

SERVICE OF MOTIONS TO AVOID LIEN(S)

In cases assigned to Judge Walker, service of all motions to avoid liens pursuant to 11 U.S.C. § 506 or § 522(f) **MUST** comply with Federal Rules of Bankruptcy Procedure 4003(d) and 9014(b). The motion, notice and supporting documents must be served on the holder of the lien to be avoided in the same manner as service of a summons and complaint under Federal Rule of Bankruptcy Procedure 7004.

Federal Rule of Bankruptcy Procedure 4003(d) requires that “[a] proceeding under § 522(f) to avoid a lien or other transfer of property exempt under the Code shall be commenced by motion in the manner provided by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004 for service of summons and complaint.”

Federal Rule of Bankruptcy Procedure 9014(b) requires that “[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d).” For proper service of a summons, *see generally* FED. R. BANKR. P. 7004 and FED. R. CIV. P. 4. Some common service rules:

- (i) Service upon the debtor must also be made upon debtor's counsel;
- (ii) Service upon a business entity must be directed to named officer, managing or general agent, or other agent authorized to receive service of process;¹

¹ [S]ervice upon unnamed corporate officers does not comply with the applicable rules. Pursuant to F.R.B.P. 7004(b)(3) and 7004(h), a moving party must serve the appropriate named officer of the lienholder. Service that is not upon a named officer is not valid. *In re Schoon*, 153 B.R. 48 (Bankr. N.D. Cal. 1993) (denying a motion to avoid a lien under section 522(f) that was served upon “Attn: President”); *In re Franchi*, 451 B.R. 604 (Bankr. S.D. Fla. 2011) (denying a motion to avoid a lien because the debtor improperly served it upon “Any Officer Authorized to Accept Service” and holding that “service under Rule 7004(h) is not effected by serving an unnamed title or using language such as ‘any other officer or agent entitled to receive service.’ Service under Rule 7004(h) must be upon a named officer of the institution unless one of the three enumerated exceptions in that Rule apply.”); *Addison v. Gibson Equip. Co. (In re Pittman Mechanical Contractors)*, 180 B.R. 453 (Bankr. E.D. Va 1995) (following *Schoon* and granting a motion to set aside a default judgment because the summons and complaint were improperly served upon “Attn: President or Corporate Officer”). . . *In re Forester*, No. 6:10-BK-16163-WJ, 2021 WL 603378, at *2 (Bankr. C.D. Cal. Feb. 10, 2021)

- (iii) With certain exceptions, service upon an FDIC insured financial institution must be made by certified mail on an officer of the institution;
- (iv) Service upon the United States must include service upon the local U.S. Attorney and upon the United States Attorney General.

The following FDIC locator tool may be helpful in determining whether an entity is an FDIC insured institution: <http://www2.fdic.gov/idasp/main.asp> or <http://research.fdic.gov/bankfind/>