

PROCEDURE FOR FILING MOTION TO DETERMINE SECURED STATUS
AND TO STRIP JUNIOR LIEN ON DEBTOR'S PRINCIPAL RESIDENCE
ON NEGATIVE NOTICE

1. Motions to value claims secured by junior liens on the debtor's principal residence and to strip off the liens may be filed on negative notice only in a Chapter 13 case. Lien stripping is not available to debtors in a Chapter 7 case.
2. Motions to value claims secured by junior liens on the debtor's principal residence at \$0 and to "strip off" such liens shall not be filed before the earlier of the time when: (a) the affected creditor has filed a proof of claim or (b) the expiration of the time to file claims (claims bar date). A premature motion to value will be denied without prejudice.
3. The motion shall
 - clearly state (a) all known parties who may have an interest in the mortgage, (b) the loan number (formatted as xxxx1234) and recording information of all mortgage lien(s) affected by the Motion, (c) the legal description and street address of the subject property, and (d) the basis of the valuation – private appraisal, county valuation, or other;
 - be verified, or supported by an affidavit or declaration (pursuant to 28 U.S.C. § 1746) of the debtor;
 - include on the first page the "negative notice" legend (below) giving interested parties 30 days to file an objection/request for hearing;
 - certify service on (i) the appropriate persons required by Rule 7004 (b) (note in particular the requirements of Rule 7004 (h) for insured depository institutions), (ii) on the person who filed the mortgagee's proof of claim, (iii) the attorney, if any, for such creditor, and (iv) the Chapter 13 trustee; and
 - be docketed in CM/ECF using the "Motion to Determine Secured Status (and strip lien if applicable)" docket event.
4. The movant shall submit the attached form of proposed order to the Clerk's Office through its e-orders program not later than ten (10) days after the expiration of the thirty (30) day objection period. If attorney's fees are sought in the motion, then the title of the motion should reflect that, and the title of the order should reflect the awarding of fees therein.
5. The negative notice legend should read substantially as follows:

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider this motion without further notice or hearing unless a party in interest files an objection within thirty (30) days from the

date of service of this paper. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 801 N. Florida Avenue, Suite 555, Tampa FL 33602-3899, and serve a copy on the movant's attorney, [Insert name and address, and any other appropriate person].

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

6. The debtor's Chapter 13 plan shall provide for the stripping off of the lien, conditioned on the debtor's obtaining a discharge or on further order of the Court.

10/01/2009

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No. 8:09-bk-00000-XXX
Chapter 13

John Doe,

Debtor.

**MOTION TO DETERMINE SECURED STATUS OF ABC MORTGAGE
COMPANY AND TO STRIP LIEN EFFECTIVE UPON DISCHARGE**

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider this motion without further notice or hearing unless a party in interest files an objection within thirty (30) days from the date of service of this paper. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 801 N. Florida Avenue, Suite 555, Tampa FL 33602-3899, and serve a copy on the movant's attorney, [Insert name and address, and any other appropriate person].

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW John Doe (the "Debtor") by and through his undersigned counsel, and files this Motion to Determine Secured Status of ABC Mortgage Company and to Strip Lien and states as follows:

1. The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on February 1, 2009.

2. The Debtor owns real property (the "Real Property") located at 123 Maple Street, Tampa, Florida, and more particularly described as follows:

LEGAL DESCRIPTION

3. The Real Property is encumbered by two mortgages:

(a) Lucky Mortgage, account number XXXX1234, holds the first mortgage, recorded on April 1, 2002, at Book XXXX, Pages XXXX, Instrument No. XXXX of the official records of Hillsborough County and has filed Claim No. 1 in the amount of \$250,000.00.

(b) ABC Mortgage Company, account number XXXX1234, holds a second mortgage, recorded on April 1, 2002, at Book XXXX, Pages XXXX, Instrument No. XXXX of the official records of Hillsborough County and has filed Claim No. 2 in the amount of \$75,000.00.

4. Based on the appraisal attached hereto as Exhibit 1, the value of the Real Property is \$200,000.00.

6. Accordingly, ABC Mortgage Company's second mortgage is completely unsecured.

Wherefore, the Debtor respectfully requests that the Court enter an order:

(a) granting the Motion; (b) determining the value of the Real Property to be \$200,000.00, (c) determining that ABC Mortgage Company's claim shall be treated as an unsecured claim; (d) voiding the mortgage lien of ABC Mortgage Company effective upon discharge; and (e) granting such other and further relief as the Court deems appropriate.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No. 8:09-bk-00000-XXX
Chapter 13

Debtor.
_____/

**ORDER GRANTING DEBTOR'S MOTION TO DETERMINE
SECURED STATUS OF ABC MORTGAGE COMPANY
AND TO STRIP LIEN EFFECTIVE UPON DISCHARGE**

THIS CASE came on for consideration on the Debtor's Motion to Determine Secured Status of **ABC Mortgage Company** and to Strip Lien (the "Motion") (Doc. No. XX) pursuant to negative notice provisions of Local Rule 2002-4. The Court, considering the Motion and the absence of any record objection to the relief requested in the Motion by any party in interest, deems the Motion to be uncontested.

The real property (the "Real Property") that is the subject of the Motion is located at **123 Maple Street, Tampa, Florida**, and more particularly described as follows:

LEGAL DESCRIPTION

Accordingly, it is hereby

ORDERED:

1. The Motion is GRANTED.
2. Claim No. X filed by **ABC Mortgage Company** shall be treated as an unsecured claim in this Chapter 13 case.

3. The mortgage on the Real Property held by **ABC Mortgage Company** recorded on **April 1, 2002**, at **Book XXXX, Pages XXXX, Instrument No. XXXX** of the official records of Hillsborough County, Florida, shall be deemed void, and shall be extinguished automatically, without further court order, upon entry of the Debtor's discharge in this Chapter 13 case, provided, however, that the Court reserves jurisdiction to consider, if appropriate, the avoidance of **ABC Mortgage Company's** mortgage lien prior to the entry of the Debtor's discharge.

4. This order does not prohibit **ABC Mortgage Company** from asserting, at any time prior to the time when the lien is avoided by this order upon entry of the Debtor's discharge, any rights it may have as a defendant in any foreclosure proceeding brought by a senior mortgagee, including the right to claim excess proceeds from any foreclosure sale.

DONE and ORDERED in Chambers at Tampa, Florida, on _____.

[Insert Judge]
United States Bankruptcy Judge

E X C E R P T

THE COURT: All right. The Court will take appearances.

MR. NANNA: Good afternoon, Your Honor. Tom Nanna for the Debtor.

THE COURT: All right. Thank you. And your proffer is?

MR. NANNA: Judge, the value of the house comes in at \$106,000. That's shown on Exhibit A pursuant to an appraisal from Cyberhomes. And then the first mortgage payoff is \$128,000, pursuant to Bank of America's Claim No. 2, and we're seeking to strip Bank of America's second mortgage, and that's set forth in Claim No. 4.

The motion was served on an officer of Bank of America who did sign for it. I have the return receipt via Certified Mail. It was served also upon Bank of America's counsel, Anna Laura Diez, as well as the person who filed the claim.

* * * * *

THE COURT: All right. That proffer is on all fours. Give me an order stripping the lien in the form that the Court requires.

Did you request fees?

MR. NANNA: No, I did not, Your Honor.

I have an order here.

THE COURT: Thank you.

COURTROOM DEPUTY: We need to come back to this one for confirmation.

THE COURT: That's fine. You know, I just want to keep going on the lien strips.

Thank you for handing up the order.

(Whereupon, this completed the requested excerpt.)