

Wholly unsecured junior liens on a Chapter 13 Debtor's residence.

In many cases, Chapter 13 provides a powerful tool for homeowners to save their home by avoiding, or “stripping off” wholly unsecured junior liens. If the amount owed on the first mortgage is greater than the value of the property (as determined by a legitimate, professional appraisal) then any and all junior liens are wholly unsecured.

The junior lien holder(s) is properly scheduled as a secured creditor on the original schedule D because they do have a lien as of the petition date. The entire amount owed will be shown in the column labeled “Unsecured portion if any”.

Do not enter payments for debts secured by the junior lien that is to be avoided on schedule J or on Form B22C or in Plan Section C.

Section 506. Determination of secured status; tells us that the secured or unsecured status of a claim is based on the value of the property at the petition date and provides that if a lien secures a claim that is not an allowed secured claim, the lien is void.

Secured status may be determined through a Motion under Rule 3012 or an Adversary Proceeding under Rule 7004. Junior lien holders that are truly unsecured are not contesting these matters if the proposed order provides that the lien remains in effect if the case is dismissed or converted.

The Court has mandated the use of form orders for Rule 3012 motions and Adversaries. Copies are included in the materials and can be found on the Court's web site.

Wholly unsecured Junior Mortgage Creditors **must** be provided for in Plan Section E3.2. It is advisable to include a provision in Section G of the plan with language similar to the proposed order if a Rule 3012 motion will be filed or similar to the judgment order if an adversary will be filed. Do not state the debtor's intentions. Do use clear strong language that tells the Trustee and the creditor how any claim filed by the creditor is to be treated. Identify the creditor by name and identify the real property by address. If the same lender

has more than one mortgage on the real property in question, state the position of the lien (2nd or 3rd) and include the last four digits of the account number.

In Round Lake Beach (Lake County, Judge Goldgar) and in Joliet (Will, Kendall, Grundy and LaSalle Counties, Judge Black) the only requirement at the time of plan confirmation is that the unsecured junior mortgage creditor is provided for in Plan Section E3.2 and there is no objection from that creditor. Failure of the creditor to object to confirmation is a pretty good sign that your motion or AP will not be contested. Judge Goldgar and Judge Black will entertain and rule on either a Rule 3012 motion or an adversary filed before or after confirmation.

In Geneva (DuPage and Kane Counties, Judge Cassling) an Adversary Proceeding is not required per se but his requirements regarding notice are so exacting as to make an Adversary the best route to take.

The end goal is to get a title company to issue clear title to the debtor free of the junior lien at some point after discharge. The best and safest way to accomplish this is with an Adversary Proceeding because it provides the debtor with a Judgment Order that can be recorded. This combined with the Plan, Confirmation Order and Discharge Order should smooth the way to having the lien released and should convince a title company that the lien is no longer in force.

Chapter 7 debtors cannot avoid wholly unsecured junior mortgage liens. See *Grano v. Wells Fargo Bank* 20 CBN 438 (Bankr. W.D.N.Y. 2010). Citing the Supreme Court's ruling in *Dewsnap v. Timm*, 502 US 410 (1992). §1322(b)(2) give a Chapter 13 debtor the ability to avoid a wholly unsecured homestead mortgage. No parallel provision applies in Chapter 7. Wells Fargo's claim was "allowed" pursuant to §502 and secured by a valid lien against the collateral. Therefore it was not subject to avoidance under §506(d), which voids only liens corresponding to claims that have not been allowed and secured.

Judge Goldgar has ruled that a debtor with a recent Chapter 7 discharge can avoid an unsecured junior mortgage in their Chapter 13 even though they are not entitled to a

Chapter 13 discharge in the case of [Anderson](#) v. Harris N.A. 10 AP 02467 (10 B 45294). A transcript of his unpublished ruling denying Harris N.A.'s motion to dismiss the AP is in your materials. The interesting analysis starts on page eight; the key according to Judge Goldgar is that a loan rendered unsecured by §506(a) is not protected by §1325(a)(5).

Chapter 20 Lien Stripping

Decisions allowing Chapter 13 debtors to avoid wholly unsecured junior mortgage liens when they are not eligible for a discharge in their Chapter 13 Bankruptcy case are listed below. Links to the decisions can be found at

<http://www.lisle13.com.cnhost.com/Chapter20.pdf>

[Davis, Fourth Circuit](#)

[Anderson NDIL Judge Goldgar 10 AP 02467; 10 B 45294](#)

[Scantling MD FL](#)

[Victorio SD CA](#)

[Frazier ED CA](#)

[Okosisi NV](#)

[Miller ED NY](#)