*[****INDIVIDUAL*** *DEBTOR WITH* ***JOINT TENANCY*** *USING* ***HOMESTEAD****]*

*[****PARTIAL*** *AVOIDANCE]*[[1]](#footnote-2)

**UNITED STATES BANKRUPTCY COURT**

**EASTERN DISTRICT OF NORTH CAROLINA**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DIVISION**

|  |  |
| --- | --- |
| **IN RE:** |  |
| **XXXXXXXXX** | **CASE NO. XX-XXXXX-XXX** |
| **DEBTOR** | **CHAPTER XX** |

**MOTION TO AVOID JUDICIAL LIEN OF –*state name of lienholder*–**

Now comes \_\_\_\_\_ (“Debtor”), by and through counsel, and moves to avoid the judicial lien of \_\_\_\_\_ (“-*define the lienholder*-”) pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 of the Federal Rules of Bankruptcy Procedure and states as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157, and 1334. The court has the authority to hear this matter pursuant to the General Order of Reference entered August 3, 1984 by the United States District Court for the Eastern District of North Carolina.
2. The Debtor filed a petition for relief under Chapter \_\_\_ of the United States Bankruptcy Code on \_\_\_\_\_ (“Petition Date”).
3. The Debtor owns as joint tenants with \_\_\_\_\_[[2]](#footnote-3) real property described as \_\_\_\_\_ (“Property”) having a value of $\_\_\_\_\_ as of the Petition Date. The Debtor has a \_\_\_\_\_[[3]](#footnote-4) interest in the Property.
4. The Property is the Debtor’s residence, and the Debtor could claim an exemption in the amount of $35,000.00[[4]](#footnote-5) pursuant to N.C. Gen. Stat. § 1C-1601(a)(1) if there were no liens on the Property.
5. *[if applicable]* The Property is encumbered by a first priority deed of trust in favor of \_\_\_\_\_ (“1st Mortgage Creditor”). As of the Petition Date, the obligation owed to the 1st Mortgage Creditor had an unpaid balance of $\_\_\_\_\_.
6. *[if applicable]* The Property is encumbered by a second priority deed of trust in favor of \_\_\_\_\_ (“2nd Mortgage Creditor”). As of the Petition Date, the obligation owed to the 2nd Mortgage Creditor had an unpaid balance of $\_\_\_\_\_.
7. \_\_\_\_\_ (“1st Lien Creditor”)[[5]](#footnote-6) obtained a judgment against the Debtor as referenced in file \_\_-\_\_\_-\_\_\_ in the Office of the Clerk of Court of \_\_\_\_\_ County in the amount of $\_\_\_\_\_\_\_\_, including interest and attorney’s fees, as of the Petition Date. That judgment constitutes a judicial lien encumbering the Property.
8. \_\_\_\_\_ (*previously defined name of lienholder*) obtained a judgment against the Debtor as referenced in file \_\_-\_\_\_-\_\_\_ in the Office of the Clerk of Court of \_\_\_\_\_ County in the amount of $\_\_\_\_\_\_\_\_, including interest and attorney’s fees, as of the Petition Date. That judgment constitutes a judicial lien encumbering the Property.
9. When the sum of the consensual mortgage liens on the Property is subtracted from the value of the Property, the result is $\_\_\_\_\_\_\_\_, which is the total equity in the Property absent any judicial liens. The value of the Debtor’s interest in this equity (“Debtor’s Equity”) is \_\_\_\_\_ of this amount, or $\_\_\_\_\_.[[6]](#footnote-7)
10. Deducting the amount of the exemption the Debtor could claim if there were no liens on the Property and deducting the balance of any senior liens as of the Petition Date from the Debtor’s Equity results in an amount that is less than the balance of the lien held by \_\_\_\_\_ (*previously defined name of lienholder*); therefore, the judicial lien of \_\_\_\_\_ (*previously defined name of lienholder*) impairs an exemption pursuant to 11 U.S.C. § 522(f)(2)(A) and *In re Powers*, No. 14-06943-5-SWH, 2016 Bankr. LEXIS 2180, 2016 WL 3344247 (Bankr. E.D.N.C. June 2, 2016) and is subject to partial avoidance pursuant to 11 U.S.C. § 522(f)(1). The calculations are as follows:

