result of (description of transaction that resulted in the debt). (Creditor) sued and obtained a default judgment which effected a judicial lien on debtor’s property, entered of record at (Court, Court Term and Number).
5. The existence of (creditor’s) security interest in Debtor’s property impairs exemptions to which the Debtor would be entitled under 11 U.S.C. §522(b).

WHEREFORE, Debtor moves this Court for an Order which would cancel and avoid the security interest held by (creditor) in Debtor’s property and for such additional or alternative relief as may be just and proper.

What is the procedure for filing a Debtor's Motion to avoid a Judicial Lien?

A Motion to Avoid Liens must be filed pursuant to Local Bankruptcy Rule 9014-3.

Under L.B.R. 9014-3, the following documents must be filed:

1. Notice of Hearing to Consider Motion (Local Bankruptcy Form 9014-3)
2. Proposed Order
3. Certificate of Service

All filings should be made electronically unless the requirement of electronic filing has been waived by the court. L.B.R. 9014-3 requires that the movant serve the following parties or, if represented, their counsel of record:

- The debtor
- U.S. Trustee
- Any person whose interest would be directly, materially and adversely affected if the relief requested in the motion were granted and whose interests are not adequately represented by persons on whom service is otherwise required.