

SUGGESTED FORM OF MOTION TO AVOID LIEN

[Style of case, including contested matter info: names of Movant and Respondent]

Motion To Avoid Lien

X, Debtor in this bankruptcy case, moves for an order avoiding a lien held by Respondent pursuant to 11 U.S.C. § 522(f) and alleges as follows:

(NOTE: delete the paragraph no. 1 that is not applicable to the facts in your case.)

1. Respondent obtained a judgment against Debtor on or about [Date] in the [Court Rendering Judgment] and the amount of that judgment lien on the petition date was \$_____.

OR

1. Respondent holds a nonpossessory, nonpurchase-money security interest created by a security agreement between Debtor and Respondent dated on or about [Date] in the property described below to secure a debt in the amount of \$ _____ as of the petition date.

NOTE: Paragraph 2 deals *only* with the situation in which the amount claimed as exempt is equal to or greater than the value of the property. For example, if the debtor claims an exemption of \$500 in property that is worth \$500 or less, a lien against that property will *always* impair the claimed exemption. Do not use this paragraph unless you have inspected Schedules A, B and C and compared the values. See Bankruptcy Rule 9011.

2. Pursuant to 11 U.S.C. § 522 and O.C.G.A. § 44-13-100, Debtor properly claimed as exempt on Schedule C the property the following property:

[Describe Property, e.g., Household furnishings, household goods, jewelry, appliances, etc.]

The value of each claimed exemption in the above property as shown on Schedule C is equal to or greater than the market value of that property, as accurately reflected on Schedules A and B.

NOTE: Paragraph 3 deals with what paragraph 2 does not cover – the situation in which the value of the property claimed as exempt is greater than the amount of the claimed exemption. There are four variables – (1) the value of the debtor’s interest in the property, (2) the amount of the exemption, (3) the aggregate amount of the liens other than the one to be avoided and (4) the amount of the potentially avoidable lien. If (1) is subtracted from the sum of (2) plus (3) plus (4) and the difference (“Difference”) is greater than or equal to (4), the lien is avoidable in its entirety. If the Difference is less than (4), the lien is avoidable in the amount of the Difference, and the lien survives in an amount equal to (4) minus the Difference. This analysis must be repeated for each item of property to which the lien attaches.

Use the Worksheet or a similar table to show the arithmetic for each item of property.

3. Pursuant to 11 U.S.C. § 522 and O.C.G.A. § 44-13-100, Debtor properly claimed as exempt on Schedule C the property described below in this paragraph. Respondent’s lien on this property impairs the claimed exemption(s), as shown in the attached Lien Avoidance Worksheet(s).

Property	Amount To Be Avoided	Amount Not Avoidable

Wherefore, Debtor is entitled to entry of an order avoiding Respondent’s lien against the exempt property as set forth above.

Date

Signature

Lien Avoidance Worksheet

Line	Property Description:			
1	Debtor's Interest (Percentage Ownership of) Property: ____%	Value of All Interests in Property: \$_____		
2	Value of D's Interest in Property (From Line 1: % x Tot. Value)		\$	
3		Check (✓) Respon- dent	Name of Lienholder	Amt. of Lien Based on Debtor's Interest
4	1 st Priority Lien			\$
5	2 nd Priority Lien			\$
6	3 rd Priority Lien			\$
7	4 th Priority Lien			\$
8	Exemption Claimed (Sched. C)			\$
9		Total of Liens and Exemption (Lines 4 through 8)		\$
10		Total of Liens and Exemption (Line 9) less Value (Line 2)		\$
Analysis	<p>CHECK APPLICABLE BOX(ES)</p> <p>G Line 2 (Value of D's Interest) is GREATER THAN or EQUAL TO Line 9; STOP! Lien is NOT avoidable.</p> <p style="text-align: center;">or</p> <p>G Line 2 (Value) is less than Line 9; CONTINUE.</p> <p style="padding-left: 40px;">G Line 10 is GREATER THAN or EQUAL TO Line ____ (on which Respondent's Lien appears). Lien is avoidable in its entirety.</p> <p style="padding-left: 40px;">G Line 10 is LESS than Line ____ (on which Respondent's Lien appears). Lien is avoidable by the amount stated on Line 10. Lien is not avoidable in the amount equal to the difference between the amount of Respondent's Lien and the amount stated on Line 10.</p>			

NOTES TO LIEN AVOIDANCE WORKSHEET:

(1) The value of the Debtor's interest in property is the value of the property multiplied by the Debtor's percentage of ownership. If the Debtor owns an undivided 50% interest, the value of his interest is one-half the total value. The amounts of liens MAY need adjustment if the Debtor is not the sole owner. Suppose that a debtor and a co-owner (who could be the spouse of the debtor) each own an undivided 50% interest in the property securing a first mortgage note. For section 522(f) purposes, the amount of the first mortgage lien on the petition date attributable to that debtor would be one-half of the amount owed on the first mortgage. If that debtor had obtained a second mortgage against only his one-half interest, there would be no adjustment in the amount of the second mortgage lien.

(2) Complete Line 10 and file the motion with respect to the identified property ONLY if Line 2 (Value of Debtor's Interest in Property) is less than Line 9.

(3) If the debtor has a spouse, pay very careful attention to who owes the debt and to whose interest in property a lien attaches. Analysis under section 522(f) should be done separately for each joint debtor and for a debtor and a non-filing spouse if either (A) only one of them owns the property subject to a potentially avoidable lien or (B) the judgment or security interest is enforceable against one debtor but not the other or not the non-filing spouse.

(4) **Read section 522(f).** The only avoidable consensual liens are nonpossessory, nonpurchase money security interests attaching to the following property:

(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.

11 U.S.C. § 522(f)(1)(B). Consensual liens on vehicles are **not** avoidable because vehicles are **not** listed in section 522(f)(1)(B). Tax liens, mechanics liens and other statutory liens are **not** avoidable.

(5) **Read Ga. Code Ann. § 44-13-100.** Do not list on Schedule C property not exemptible under this statute and do not claim an exemption amount larger than that permitted by this statute. Real estate not used as a residence by the debtor or a dependent of the debtor is NOT exemptible.

(6) If there is more than one avoidable lien on the property, begin the avoidance analysis with the most recently filed lien. If it is avoidable entirely, then repeat for the next most junior lien, etc.

(7) If the amount of the exemption claimed is greater than or equal to the value of the Debtor's interest in an item of property, an avoidable lien on that property will always impair the exemption. For example, if the value of the household goods stated on Schedule B is \$1,000 and the amount of the

exemption claimed for household goods is \$1,000, any avoidable lien will impair the exemption. Do not use the Worksheet in this circumstance.

(8) If the value of the exempted property shown in Schedule C is “unknown,” Line 1 must be left blank, and it would be impossible to determine whether a lien would impair the exemption, and hence a motion to avoid a lien on unvalued property will always be denied.