|  |  |
| --- | --- |
| Value of Property | $\_\_\_\_\_ |
| *[if applicable]* Less: balance owed to 1st Mortgage Creditor | $\_\_\_\_\_ |
| *[if applicable]* Less: balance owed to2nd Mortgage Creditor | $\_\_\_\_\_ |
| Equals total equity in Property absent any judicial liens | $\_\_\_\_\_ |
| Multiplied by Debtor’s fractional interest in the Property |  |
| Equals Debtor’s Equity | $\_\_\_\_\_ |
| Less: Exemption | $\_\_\_\_\_ |
| *[if applicable]* Less: Sum of all senior judicial liens | $\_\_\_\_\_ |
| Equals amount of lien that is unavoidable | $\_\_\_\_\_[[7]](#footnote-8) |
| Amount of lien avoided (balance of lien minus unavoidable amount) | $\_\_\_\_\_[[8]](#footnote-9) |

Wherefore, the Debtor prays for the court to grant the following relief:

1. To avoid and cancel the lien held by \_\_\_\_\_ (*previously defined name of lienholder*) pursuant to a judgment referenced in file \_\_-\_\_\_-\_\_\_ in the Office of the Clerk of Court of \_\_\_\_\_ County, to the extent of the sum of $\_\_\_\_\_, with the balance of the lien in excess of that $\_\_\_\_\_ amount to remain as a lien against the Property to the extent enforceable under state law;
2. To enter an Order stating that that portion of the lien held by \_\_\_\_\_ (*previously defined name of lienholder*) shall have no further force and effect with respect to that amount upon the Debtor’s interest in the Property, subject to the condition that if this case is dismissed then, pursuant to 11 U.S.C. § 349(b)(1)(B), the lien held by \_\_\_\_\_ (*previously defined name of lienholder*) shall remain valid and enforceable and shall continue to encumber the Debtor’s interest in the Property; and
3. To grant such other relief as the court deems just and appropriate.

Dated:

Counsel Signature Block

1. The title at the top and the footnotes are for illustration only and not to be part of the form. [↑](#footnote-ref-2)
2. In this example the Property is owned with one or more third parties, so the Debtor has a fractional undivided interest. [↑](#footnote-ref-3)
3. State the fraction or percentage of the ownership, *e.g.*, 1/2, 2/3, 20%, *etc.* [↑](#footnote-ref-4)
4. No reservation has been made in this case for the Wildcard Exemption (N.C. Gen. Stat. § 1C-1601(a)(2)), but a debtor may reserve up to $5,000 of the Homestead Exemption to use for the Wildcard Exemption. The amount of the Homestead Exemption must be **reduced** if a portion is being used under the Wildcard Exemption. The Debtor may also elect to use only a portion of the exemption with respect to the Property. [↑](#footnote-ref-5)
5. In this example the 2nd Judicial Lien is sought to be avoided. If the value of the Property were less and allowed for avoidance of the 1st Judicial Lien, then that Motion would need to be filed **after** the avoidance of the 2nd Judicial Lien. 11 U.S.C. § 522(f)(2)(B). If there is only one judicial lien against the Property, this paragraph about the 1st Lien Creditor is not necessary. [↑](#footnote-ref-6)
6. The fractional interest the Debtor has in the Property should be applied to the total equity in the Property absent any judicial liens. For example, if the Property has a value of $150,000.00, the total amount owed to all mortgage creditors is $100,000.00 and the Debtor has a ½ interest in the Property, the Debtor’s share of the equity is $150,000.00 minus $100,000.00, multiplied by ½, or $25,000.00. *See In re Powers*, No. 14-06943-5-SWH, 2016 Bankr. LEXIS 2180, 2016 WL 3344247 (Bankr. E.D.N.C. June 2, 2016). [↑](#footnote-ref-7)
7. If this amount is zero or negative, then the lien can be avoided in full and the form motion for full lien avoidance should be used. [↑](#footnote-ref-8)
8. In this example, the amount of the equity in the Property prevented the judicial lien from being avoided in full. [↑](#footnote-ref-9)