

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :
AMENDMENT OF LOCAL RULE 4003-2 re: : BANKRUPTCY GENERAL ORDER
Requirement for Content and Service of Motions
to Avoid Lien : No. 12-003
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**GENERAL ORDER AMENDING LBR 4003-2 TO SPECIFY
CONTENT AND SERVICE REQUIREMENTS FOR MOTIONS TO AVOID LIEN**

Recently, the Court has observed instances in which debtors filing motions to avoid liens under 11 U.S.C. §522(f), Federal Rules of Bankruptcy Procedure 4003(d) and R.I. LBR 4003-2 (other than such motions contained in a Chapter 13 plan), have failed to set forth in the motion the required elements to establish entitlement to such relief. Moreover, the service of such motions have failed to provide proper notice to creditors and parties in interest at the addresses contained on the ECF mailing labels by case report. To assist the Bar and the Court in ensuring that motions to avoid liens fully comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and this Court’s Local Rules,

IT IS HEREBY ORDERED: that LBR 4003-2, entitled “Lien Avoidance” is **AMENDED** as highlighted below in **bold**, *italics* and strike-out:

(a) Content of Motion. A motion to avoid a lien pursuant to 11 U.S.C. § 522(f), other than one contained in a Chapter 13 plan, shall:

- (1) identify the holder of the judicial lien sought to be avoided,*
- (2) state the principal amount of the lien as of the date of the filing of the bankruptcy petition, and the date the lien was obtained;*
- (3) identify the property against which the lien is fixed, and the value of the debtor’s interest in the property;*
- (4) identify the holders of all other liens against the property, listing them in order of their priority, and state the amount of each such lien and the total of amount of all liens against the property;*
- (5) state whether debtor(s) previously avoided a lien against the property;*
- (6) state whether the debtor(s) elected exemptions under 11 U.S.C. § 522(b)(2) or 11 U.S.C. § 522(b)(3);*
- (7) identify the applicable statutory provision for the exemption claimed and the amount of the exemption that is allegedly impaired by the liens sought to be avoided;*
- (8) provide the calculation under the formula set forth in 11 U.S.C. § 522(f)(2)(A); and*
- (9) state whether the entire lien is voidable, or if the lien can only be partially avoided, the amount of the surviving lien.*

(b) ~~Motion; Service.~~ Service of Motion. *All such motions must be served upon* ~~Upon the filing of a motion to avoid a lien, a copy must be served on~~ the case trustee, the local office of the United States trustee, the lienholder and the lienholder’s counsel, if known, *utilizing to*

the extent applicable, the addresses listed on the most recent ECF Mailing Labels by Case¹ report as of the date service will be made. With respect to judicial liens against the property, if bankruptcy counsel for any such judicial lienholders is not known, then service shall also be made by first class mail upon counsel that represented any such judicial lienholders in the non-bankruptcy action in which the lien was obtained. If there was no counsel in such non-bankruptcy action, then the Certificate of Service must expressly indicate that review of the non-bankruptcy action was undertaken and no counsel was listed for the judicial lienholder. Movant shall file a certificate of service in accordance with [LBR 9013-3](#).

This order is effective immediately and shall apply to all cases filed on or after this date, and all cases pending in the Court as of this date.

ENTER:



Diane Finkle
U.S. Bankruptcy Judge

ORDER:



Susan M. Thurston
Clerk of Court

Dated: 11/26/12

¹ In the next release of ECF, the term "Mailing Labels by Case" will be changed to "Mailing Matrix by Case".