

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

In Re

BANKRUPTCY NO.

Tax I.D.(EIN)#: _____/S.S.#:XXX-XX-_____ Debtor.

**DEBTOR'S MOTION TO VALUE REAL PROPERTY,
TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF**

(Affected Lien Holder)

A. Lien, Claim and Property at Issue: In connection with confirmation of the Chapter 13 Plan dated _____ ("Plan"), Debtor moves to value and avoid the junior deed of trust, mortgage or other encumbrance of _____ ("Affected Lien Holder"), recorded on _____ as instrument number _____ in the official records of _____ ("Affected Lien") encumbering the real property commonly known as _____ and more fully described as *(insert legal description or attach exhibit):* _____ ("Property").

The Property:

- Is the Debtor's primary residence; or
- Is NOT the Debtor's primary residence.

Associated Claim:

- The Affected Lien Holder filed a proof of claim on _____ assigned Claim No. _____, which is associated with the Affected Lien ("Claim"); or
- As of the date of this Motion, Affected Lien Holder has not filed a proof of claim associated with the Affected Lien.

Pursuant to 11 U.S.C. §§ 506(a) and 1322(b)(2), the Affected Lien may be avoided upon completion of Plan payments after confirmation of the Plan. The Claim will be treated in the Plan as an unsecured claim, and may be satisfied by discharge or other order of the Court.

B. Petition Date: _____

C. The Motion is timely under LBR 3015-8(d) as follows:

The Motion is filed within twenty-eight days after the Claim was filed;

The Affected Lien Holder did not file a proof of claim, but the Motion is filed within twenty-eight days after the claims bar date of _____; or

The Court entered an order on _____ setting _____ as the deadline to file the Motion.

D. Service of the Motion on the Affected Lien Holder complies with FRBP 7004 ("Rule 7004") as follows:

Service was accomplished under Rule 7004(h):

By certified mail addressed to a specifically named officer of the institution;

Other:

OR

The Affected Lien Holder is **not** an Insured Depository Institution, as defined in section 3 of the Federal Deposit Insurance Act and 11 U.S.C. § 101(35), and service was made by first-class mail:

Upon an individual under Rule 7004(b)(1);

Upon a domestic or foreign corporation or upon a partnership or other unincorporated association under Rule 7004(b)(3); or

Other:

E. Service on Proof of Claim Address:

Affected Lien Holder was served at the address designated for receipt of notices and to the attention of the person filing the Claim; or

As of the date of this Motion, Affected Lien Holder has *not* filed a proof of claim.

F. Value of the Property is: _____, as of _____. This opinion of value is based on the following admissible evidence:

Declaration of Appraiser or Real Estate Broker

Declaration of Owner based on personal familiarity with the Property, or

Other:

and is attached as Exhibit _____.

G. Senior Debt: The deeds of trust, mortgages or other liens encumbering the Property which are senior in priority to the Affected Lien (“Senior Debt”):

Creditor	Priority	Balance Owed/Date

This information is supported by admissible evidence (e.g. Proof of Claim attached as exhibit or a recent statement from the Creditor, submitted with the Debtor’s declaration)

Total Senior Debt: _____

Prayer:

Wherefore, Debtor prays that this Court issue an Order which finds and determines that:

1. The Property is valued at no more than \$ _____;
2. The balance owing on the Senior Debt exceeds the value of the Property and the Affected Lien is wholly unsecured and the Claim may be satisfied through the Plan as an unsecured claim;
3. The Claim will be paid pursuant to the Plan as a non-priority general unsecured claim to the extent allowed. If Affected Lien Holder has not filed a proof of claim, and the deadline to file unsecured claims has expired, Affected Lien Holder has an extension of the deadline until 60 days after the date of entry of the Order;
4. Upon completion of payments under the confirmed Plan, and entry of the resulting discharge, the Affected Lien will be deemed fully satisfied, and Affected Lien Holder is required to reconvey and release the Affected Lien. If the Affected Lien Holder fails to release the Affected Lien within the time required by applicable state law, the Debtor may file a motion requesting an order to extinguish the Affected Lien;
5. If this case is dismissed or converted to Chapter 7, the Affected Lien Holder will retain its lien for the full amount due under the corresponding note;
6. Debtor’s counsel is authorized to add, in connection with Plan Confirmation, the guideline fee as reflected in the Rights and Responsibilities Statement for motions of this type and costs subject to proof, or additional fees through fee application.
7. See attached continuation page for additional provisions.

Dated: _____

[Attorney for] Debtor