

## Guidelines for Chapter 13 “Lien Strip” Valuation Motions filed in Department 1

Department 1 provides these guidelines to inform practitioners of issues encountered by the Court in many Chapter 13 valuation motions brought to determine a junior lien on the debtor’s residence to be unsecured (“lien strip motions”).

### **1. Service -**

Since a lien strip motion is a contested matter, service of the motion must be in accordance with Bankruptcy Rule 7004, which contains the rules for service of a summons. Failure to properly serve the motion deprives the Court of jurisdiction to rule on it. The required manner of service under Bankruptcy Rule 7004 varies depending upon the nature of the lender whose lien is proposed to be stripped.

If the lender is an FDIC insured institution, typically a bank, service must be made under Bankruptcy Rule 7004(h) by certified mail on a named officer of the bank. Service on an agent for service of process is not sufficient for service on a bank.

There is a rare exception to the requirement of service on the named bank officer: where the bank has appeared through counsel regarding valuation issues. Then counsel for the bank must be served, although service can be by first class mail. Note that banks’ Requests for Special Notice generally do not suffice as an appearance for lien strip motions.

If the lender is a non-bank entity, service must be made by first class mail to a specifically named officer. Alternatively, service must be made by first class mail to an authorized agent designated by the lender to receive service of process. Bankruptcy Rule 7004(b). The agent for service of process can often be determined by a search done through California Secretary of State Business Search, [www.sos.ca.gov/business/be/service-of-process.htm](http://www.sos.ca.gov/business/be/service-of-process.htm). Note that if the lender has filed a proof of claim designating where notices regarding the claim should be sent, the employee of the lender who signed the proof of claim can be considered the agent for service of process at the notice address.

Although serving the lien strip motion at the address named in the proof of claim may satisfy Rule 7004(b)’s requirement for service on an authorized agent of the lender, the lien strip motion must still identify the real party in interest as the owner of the debt secured by the lien. Identifying the loan servicer alone in the lien strip motion may not be sufficient to confer jurisdiction over the real party in interest, even if service on that loan servicer complies with Rule 7004(b).

## **2. Evidence of Senior Lien –**

Evidence of the senior debt on the property must be established by competent evidence. This is often done either by referring to the proof of claim filed by the senior lienholder, or by filing a supporting declaration of the debtor attaching the latest statement received from the lender. A declaration from the attorney for the debtor attaching a statement usually does not suffice to lay an appropriate foundation for the senior debt.

## **3. Valuation Evidence –**

An appraisal submitted as valuation evidence must be attached to a declaration submitted by the appraiser that lays an adequate foundation for the appraisal. Evidence of value can also be submitted by a declaration from the debtor based upon his/her personal knowledge. The debtor's opinion of value cannot be based only upon an appraisal he/she did not prepare.

## **4. Order –**

The order must substantially conform to Local Form CSD 1171.2. However, where the debtor received a discharge in a previous case, and is not entitled to a discharge in the current case (commonly known as a Chapter 20 case), the order should delineate the words "and entry of the resulting discharge," from the first sentence, number 2 on page 3. *See In re Hill*, 440 B.P. 176 (Bankr. S.D. Cal. 2010).

***These Guidelines are posted to assist practitioners and should not be substituted for the advice of competent legal counsel or a financial expert. The Court does not provide legal or financial advice, which may be obtained from a competent attorney, accountant, or financial adviser.***