Note:
1. Absent further order of the Eleventh Circuit Court of Appeals or the Supreme Court, the second sentence of decretal paragraph 1 below is no longer accurate. *See In re McNeal*, 2012 WL 116498.

2. When a strip-down or strip-off of a lien is a remedy available to a debtor, this order prescribes the proper procedure for a strip-down or strip-off of a lien against *any* real property in any case, not just the debtor's principal residence in a chapter 13 case.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re LIEN STRIPPING
IN CHAPTER 13 CASES

Administrative Order
TPA-2009-10

_____/

ORDER ESTABLISHING PROCEDURE FOR FILING MOTION ON NEGATIVE NOTICE TO DETERMINE SECURED STATUS AND TO STRIP JUNIOR LIEN ON DEBTOR'S PRINCIPAL RESIDENCE

Local Rule 2002-4 sets forth the specific types of matters that may be considered by the Court without a hearing if no party in interest requests a hearing under the negative notice procedures described in the rule. The types of matters listed in the rule do not specifically include a motion to determine secured status and to strip a junior lien on a debtor's principal residence. The rule does provide, however, that motions other than those listed may be filed by negative notice if permitted by the judge presiding over the case.

The judges resident in the Tampa and Fort Myers Divisions of the Middle District, after due consideration, have determined that motions to determine secured status and to strip junior liens on a debtor's principal residence should be included among the types of motions that may be filed on negative notice under Local Rule 2002-4, provided that the debtor complies with the procedures set forth in this Order. Accordingly, it is

ORDERED:

1. Chapter 13 Cases Only. Motions to determine secured status of junior liens on a debtor's principal residence and to strip off the liens may be filed on negative notice in Chapter 13 cases. Lien stripping is only available to debtors in Chapter 13 cases and is not available to debtors in Chapter 7 cases.

2. Timing of Motion. Motions to determine secured status of junior liens on the debtor's principal residence at $0 and to "strip off" such liens shall not be filed before the earlier of the time when: (a) the affected creditor has filed a proof of claim or (b) the expiration of the time to file claims (claims bar date). A premature motion will be denied without prejudice.

3. Contents of Motion. The contents of the motion shall include:

a. all known parties who may have an interest in the mortgage;

b. the loan number (formatted as xxxx1234) and recording information of all mortgage lien(s) affected by the motion;

c. the legal description and street address of the subject property;

d. the basis of the valuation – private appraisal, county valuation, or other; and

e. shall give interested parties 30 days to file an objection/request for hearing pursuant to the following "negative notice" legend, which shall be included in the first page of the motion:

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider this motion without further notice or hearing unless a party in interest files an objection within thirty (30) days from the date of service of this paper. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 801 N. Florida Avenue, Suite 555, Tampa Florida 33602-3899, and serve a copy on the movant's attorney, [Insert name and address, and any other appropriate person].

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

4. Verification. The motion shall be verified or supported by an affidavit or declaration (pursuant to 28 U.S.C. § 1746) of the debtor.

5. Service. The motion shall be served and the movant shall certify service on:

a. the appropriate persons required by Rule 7004 (b) (note in particular the requirements of Rule 7004 (h) for insured depository institutions);

b. the person who filed the mortgagee's proof of claim;

c. the attorney, if any, for such creditor; and

d. the Chapter 13 trustee.

6. Docketing. The motion shall be docketed in CM/ECF using the "Motion to Determine Secured Status (and strip lien if applicable)" docket event.

7. Plan Provision. The debtor's Chapter 13 plan shall provide for the stripping off of the lien, conditioned on the debtor's obtaining a discharge or on further order of the Court.

8. Form of Order. The movant shall submit the attached form of proposed order to the Clerk's Office through its e-orders program not later than ten (10) days after the expiration of the thirty (30)-day objection period. If attorney's fees are sought in the motion, then the title of the motion should reflect that, the title of the order should reflect the awarding of fees therein, and a decretal paragraph should be added to the proposed form of order to award the appropriate fees (as prescribed in the Court's Second Amendment to Order Establishing Presumptively Reasonable Debtor's Fee in Chapter 13 Cases (decretal paragraph 2.g.) entered August 26, 2009).

DONE and ORDERED in Tampa, Florida, on October 5, 2009.

MICHAEL G. WILLIAMSON
United States Bankruptcy Judge
Presiding Judge, Tampa Division

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No. 8:09-bk-00000-XXX
Chapter 13

Debtor.
_____/

ORDER GRANTING DEBTOR'S MOTION TO DETERMINE SECURED STATUS OF ABC MORTGAGE COMPANY AND TO STRIP LIEN EFFECTIVE UPON DISCHARGE

THIS CASE came on for consideration of the Debtor's Motion to Determine Secured Status of **ABC Mortgage Company** and to Strip Lien (the "Motion") (Doc. No. **XX**) pursuant to negative notice provisions of Local Rule 2002-4. The real property (the "Real Property") that is the subject of the Motion is located at **123 Maple Street, Tampa, Florida**, and is more particularly described as follows:

LEGAL DESCRIPTION

The Court, considering the Motion and the absence of any record objection to the relief requested in the Motion by any party in interest, deems the Motion to be uncontested. Accordingly, it is

ORDERED:

1. The Motion is GRANTED.

2. Claim No. **X** filed by **ABC Mortgage Company** shall be treated as an unsecured claim in this Chapter 13 case.

3. The mortgage on the Real Property held by **ABC Mortgage Company** recorded on **April 1, 2002**, at **Book XXXX, Pages XXXX, Instrument No. XXXX** of the official records of Hillsborough County, Florida, shall be deemed void, and shall be extinguished automatically, without further court order, upon entry of the Debtor's discharge in this Chapter 13 case, provided, however, that the Court reserves jurisdiction to consider, if appropriate, the avoidance of **ABC Mortgage Company's** mortgage lien prior to the entry of the Debtor's discharge.

4. This Order does not prohibit **ABC Mortgage Company** from asserting, at any time prior to the lien being avoided based on this Order and upon entry of the Debtor's discharge, any rights it may have as a defendant in any foreclosure proceeding brought by a senior mortgagee, including the right to claim excess proceeds from any foreclosure sale.

DONE and **ORDERED** in Chambers at Tampa, Florida, on _____.

_____
[Insert Judge]
United States Bankruptcy Judge