

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 lien avoidance
Name of Person to be Served)	calculation)
)	
Respondent/Creditor.)	

**NOTICE AND MOTION TO AVOID NONPOSSESSORY, NONPURCHASE-MONEY
SECURITY INTEREST OF [NAME OF CREDITOR]**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY.

YOU MUST FILE AND SERVE YOUR RESPONSE BY [DATE THAT IS 21 DAYS AFTER SERVICE]. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU.

IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING, THE DATE OF WHICH WILL BE SENT TO YOU IF YOU FILE A RESPONSE. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

1. **[Name of debtor]** (the “Debtor”) commenced this case on **[date of petition]** by filing a petition for relief under Chapter **[chapter number]** of the United States Bankruptcy Code.

2. This Court has jurisdiction under 28 U.S.C. § 1334 and E.D. Mo. L.R. 9.01 to avoid nonpossessory, nonpurchase-money security interests in certain property pursuant to 11 U.S.C. § 522(f).

3. The Debtor has an interest in the following property (the “Property”):
 [provide specific description of each item of personal property].

4. The Property constitutes household goods held primarily for the personal, family, or household use of the Debtor or a dependent of the Debtor, or another type of personal property described in 11 U.S.C. § 522(f)(1)(B). [Unless it is obvious that the Property fits within one or more of the categories in the statute, provide an explanation. For example, “The iPad is a ‘personal computer,’ as that term is used in § 522(f)(4)(xv);” or “The John Deere lawn tractor is a tool of the trade of the Debtor’s dependent child, who owns and operates a lawn-care business.”]

5. The Debtor claims one or more exemptions in the Property in the amount of \$ [dollar amount]. [Note that multiple calculations may be required if different exemptions apply to different assets.]

6. On [date], [name of creditor] (the “Creditor”) obtained a security interest in the Property to secure an obligation in the amount of \$ [dollar amount of original debt] pursuant to [description of documents giving rise to the security interest]. The Creditor did not finance the Debtor’s acquisition of the Property in whole or in part. The Creditor does not have possession of any of the Property.

7. The fair market value of the Property subject to the security interest is \$ [dollar amount].

8. At the time this bankruptcy case was filed, the Property was subject to other liens in the amount of \$ [dollar amount].

9. At the time this bankruptcy case was filed, the Creditor’s security interest secured an indebtedness in the amount of \$ [dollar amount owed as of petition date].

10. The existence of the Creditor’s security interest in the Property impairs the exemption(s) to which the Debtor would be entitled under 11 U.S.C. § 522(b). 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:

1	<i>Creditor’s security interest</i>	\$1,500.00
2	<i>All other liens</i>	\$1,000.00
3	<i>Debtor’s exemption(s)</i>	\$3,000.00
4	<u>Total</u> <i>(sum of boxes 1-3)</i>	<u>\$5,500.00</u>
5	<i>Fair market value of the Property absent liens</i>	\$3,000.00
6	<u>Extent of impairment</u> <i>(subtract box 5 from box 4)</i>	<u>\$2,500.00</u>

11. [For full lien avoidance] The extent of impairment exceeds the amount of the Creditor's security interest so that the entire security interest should be avoided.

12. [For partial lien avoidance] The Creditor's security interest impairs the Debtor's exemption(s) to the extent of \$ [dollar amount] and the security interest should be avoided to the extent of the impairment.

WHEREFORE, the Debtor prays for an order avoiding the Creditor's security interest to the extent that the security interest impairs the Debtor's exemption(s), and for such additional or alternative relief as may be just and proper.

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

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion to Avoid Nonpossessory, Nonpurchase-money Security Interest was filed electronically with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court's CM/ECF System as listed on the Court's Electronic Mail Notice List and/or via Regular United States Mail Service, first class, postage fully pre-paid, to the parties listed below.

[List names and electronic addresses]

[List names and physical addresses]

/s/ Signature
Name
Address
City, State, Zip
Telephone
Facsimile
Email address

Service must comply with Fed. R. Bankr. P. 4003.