*[****JOINT*** *DEBTORS WITH* ***ENTIRETIES*** *PROPERTY*

*JOINT JUDGMENT USING* ***HOMESTEAD****]*

*[****FULL*** *AVOIDANCE]*[[1]](#footnote-1)

**UNITED STATES BANKRUPTCY COURT**

**EASTERN DISTRICT OF NORTH CAROLINA**

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

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

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

Now come \_\_\_\_\_ and \_\_\_\_\_ (“Debtors”), by and through counsel, and move 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 by showing unto the court the following:

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 Debtors filed a petition for relief under Chapter \_\_\_ of the United States Bankruptcy Code on \_\_\_\_\_ (“Petition Date”).
3. The Debtors own as tenants by the entirety[[2]](#footnote-2) real property described as \_\_\_\_\_ (“Property”) having a value of \_\_\_\_\_ as of the Petition Date.
4. The Property is the Debtors’ residence, and the Debtors could claim an exemption in the amount of $70,000.00[[3]](#footnote-3) 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”)[[4]](#footnote-4) obtained a judgment against the Debtors 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 Debtors[[5]](#footnote-5) 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. Pursuant to 11 U.S.C. § 522(f)(2)(A), “a lien shall be considered to impair an exemption to the extent that the sum of (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor’s interest in the property would have in the absence of any liens.”
10. The total amount of the liens on the Property plus the amount of the exemption the Debtors could claim if there were no liens on the Property exceeds the value the Debtors’ interest in the Property would have in the absence of any liens; therefore, the judicial lien of \_\_\_\_\_ (*previously defined name of lienholder*) impairs an exemption pursuant to 11 U.S.C. § 522(f)(2)(A) and is subject to avoidance pursuant to 11 U.S.C. § 522(f)(1). The calculations are as follows:

|  |  |
| --- | --- |
| *[if applicable]* 1st Mortgage Creditor | $\_\_\_\_\_ |
| *[if applicable]* 2nd Mortgage Creditor | $\_\_\_\_\_ |
| *[if applicable]* 1st Lien Creditor | $\_\_\_\_\_ |
| (*previously defined name of lienholder*)[[6]](#footnote-6) | $\_\_\_\_\_ |
| Exemption | $\_\_\_\_\_ |
| Total Liens and Exemption | $\_\_\_\_\_ |
| Less: Property Value | ($\_\_\_\_\_) |
| Amount of Impairment | $\_\_\_\_\_[[7]](#footnote-7) |
| Amount of Lien Avoided | $\_\_\_\_\_ |

Wherefore, the Debtors pray 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 in the full amount of the judgment;
2. To enter an Order stating that the lien held by \_\_\_\_\_ (*previously defined name of lienholder*) shall have no further force and effect upon 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 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-1)
2. If the Property is owned as tenants-in-common or as joint tenants with a non-filing owner, use the form for individual debtors with joint ownership. Do not use this form. This form is for tenancy by the entirety. [↑](#footnote-ref-2)
3. In this case we have joint debtors who are married and own the property in tenancy by the entirety. If a debtor files an individual case, the Homestead Exemption is $35,000 under current law. No reservation has been made in this case for the Wildcard Exemption (N.C. Gen. Stat. § 1C-1601(a)(2)), but joint debtors may reserve up to $10,000 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 Debtors may also elect to use only a portion of the exemption with respect to the Property. [↑](#footnote-ref-3)
4. In this example the 2nd Judicial Lien is sought to be avoided. Either the Property has sufficient equity that the lien with higher priority held by the 1st Lien Creditor cannot be avoided, or the 1st Lien Creditor’s lien will be avoided under a subsequent motion. If the value of the Property allows for avoidance of the 1st Judicial Lien, then that Motion would need to be filed **after** the Motion seeking 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-4)
5. If the judgment is only against one of the Debtors, then the judgment does not constitute a lien against entireties property and no Motion to Avoid Lien should be filed. [↑](#footnote-ref-5)
6. Lien to be avoided. [↑](#footnote-ref-6)
7. If this amount is zero or negative, then the lien cannot be avoided. If this amount is greater than zero but less than the lien amount, then the lien can only be avoided up to this amount, and the form motion for partial lien avoidance should be used. [↑](#footnote-ref-7)