

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI**

| | | |
|------------------------------------|---|--|
| In re: |) | |
| |) | |
| Name of Debtor(s), |) | Case No. |
| Movant/Debtor. |) | |
| |) | Chapter ____ |
| vs. |) | |
| |) | |
| Name of Creditor, |) | EXAMPLE – (sample dollar values |
| Serve: |) | shown to illustrate partial lien avoidance |
| Name of Person to be Served |) | calculation) |
| |) | |
| Respondent/Creditor. |) | |

CERTIFICATION OF NO RESPONSE

The undersigned certifies that he/she served all parties in accordance with the applicable Bankruptcy Rules; that at least 14 days have passed since service of Debtor's Motion to Avoid Judicial Lien; and that he/she has received no response in opposition to this Motion to Avoid Judicial Lien, or that any opposition has been resolved.

Dated: _____

Attorney Name, Fed. & State Bar #
Attorney for Movant/Debtor
Address
City, State, Zip Code
Phone: Fax:
e-mail

ORDER AVOIDING JUDICIAL LIEN ON REAL ESTATE

This matter is before the Court on the above-referenced Debtor's Motion to Avoid Judicial Lien on Real Estate. No response has been filed by the creditor **[name of creditor]** or any response has been resolved as stated below. The Court makes the following findings:

1. On or about **[date]**, **[name of creditor]** obtained a judgment against the Debtor and obtained a lien against the Debtor's real property located at **[address of property]**.

The judgment is entered of record in [style of case, case number], in [court name, division and location]. The amount of the judgment is \$ [dollar amount] plus court costs and attorneys' fees, which constitutes the amount of the lien.

2. The fair market value of the real estate owned by Debtor and subject to the judicial lien is \$ [dollar amount].
3. The Debtor claims an exemption in the subject property in the amount of \$ [dollar amount].
4. At the time Debtor filed this bankruptcy petition, this real estate was subject to consensual mortgage lien(s) and other liens in the amount of \$ [dollar amount].
5. At the time Debtor filed this bankruptcy petition, the Creditor's judicial lien secured an indebtedness in the amount of \$ [dollar amount]

The Court makes the following conclusions of law:

6. Pursuant to 11 U.S.C. Sec. 522(f), Debtor is entitled to avoid the Creditor's judicial lien to the extent it impairs the Debtor's exemption(s).
7. The Creditor's judicial lien impairs the Debtor's exemption to the extent that the sum of the lien, all other liens on the real estate, and the amount of the Debtor's exemption exceeds the value that the Debtor's interest in the property would have in the absence of any liens. The applicable formula as set forth in *Kolich v. Antioch Laurel Veterinary Hospital Inc. (In re Kolich)*, 273 B.R. 199 (B.A.P. 8th Cir. 2002) *aff'd* 328 F.3d 406 (8th Cir. 2003) is:

| | |
|--|-----------------------|
| <i>Creditor's Judicial Lien</i> | <u>[\$14,822.85]</u> |
| <i>Plus all other liens</i> | <u>[\$140,000.00]</u> |
| <i>Plus exemptions</i> | <u>[\$15,000.00]</u> |
| <i>Total</i> | <u>[\$169,822.85]</u> |
| <i>Minus value of land interest absent liens</i> | <u>[\$165,000.00]</u> |
| <i>Extent of Impairment</i> | <u>[\$4,822.85]</u> |

1. The Creditor's judicial lien impairs Debtor's exemption, and therefore the judicial lien shall be avoided to the extent of the impairment.

ACCORDINGLY, IT IS HEREBY

ORDERED that the judicial lien held by [name of creditor], in and on Debtor's real estate at [address of property] created by the judgment entered of record in [style of case, case number], in [court name, division and location], in the amount of \$ [dollar amount]

amount, is hereby avoided in full. /OR/ is hereby avoided to the extent the lien impairs Debtor's exemptions, and such judgment shall continue to be a lien against such property only in the amount of \$[dollar amount].

IT IS FURTHER ORDERED that unless Debtor's bankruptcy case is dismissed, [name of creditor] shall take all steps necessary and appropriate to release the judicial lien and remove it from the local judgment index in accordance with this order.

IT IS FURTHER ORDERED that the judicial lien of [name of creditor] shall be reinstated in its entirety upon dismissal of the Debtor's bankruptcy case.

Dated: _____

United States Bankruptcy Judge

Copies mailed to:

Trustee
Address
City, State, Zip Code

Creditor
Respondent
Address
City, State, Zip Code

Respondent's Service Recipient
Address
City, State, Zip Code

Debtor
Address
City, State, Zip Cod

Other Lien Holders
Address
City, State, Zip Code

Creditors Filing Proofs of Claim (Chapter 13 Cases - only)
Address
City, State, Zip Code

06/12