

Instructions for filing a Motion to Avoid Lien

Under § 522(f), 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[.]” A lien impairs an exemption to the extent that the value of Debtor’s interest in the property is less than the sum of the lien, all other liens on the property, and the amount of exemptions Debtor could claim if no liens attached to the property.

While undisputed allegations of fact may be deemed admitted, undisputed legal conclusions are not entitled to the same treatment. Whether an exemption is impaired is a legal conclusion. Thus, Debtor’s attorney should allege the *facts* supporting such conclusion in the Motion – *i.e.* the value of the property, and the amount of liens and exemptions on the property. Allegations of fact in Debtor’s Schedules are not deemed admitted by a lien creditor’s failure to respond to the Motion. Without allegations of fact in the Motion, the court does not have a sufficient factual basis to form legal conclusions, so even unchallenged motions will be denied.

Moreover, to the extent the lien in question might attach to a vehicle or to real property, the Motion should allege that evidence for Debtor’s valuation of the vehicle or real property exists (a Rule 11 statement), or attach such evidence as an exhibit to the Motion. Sufficient evidence can be readily obtained from NADA guides (for vehicles) and tax records (for real property).

Example Allegations

The value of Debtor's real property at 1234 Main Street, Atlanta, Georgia, 12345 (the "Real Property"), is \$100,000.00, as evidenced by the tax valuation attached to this motion as Exhibit "A." The Real Property is encumbered by a Security Deed in the amount of \$95,000. Debtor has claimed an exemption in the Real Property of \$5,000. Accordingly, Debtor has claimed as exempt the entire unencumbered value of the property, and any judgment lien on the property would impair that exemption.

The value of Debtor's 1972 AMC Gremlin (the "Vehicle") is \$1,000.00, as shown by the "Clean Sale" column of the NADA valuation attached to this motion as Exhibit "B." Title Pawns 'R Us, LLC holds a consensual lien on the Vehicle in the amount of \$1,200.00. Accordingly, no unencumbered value remains to which a judgment lien may attach.

The value of Debtor's remaining personal property (the "Personal Property") is \$2,000.00, as shown on Debtor's Schedule "B" attached to this motion as Exhibit "C." Debtor has claimed exemptions in the personal property in the total amount of \$2,000, as detailed in Debtor's Schedule "C," attached to this motion as Exhibit "D." Accordingly, any judicial lien on the Personal Property would impair Debtor's exemptions.

Debtor holds no property other than the Real Property, Vehicle, and Personal Property identified in this motion.