

## Instructions To Debtors' Counsel: 11 U.S.C. §§ 506 & 522(f) issues

See text highlighted in green below for Judge Bason's procedures

### **A. MOTION PRACTICE (USUAL PROCEDURE)**

**Step 1, case commencement:** File the plan with Attachment A. Serve the Plan per FRBP 2002, using the standard notice/cover sheet (F3015-1.02.NOTICE341CNFRM).

**Step 2, after obtaining appraisal:** File motion(s) with supporting evidence, and serve per FRBP 7004.

§ 506, Lam motion: Local Form F 4003-2.4.JR.LIEN.MOTION

§ 506, non-Lam motion: Local Form F 3012-1.MOTION.VALUATION

§ 522(f), real property: Local Form F 4003-2.1.AVOID.LIEN.RP.MOTION

§ 522(f), personal property: Local Form F 4003-2.1.AVOID.LIEN.PP.MOTION

**Step 3, § 506/522(f) hearing(s) & order(s):** After the hearing (or if there is no opposition/hearing) lodge your proposed order(s):

§ 506, Lam motion: Local Form F 4003-2.4.JR.LIEN.ORDER

§ 506, non-Lam motion: Local Form F 3012-1.ORDER.VALUATION

§ 522(f), real property: Local Form F 4003-2.1.AVOID.LIEN.RP.ORDER

§ 522(f), personal property: Local Form F 4003-2.1.AVOID.LIEN.PP.ORDER

**Step 4, confirmation order:** The chapter 13 trustee lodges a proposed confirmation order with Attachment A (the trustee copies the PDF Attachment A from the most recent plan filed by the debtor).

**B. PLAN ACTS AS THE MOTION (optional procedure: only for cases filed on or after 12/1/17)**

**Step 1, case commencement:** File a plan that serves as your 506/522(f) motion(s) – *i.e.*, check the appropriate boxes on p.1 (to alert lienholders that you’re using the Plan as your 506/522(f) motion) and include Attachment B, C, or D as applicable.

(a) serve the plan as usual: per FRBP 2002 *without* any evidence, using the standard notice/cover sheet (F3015-1.02.NOTICE341CNFRM)

AND

(b) serve affected lienholders per FRBP 7004 with the plan, the special notice/cover sheet (F3015-1.02.NOTICE341LIENCNRM), and the same evidence as you would use for a motion.

**Note:** If you do not yet have an appraisal (or other evidence) then include a statement to that effect (*e.g.*, attach a sheet stating, “Evidence to be provided with future amended plan”).

**Step 2, after obtaining appraisal (or other evidence):** File and serve amended plan (same as Step 1) with evidence.

**Step 3, § 506/522(f) hearing:** Follow your judge’s procedures about whether to have a separate hearing on this aspect of the plan (*e.g.*, if there is an opposition then the judge might hold hearings at the same time as regular § 506/522(f) motions are heard, or the judge might address these issues at a preliminary confirmation hearing).

**Judge Bason’s procedures:** The judge will address these issues initially at the confirmation hearing. If valuation is disputed, the judge will follow the same procedures as for regular motions under 11 U.S.C. §§ 506/522(f) (*i.e.*, he will address with the parties whether to continue the matter for both parties to obtain appraisals, and, once appraisals have been obtained, how to determine valuation – *e.g.*, by setting an evidentiary hearing, or by appointing a third appraiser as the court’s expert, or by reviewing the written record including declarations of each appraiser, or by some other method).

**Compensation:** The judge will allow the same fees for addressing §§ 506/522(f) issues in the chapter 13 plan as for separate motions. For example, suppose the plan itself serves as three motions affecting three liens: requests to affect two liens under § 506(a), one of which is unopposed and the other resolved by stipulation, and a request to affect one lien under § 522(f) which is opposed. In that situation counsel could charge (in addition to the basic RARA fee of \$5,000 or \$6,000) “no-look” fees of \$1,250 + \$1,500 (the standard charge for such § 506(a) motions) plus the greater of \$750 (the “no look” fee for a § 522(f) motion) or the fees for actual and reasonable time spent on the opposed § 522(f) motion at counsel’s hourly rates listed in the RARA. See section 2.9(b) of the Court Manual.

**Step 4, amended plan (if necessary):** (a) If the court does not change your proposed valuations then you do not need to file an amended plan – your existing plan can be confirmed (subject to any non-506/522(f) objections), so skip to Step 5. (b) If the court finds valuation(s) different from what you have proposed then you will need to file and serve an amended plan incorporating the new valuation(s), with amended Attachment(s) B, C, or D as applicable (instead of supporting evidence, you can attach a sheet stating “Valuation per court ruling” or the equivalent).

**Step 5, confirmation order:** The chapter 13 trustee lodges a proposed confirmation order with Attachment B, C, and/or D as applicable (the trustee copies the PDF Attachments from the most recent plan filed by the debtor).

**Note:** Judge Bason encourages attorneys not to use the Plan as a 506/522(f) motion until at least March of 2018 (until they get used to the other new forms and procedures). Thereafter, however, he encourages attorneys to use these procedures if they believe that would be more efficient – *e.g.*, if multiple § 506/522(f) motions involve essentially the same evidence. All of the foregoing is subject to change as the court and counsel gain experience with the new procedures.