

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.)	

NOTICE AND MOTION TO AVOID JUDICIAL LIEN 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 WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. 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. Debtor **[name of debtor]** commenced this case on **[date of petition]** by filing a voluntary petition for relief under Chapter ____ of the United States Bankruptcy Code.
2. The Court has jurisdiction pursuant to 28 U.S.C. § 1334 to avoid and cancel the judicial lien held by **[name of creditor]** on real property of the Debtor pursuant to 11 U.S.C. § 522(f).

3. 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 and legal description (if available)]. 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.
4. For judgments taken in associate circuit court or in a different county than where the judgment was transcribed, the judgment was transcribed to the circuit court of [county name] under the style of [caption of case, case number] by filing a transcript of the judgment with that court on [date]. The amount of the transcribed judgment is \$ [dollar amount] plus court costs and attorneys' fees, which constitutes the amount of the lien.
5. The fair market value of the real estate owned by Debtor and subject to the judicial lien is \$ [dollar amount].
6. The Debtor claims an exemption in the property referred to in the preceding paragraph in the amount of \$ [dollar amount].
7. 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].
8. At the time Debtor filed this bankruptcy petition, the Creditor's judicial lien secured an indebtedness in the amount of \$ [dollar amount].
9. The existence of the [name of creditor's] lien on Debtor's real estate impairs exemptions 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:

<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>

10. The extent of impairment exceeds the amount of the Creditor's judicial lien so that the entire judicial lien should be avoided. **/OR/** The lien impairs Debtor's exemption to the extent of \$ [dollar amount], and the lien should be avoided to the extent of the impairment.

WHEREFORE, Debtor prays for an order against [name of creditor] avoiding and canceling the judicial lien in the above-mentioned property to the extent of the lien impairs Debtor's exemptions, and for such additional or alternative relief as may be just and proper.

Attorney Name, Fed. & State 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 the [insert name of the document] 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