

**PROPOSED PROCEDURE TO AVOID WHOLLY-UNSECURED
LIENS ON REAL PROPERTY IN CHAPTER 13 CASES**

The Chapter 13 Plan

1. The plan should contain a statement of the debtor's intent to value the wholly-unsecured lien at zero under Section 506(a) and to void the related lien upon discharge and disclosing the impact this will have on the debtor's plan and budget.
 - a. The statement should be listed under Paragraph 10D of the current plan under the caption "Other Plan Provisions" and contain the following:
 - i. The statement should clearly identify the mortgage creditor, the collateral securing the lien, and the amount of the lien;
 - ii. The statement should explain that the debtor has or will file a motion as a contested matter under Bankruptcy Rule 9014 seeking to value the collateral securing the lien at zero, and that the lien will not be voided solely as a result of confirmation of the plan;
 - iii. The statement should explain state that the lien will be deemed voided for purposes of the Chapter 13 case only, and that the lien will not be voided until the creditor is paid in full under § 1325(a)(5)(B) or the debtor receives a discharge under § 1328.
 - iv. The statement should also indicate that "if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law." 11 U.S.C. § 1325(a)(5)(B)(i)(II).¹
 - b. The presumption should be that the debtor will prevail on the lien valuation motion and that the debt associated with the lien will be treated as an unsecured claim through the plan. Consequently, the debtor should not be allowed to take deductions on Line No. 47 ("Future Payments on Secured Claims") and Line No. 48 ("Other Payments on Secured Claims") of Form 22C for any claim or arrearage relating to the wholly-unsecured lien.

¹ "The Pichts' plan also fails to provide that "if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law." 11 U.S.C. § 1325(a)(5)(B)(i)(II). **On remand, any proposed plan must also comply with this provision.**" *In re Picht*, 428 B.R. 885, 894 n. 37 (10th Cir. BAP 2010) (emphasis added).

The Lien Valuation Motion

2. The debtor should file a motion to value the lien within 15 days of the petition date (the “Lien Valuation Motion”).
 - a. This deadline will allow sufficient time before the confirmation hearing to know whether the creditor is contesting the Lien Valuation Motion. If the Lien Valuation Motion results in a default order, its impact on the plan can be considered as part of the confirmation process. If the Lien Valuation Motion is contested, the debtor can include contingencies in the plan to deal with the possibility that the lien is not voided.
 - b. It might be helpful to include an example of a Lien Valuation Motion on the court’s web site that includes the required language that the lien will be deemed voided for purposes of the Chapter 13 case only, that the lien will be unaffected until the creditor is paid in full under § 1325(a)(5)(B) or the debtor receives a discharge under § 1328. Furthermore, that if the Chapter 13 case is dismissed or converted without completion of the plan, such lien shall be retained by such holder to the extent recognized by applicable nonbankruptcy law.
 - c. The Lien Valuation Motion must be served in the same manner as an adversary proceeding under Bankruptcy Rules 9014(b) and 7004, and most particularly 7004(h) regarding service on an insured depository institution.
 - d. Bankruptcy Rule 9014 will apply to the prosecution and defense of the Lien Valuation Motion.
 - e. If possible, a separate ECF event should be created for Lien Valuation Motions so that they can be easily tracked by the court and the trustee.

The Lien Valuation Order

3. The order valuing the lien (the “Lien Valuation Order”) should contain the following:
 - a. Language that the lien will not be voided until the creditor is paid in full under § 1325(a)(5)(B) or the debtor receives a discharge under § 1328.
 - b. Language that if the Chapter 13 case is dismissed or converted without completion of the plan, such lien shall be retained by such holder to the extent recognized by applicable nonbankruptcy law.
 - c. The name of the creditor on the original trust deed and, if different, the name of the creditor or mortgage servicer in the Lien Valuation Motion;
 - d. A legal description of the affected real property and the recording information of the lien (e.g., county, date, and recorder’s entry number).
 - e. The Lien Valuation Order should only be recorded after entry of the debtor’s discharge.