

Hypothetical #1:

Chapter 7 Debtor files bankruptcy. Debtor schedules residential real estate valued at \$150,000.00. The Debtor also schedules a first mortgage securing a debt of \$100,000.00, a second mortgage securing a debt of \$20,000.00, and tax liens securing debt of \$6,325.00.

The real estate is also encumbered by the following judicial liens in the order of highest priority to lowest priority:

- (1) Judicial Lien #1 recorded 1/1/17 - \$1,000.00
- (2) Judicial Lien #2 recorded 2/1/17 - \$2,000.00
- (3) Judicial Lien #3 recorded 3/1/17 - \$3,000.00
- (4) Judicial Lien #4 recorded 4/1/17 - \$4,000.00

The Debtor claims the full exemption of \$23,675.00 pursuant to 11 U.S.C. § 522(d)(1).

Are any of the liens avoidable under § 522(f)?

Hypothetical #1 Order:

ORDER AVOIDING JUDICIAL LIEN

This matter is before the Court on the Debtor's Motion to Avoid Liens pursuant to 11 U.S.C. § 522(f)(1)(A) (the "Motion"). The Debtor represents that the following judicial liens impair an exemption to which the Debtor would have been entitled under 11 U.S.C. § 522(b) (listed in order of highest priority to lowest priority):

Name of Lienholder	Collateral ¹	Location	Book/Page	Amount Owed
Judicial Lien #1				\$1,000.00
Judicial Lien #2				\$2,000.00
Judicial Lien #3				\$3,000.00
Judicial Lien #4				\$4,000.00
(Add lines if necessary.)			TOTAL:	\$10,000.00

The Debtor states the liens held by the Lienholders impair the Debtor's exemption in the Real Property as follows:

A. Amount of lien to be avoided:	\$4,000.00 ²
B. Amount of all other liens:	\$132,325.00 ³
C. Value of claimed exemption:	\$23,675.00
Statutory basis for exemption:	§ 522(d)(1)
D. Total of adding lines A, B, and C:	\$160,000.00
E. Value of debtor(s)' interest in property:	\$150,000.00
F. Subtract line E from line D:	\$10,000.00
G. Extent of Impairment:	Line F is greater than line A, so the entire lien is avoided.

¹ Although the columns are blank for the purpose of this hypothetical, the expectation is that counsel will fill in a description of the property, its location, and book/page columns with the necessary identifying information.

² The liens should be calculated in reverse priority as the lien with the highest priority will be the first to attach to any remaining equity.

³ This amount represents the first mortgage (\$100,000.00), second mortgage (\$20,000.00), tax liens (\$6,325.00) and the remaining judicial liens that are not yet avoided (\$3,000.00 + \$2,000.00 + \$1,000.00 = \$6,000.00).

A. Amount of lien to be avoided:	\$3,000.00
B. Amount of all other liens:	\$129,325.00 ⁴
C. Value of claimed exemption:	\$23,675.00
Statutory basis for exemption:	§ 522(d)(1)
D. Total of adding lines A, B, and C:	\$156,000.00
E. Value of debtor(s)' interest in property:	\$150,000.00
F. Subtract line E from line D:	\$6,000.00
G. Extent of Impairment:	Line F greater than line A, so the entire lien is avoided.

A. Amount of lien to be avoided:	\$2,000.00
B. Amount of all other liens:	\$127,325.00 ⁵
C. Value of claimed exemption:	\$23,675.00
Statutory basis for exemption:	§ 522(d)(1)
D. Total of adding lines A, B, and C:	\$153,000.00
E. Value of debtor(s)' interest in property:	\$150,000.00
F. Subtract line E from line D:	\$3,000.00
G. Extent of Impairment:	Line F is greater than line A, so the entire lien is avoided.

⁴ This amount represents the first mortgage (\$100,000.00), second mortgage (\$20,000.00), tax liens (\$6,325.00) and the remaining judicial liens that are not yet avoided ($\$2,000.00 + \$1,000.00 = \$3,000.00$).

⁵ This amount represents the first mortgage (\$100,000.00), second mortgage (\$20,000.00), tax liens (\$6,325.00) and the remaining judicial liens that are not yet avoided (\$1,000.00).

A. Amount of lien to be avoided:	\$1,000.00
B. Amount of all other liens:	\$126,325.00 ⁶
C. Value of claimed exemption:	\$23,675.00
Statutory basis for exemption:	§ 522(d)(1)
D. Total of adding lines A, B, and C:	\$151,000.00
E. Value of debtor(s)' interest in property:	\$150,000.00
F. Subtract line E from line D:	\$1,000.00
G. Extent of Impairment:	Line F is equal to line A, so the entire lien is avoided.

