

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK**

**FILING A MOTION TO
AVOID LIEN THAT IMPAIRS EXEMPTION**

Instructions on how to file a Motion to Avoid a Lien (that is not included in a plan) which impairs an exemption under Section 522(f) of the Bankruptcy Code. This motion is filed by the debtor seeking to avoid a lien which is held by a creditor on property which the debtor is claiming as exempt property in his/her bankruptcy case. There is no filing fee for this motion. The motion is governed by Section 522(f), a copy is attached, and Local Rule of Bankruptcy Procedure 4003-2 which requires:

1. The motion must describe the property subject to the lien. If the property is real property and the property is located in a county where recorded information is available on the internet, then the motion must also include the county recorder number of the document evidencing the lien.
2. The person filing the motion, must also file a Form of Notice (a sample form is attached) stating that any response or objection to the motion must be filed within 14 days of service of the motion and notice.
3. The person filing the motion must serve the motion and notice on all affected lienholders (such as any mortgage holder) and parties.
4. Service of the motion, form of proposed order and the notice of filing motion may be made by first class mail, postage prepaid, to the party's residence address or the address where the party regularly conducts business. Service is complete upon mailing.
5. If no objection or response to the motion to avoid lien is filed by any of the parties served, then the court may enter an order granting the motion. If no objection or response is timely (14 days plus 3 days if service was made by mail) filed, then you may file a Certificate of Service and No Objection (in the form attached). Also submit at the same time, your proposed order granting the motion to avoid lien. If you need a certified copy for recording in the county recorder's office where the real property is located, you will need to come to the office of the clerk during normal business hours to obtain a certified copy of the order.
6. If a party timely files an objection or response to your motion, a hearing will be set before the court and you will receive a notice of the date and time of that hearing.

11 USC Section 522(f)

(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section [523 \(a\)\(5\)](#); or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2) (A) For the purposes of this subsection, 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.

(B) In 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.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise

eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds \$5,000.

(4) (A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term “household goods” means—

(i) clothing;

(ii) furniture;

(iii) appliances;

(iv) 1 radio;

(v) 1 television;

(vi) 1 VCR;

(vii) linens;

(viii) china;

(ix) crockery;

(x) kitchenware;

(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii) medical equipment and supplies;

(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

(xv) 1 personal computer and related equipment.

(B) The term “household goods” does not include—

(i) works of art (unless by or of the debtor, or any relative of the debtor);

(ii) electronic entertainment equipment with a fair market value of more than \$500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

(iii) items acquired as antiques with a fair market value of more than \$500 in the aggregate;

(iv) jewelry with a fair market value of more than \$500 in the aggregate (except wedding rings); and

(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re	Chapter
	Case No.
Debtor(s)	
Movant(s)	
v.	NOTICE OF MOTION TO AVOID LIEN
Respondent(s)	

NOTICE IS HEREBY GIVEN that the above-captioned debtor(s) have filed a MOTION TO AVOID LIEN or other transfer of Property Exempt under Section 522 (f) of the Bankruptcy Code.

FURTHER NOTICE IS HEREBY GIVEN that an affected lienholder, pursuant to Local Bankruptcy Rule 4003-2, shall have 14 days after the date of service of the motion and this notice within which to object by filing with the Court a response requesting a hearing and to serve a copy of any such response upon the debtor(s) attorney/or debtor(s) if pro se, whose address is:

and to serve a copy of the response upon any other affected lienholders named in the debtor(s) motion.

Dated: _____

Movant/Attorney for Movant

Copies mailed on _____ to:

Affected Lienholders

By _____
Movant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In Re	Chapter
	Case No.
Debtor(s)	CERTIFICATE OF SERVICE AND OF NO OBJECTION
Movant(s)	
Respondent(s)	

PURSUANT to Local Rule of Bankruptcy Procedure 4003-2(d), movant is filing this Certificate of Service and of No Objection with respect to movant's previously filed Motion to Avoid Lien. Movant certifies as follows:

1. Movant served by depositing in the United States Mail in a sealed envelope, with postage thereon prepaid, a copy of:

The Motion to Avoid Lien
The Notice of Filing Motion to Avoid Lien
The Proposed Order Avoiding the Lien

2. These mailings were made to the following persons at the following addresses:

Lienholder(s)
Address

3. I hereby certify that no objections to the motion were filed with the court or received by the undersigned.

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: _____

Movant

Copies of the foregoing
mailed on _____ to:

Affected Lienholder(s)

By: _____
Movant