

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**



PUBLIC NOTICE

April 18, 2014

OPPORTUNITY FOR PUBLIC COMMENT ON PROPOSED NEW LOCAL RULE 9013-6 MOTION TO AVOID JUDICIAL LIEN – 11 U.S.C. §522(f)(1)(A)

The Court and the Local Rules Committee are soliciting comments on a proposed new Local Bankruptcy Rule. Please provide any comments and suggestions on the proposed new rule as soon as possible. The deadline for submitting all comments and suggestions is May 16, 2014.

Comments, suggestions or other correspondence can be submitted electronically to:
rules_comments@nynb.uscourts.gov

Comments, suggestions or other correspondence can also be submitted in hard copy to:

Diann Freeman
Chief Deputy
United States Bankruptcy Court
10 Broad Street, Suite 230
Utica, New York 13501

A copy of the Court's proposed rule and the existing Local Bankruptcy Rules can be obtained from the Court's website which is www.nynb.uscourts.gov.

RULE 9013-6**MOTION TO AVOID JUDICIAL LIEN – 11 U.S.C. § 522(f)(1)(A)**

- (a) **Contents.** A motion to avoid a judicial lien shall include:
- (1) The date the bankruptcy was filed (“petition date”);
 - (2) A description of the real property owned by the debtor on the petition date to which the lien has attached;
 - (3) A statement that the debtor has claimed the property as exempt on Schedule C, the amount of the claimed exemption and the statutory basis for the exemption (i.e., 11 U.S.C. § 522(b)(3) and N.Y. CPLR 5206(a), or, 11 U.S.C. § 522(b)(2) and (d)(1) and/or (d)(5));
 - (4) Whether the debtor owns the property solely or jointly and, if owned jointly, the nature of the debtor’s ownership interest in the property (e.g., joint tenant, tenant by the entirety or tenant in common);
 - (5) Proof as to the value of the real property as of the petition date;
 - (6) The name(s) of the judicial lien creditor(s), listed in order of their priority, the basis and the amount(s) of the lien(s) sought to be avoided, and the recording information for each judgment;
 - (7) For each lien sought to be avoided, a statement that the lien does not secure a debt arising out of a domestic support obligation of the kind described in § 523(a)(5);
 - (8) A copy of the recorded judgment or transcript of the judgment that reflects recording information and the name and address of the attorney who obtained the judgment on behalf of the creditor;
 - (9) The name(s) of the holder(s) of each additional lien against the property, the nature of such lien(s) (e.g., mortgage, tax, or statutory) and proof of the amount of each lien as of the petition date;
 - (10) The address of all other real property owned by the debtor (i.e., rental property, commercial property); and
 - (11) A showing that the lien impairs the claimed exemption in that the sum of the amounts described in subparagraphs (3), (6) and (10) above exceeds the value that the debtor’s interest in the property would have in the absence of any liens.
- (b) **Service.** A motion to avoid a judicial lien pursuant to § 522(f) shall be served upon the judgment creditor pursuant to Fed. R. Bankr. P. 7004 and upon the attorney who obtained the judgment on behalf of the creditor.

Comment

With reference to establishing the fair market value of the property or the balances owed on outstanding liens as of the petition date, values contained in debtors’ schedules shall not constitute adequate proof thereof. Among other things, the court may consider a broker’s price opinion or appraisal as evidence of value of real property and a proof of claim, payoff letter or account statement as evidence of a lien amount.

Code § 522(f) operates solely with respect to judicial liens. See § 101(36) for the definition of “judicial lien.” A statutory lien, as e.g. a lien that arises in favor of a governmental entity for unpaid water charges or nuisance abatement costs, which may be enforced by means of a

judgment that appears of record cannot be avoided under this section. See § 101(53) for the definition of “statutory lien.” Papers submitted in support of the motion should allow the court to readily ascertain the nature of the lien. See *In re Schick*, 418 F.3d 321 (3d Cir. 2005) (discussing the distinction between judicial liens, which are avoidable under § 522(f), and statutory liens, which are not.)