The Court having reviewed the record and being otherwise sufficiently advised, it is ORDERED:

1. The Motion is GRANTED;
2. Judicial Liens #1, #2, #3, and #4 are AVOIDED and no longer have any force or effect pursuant to the terms of 11 U.S.C. § 522(f)(1)(A);
3. Unless the Debtor's bankruptcy case is dismissed, the avoided portion of the Lienholders' judicial liens will not survive the bankruptcy case or affix to or remain enforceable against Debtor's interest in the Real Property; and
4. The Lienholders shall release their fully avoided lien within 30 days of the entry of this Order. If the Lienholders fail to act within 30 days, the Debtor is authorized to present this Order to the applicable recording office and the designated recording officer shall record this Order in the applicable lien records.

⁶ This amount represents the first mortgage (\$100,000.00), second mortgage (\$20,000.00), tax liens (\$6,325.00) and the remaining judicial liens that are not yet avoided (\$0).

Hypothetical #2:

Chapter 7 Debtor files bankruptcy. Debtor schedules residential real estate valued at \$170,000.00. The Debtor also schedules a first mortgage securing a debt of \$100,000.00, a second mortgage securing a debt of \$20,000.00, and tax liens securing debt of \$6,325.00.

The real estate is also encumbered by the following judicial liens in the order of highest priority to lowest priority:

- (1) Judicial Lien #1 recorded 1/1/17 - \$1,000.00
- (2) Judicial Lien #2 recorded 2/1/17 - \$2,000.00
- (3) Judicial Lien #3 recorded 3/1/17 - \$3,000.00
- (4) Judicial Lien #4 recorded 4/1/17 - \$4,000.00

The Debtor claims the full exemption of \$23,675.00 pursuant to 11 U.S.C. § 522(d)(1).

Are any of the liens avoidable under § 522(f)?

Hypothetical #2 Order:

ORDER AVOIDING JUDICIAL LIEN

This matter is before the Court on the Debtor's Motion to Avoid Liens pursuant to 11 U.S.C. § 522(f)(1)(A) (the "Motion"). The Debtor represents that the following judicial liens impair an exemption to which the Debtor would have been entitled under 11 U.S.C. § 522(b) (listed in order of highest priority to lowest priority):

Name of Lienholder	Collateral	Location	Book/Page	Amount Owed
Judicial Lien #1				\$1,000.00
Judicial Lien #2				\$2,000.00
Judicial Lien #3				\$3,000.00
Judicial Lien #4				\$4,000.00
(Add lines if necessary.)				TOTAL: \$10,000.00

The Debtor states the liens held by Lienholders impair the Debtor's exemption in the Real Property as follow (insert additional claims as needed):

A. Amount of lien to be avoided:	\$4,000.00 ⁷
B. Amount of all other liens:	\$132,325.00 ⁸
C. Value of claimed exemption:	\$23,675.00
Statutory basis for exemption:	§ 522(d)(1)
D. Total of adding lines A, B, and C:	\$160,000.00
E. Value of debtor(s)' interest in property:	\$170,000.00
F. Subtract line E from line D:	(\$10,000.00) ⁹
G. Extent of Impairment:	None.

⁷ The liens should be calculated in reverse priority as the lien with the highest priority will be the first to attach to any remaining equity.

⁸ This amount represents the first mortgage (\$100,000.00), second mortgage (\$20,000.00), tax liens (\$6,325.00) and the remaining judicial liens that are not yet avoided (\$3,000.00 + \$2,000.00 + \$1,000.00 = \$6,000.00).

⁹ Line F (-\$10,000.00) is less than Line A (\$4,000.00). The form order states that in this circumstance, a portion of the lien is avoidable. But in this instance, Line F is less than \$0, with \$0 representing no impairment. Line F in this calculation shows that there is \$10,000.00 in equity even after Judicial Liens #1-4 are satisfied. So Judicial Liens #1-4 are not avoidable. There is no need to go further with the calculation and/or file a motion because there is sufficient equity for all judicial liens to attach.

Hypothetical #3:

Chapter 7 Debtor files bankruptcy. Debtor schedules residential real estate valued at \$154,500.00. The Debtor also schedules a first mortgage securing a debt of \$100,000.00, a second mortgage securing a debt of \$20,000.00, and tax liens securing debt of \$6,325.00.

