

How to Strip a Judgment Lien from your property

Many homeowners have found themselves in the position of owing money on a debt that they simply cannot repay. As a result, the homeowner is sued by a Creditor and, shortly thereafter, a corresponding judgment enters against the homeowner. When this happens, the Plaintiff often will attempt to collect the money from the judgment by requesting an execution or judicial lien be issued against the homeowner and will then place the judicial lien on the homeowner's house or car.

Many of my bankruptcy clients have come to me after this type of lien has been recorded against their property. A possible solution to this problem arises after a homeowner's unsecured debts have been discharged in bankruptcy. The reason is simple; the homeowner has a lien against the property and intends to file a bankruptcy case in order to discharge the lien and other unsecured debts, so that the homeowner will not owe any money to any creditors.

After a Chapter 7 discharge, a Debtor may avoid a judicial lien by filing a motion with the Bankruptcy Court. The legal theory pursuant to 11 U.S.C. § 522(f) is simple; to the extent a lien impairs an exemption to which the Debtor otherwise would have been entitled under the Bankruptcy laws, the Bankruptcy Court will grant a Chapter 7 Debtor's motion seeking to avoid a judicial lien if the Debtor's equity in the property is less than the amount protected under the applicable state and federal exemptions. More specifically, under the Massachusetts Homestead Act, which currently allows protection of up to \$500,000 in value for the land and buildings, where the Debtor recorded the declaration of homestead prior to the judgment lien attaching to the property (M.G.L. c.

188 § 1) and where the Creditor's lien fully impaired the Debtor's equity in the property. In re Lyons, 355 B.R. 287 (2006). Additionally, if a car has less than \$3,450 in equity a judicial lien can also be stripped from that property.

By way of example, if a Debtor's home was valued at \$325,000 and a mortgage was owed with a payoff of \$175,000, then, so long as the Debtor filed a Declaration of Homestead prior to a judicial lien of \$50,000 being attached to the property and the Debtor filed a Chapter 7 bankruptcy, that Debtor would be entitled to protect all of the equity in the property and, as such, the judicial lien would impair that exemption. Since the lien impairs the exemption, the Debtor could file a Motion with the Bankruptcy Court to strip the judicial lien in the Chapter 7 or Chapter 13 case and, upon the discharge of all unsecured debt, the lien would also be stripped. Thereafter, the order could be filed and recorded at the appropriate registry of deeds, demonstrating that the lien has been discharged.

It should be noted that under Massachusetts Law, if you prepare and file a declaration of homestead at the registry of deeds in your county, you can get a half million dollars in protection against unsecured creditors. However, as of March 2011, even if you never recorded the document you can still receive up to \$125,000 in protection.

In summary, when your home or car has a judicial lien (as opposed to a mortgage or car loan) attached to it in order to collect on a judgment, you can ask the Bankruptcy Court to remove the lien if it impairs the exemption allowed under the Bankruptcy Code.