



United States Bankruptcy Court  
Northern District of Ohio  
Frank T. Bow Federal Building  
201 Cleveland Avenue, S.W.  
Canton, OH 44702  
*From the desk of Judge Russ Kendig*

TO: Counsel

RE: Motions and Orders to avoid liens or mortgages on real estate in Chapter 13 cases

DATE: December 21, 2005

## I. MOTIONS

A motion to avoid a lien or mortgage should not be granted merely because no opposition exists. The moving party is still required to meet the burden of proof. These motions need to include the following effective February 1, 2006:

1. Description of the property:
  - A. Its size, e.g. acreage or lot dimension
  - B. Full street address, including number and street, city, state and zip code
  - C. Legal description, including all permanent parcel numbers
  - D. Statement of the county and political subdivision of its location in the event this information is not included in the legal description. (Remember, many street addresses are for a city when the property is located in an area outside the city limits.)
2. A full description of the ownership interests, including the names of all persons or entities with ownership interests, and the form of title, e.g. joint and several tenancy, tenants in common or sole ownership, dower rights, etc.
3. A statement of value and the basis for the valuation. In a Chapter 13, you must attach the appraisal commissioned by the trustee;
4. A statement as to the priority and balance of each lien, along with an explanation of the basis for the statement as to the balance, e.g. the proof of claim filed in the case, the most recent billing statement, etc.

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## II. ORDERS

The order must include a specific description of the lien or mortgage such as volume/page, instrument number, date of recordation and the following language:

This order is not effective in the absence of the granting of the Chapter 13 discharge. County or state officials are ordered to release said lien(s) upon presentation of a copy of this order and a copy of the Chapter 13 discharge. The official may require the copies to be certified. If the official refuses to release the lien upon proper presentation of documents and fees, recordation of a certified copy of this order and a certified copy of the Chapter 13 discharge shall act as a release of the lien.