The real estate is also encumbered by the following judicial liens in the order of highest priority to lowest priority:

- (1) Judicial Lien #1 recorded 1/1/17 - \$1,000.00
- (2) Judicial Lien #2 recorded 2/1/17 - \$2,000.00
- (3) Judicial Lien #3 recorded 3/1/17 - \$3,000.00
- (4) Judicial Lien #4 recorded 4/1/17 - \$4,000.00

The Debtor claims the full exemption of \$23,675.00 pursuant to 11 U.S.C. § 522(d)(1).

Are any of the liens avoidable under § 522(f)?

Hypothetical #3 Order:

ORDER AVOIDING JUDICIAL LIEN

This matter is before the Court on the Debtor's Motion to Avoid Liens pursuant to 11 U.S.C. § 522(f)(1)(A) (the "Motion"). The Debtor represents that the following judicial liens impair an exemption to which the Debtor would have been entitled under 11 U.S.C. § 522(b) (listed in order of highest priority to lowest priority):

Name of Lienholder	Collateral	Location	Book/Page	Amount Owed
Judicial Lien #1				\$1,000.00
Judicial Lien #2				\$2,000.00
Judicial Lien #3				\$3,000.00
Judicial Lien #4				\$4,000.00
(Add lines if necessary.)				TOTAL: \$10,000.00

The Debtor states the liens held by Lienholders impair the Debtor's exemption in the Real Property as follow (insert additional claims as needed):

A. Amount of lien to be avoided:	\$4,000.00
B. Amount of all other liens:	\$132,325.00 ¹⁰
C. Value of claimed exemption:	\$23,675.00
Statutory basis for exemption:	§ 522(d)(1)
D. Total of adding lines A, B, and C:	\$160,000.00
E. Value of debtor(s)' interest in property:	\$154,500
F. Subtract line E from line D:	\$5,500.00 ¹¹
G. Extent of Impairment:	Line F greater than line A, so the entire lien is avoided.

¹⁰ This amount represents the first mortgage (\$100,000.00), second mortgage (\$20,000.00), tax liens (\$6,325.00) and the remaining judicial liens that are not yet avoided (\$3,000.00 + \$2,000.00 + \$1,000.00 = \$6,000).

¹¹ Line F (\$5,500.00) is greater than Line A (\$4,000.00), so Judicial Lien #4 is completely avoidable.

A. Amount of lien to be avoided:	\$3,000.00
B. Amount of all other liens:	\$129,325.00 ¹²
C. Value of claimed exemption:	\$23,675.00
Statutory basis for exemption:	§ 522(d)(1)
D. Total of adding lines A, B, and C:	\$156,000.00
E. Value of debtor(s)' interest in property:	\$154,500
F. Subtract line E from line D:	\$1,500.00 ¹³
G. Extent of Impairment:	Line F is less than line A, so a portion of the lien is avoided.

The Court having reviewed the record and being otherwise sufficiently advised, it is ORDERED:

1. The Motion is GRANTED IN PART AND DENIED IN PART;
2. Judicial Lien #4 is AVOIDED and no longer have any force or effect pursuant to the terms of 11 U.S.C. § 522(f)(1)(A);
3. Judicial Lien #3 is PARTIALLY AVOIDED and is now a lien against the Real Property only in the amount of \$1,500.00 pursuant to the terms of 11 U.S.C. § 522(f)(1)(A);
4. Unless the Debtor's bankruptcy case is dismissed, the avoided portion of the Lienholder's judicial lien will not survive the bankruptcy case or affix to or remain enforceable against Debtor's interest in the Real Property; and
5. The Lienholder shall release a fully avoided lien or liens, or partially release a partially avoided lien or liens, within 30 days of the entry of this Order. If the Lienholder fails to act within 30 days, the Debtor is authorized to present this Order to the applicable recording office and the designated recording officer shall record this Order in the applicable lien records.

¹² This amount represents the first mortgage (\$100,000.00), second mortgage (\$20,000.00), tax liens (\$6,325.00) and the remaining portion of judicial liens that are unavoidable or not yet avoided (\$2,000 + \$1,000.00 = \$3,000.00).

¹³ Line F (\$1,500.00) is less than Line A (\$3,000.00), so Judicial Lien #3 is only partially avoidable. What is left is a positive number which shows the amount of the impairment. Judicial Lien #3 impairs the Debtor's exemption by only \$1,500.00 so the lien is only partially avoidable to that extent. For a lien that secures \$3,000.00 in debt, the result is that lien may continue to secure \$1,500.00 of the debt. As for the remaining judicial liens, there is no need to continue with the calculations as none of the remaining senior liens are avoidable.