

## **PROGRAM SUMMARY 7-9-22**

By: Gary R. Wallace-Program Summary Committee Chair

### **cdcbaa Holds Seventh Meeting and MCLE Program of 2022: "LIENS & MORTGAGES: ISSUES THAT ARISE IN CHAPTER 7, 13 AND 11"**

On July 9, 2022, the CDCBAA held its seventh members meeting and MCLE program of the year. To help mitigate the spread of COVID-19, the meeting and program were conducted as a live webinar via Zoom video. The program topic was: **"LIENS & MORTGAGES: ISSUES THAT ARISE IN CHAPTER 7, 13 AND 11."** The distinguished panel consisted of Jenny L. Doling, Esq., Nicholas Gebelt, Esq., Steven R. Fox, Esq., and Roksana D. Moradi-Brovia, Esq. CDCBAA former president and current board member Hale Antico moderated.

The panel discussed the many different types of liens that exist. They explained how they differ and how these differences matter in Chapter 7, 11 and 13 cases.

Ms. Doling began by informing participants that the California state legislature is poised to pass new law, SB 1099, which will effectuate several important changes in bankruptcy law, including restoration of the "ride through" for vehicles in Chapter 7 cases and increased exemption amounts as well.

Mr. Gebelt spoke about lien avoidance and lien stripping. He explained the difference between liens that are consensual (such as a mortgage) and those that are purely statutory (such as tax liens, mechanics liens and HOA liens), and noted that, in general, statutory liens may not be avoided. The exceptions to that general rule were also discussed.

Judgment liens, which are involuntary/non-consensual, can be avoided under certain conditions. 11 U.S.C. section 522(f) is the enabling statute. The primary inquiry in such a matter is whether the judgment lien impairs an exemption. Only individuals, rather than entities (which are not permitted to assert such exemptions), qualify. Mr. Gebelt explained the mechanics of how an impairment is calculated and pointed that a motion can request that only a portion of a lien be avoided where the lien only partially impairs the exemption. The subject property must be valued as of the petition date. He emphasized the importance of serving all lienholders, not merely the particular lienholder whose lien is the subject of the motion, with the avoidance motion. He also noted an important practice tip for practitioners: be alert to the possibility that the underlying debt is nondischargeable. If the court determines that the debt is nondischargeable under section 523, then there may be no point in avoiding the lien it secures because, after the court closes the case, the creditor can simply file another lien.

Mr. Gebelt also discussed the mechanics of avoiding nonpossessory, nonpurchase money liens on personal property. These situations can arise when personal property is pledged as collateral for a loan. It was noted, however, that automobiles are not available for such avoidance motions.

Ms. Doling pointed out that, under section 1322(c)(2), when a client's mortgage has come fully due or will come fully due during the Chapter 13 plan period, the mortgage must be paid in full. Practitioners should address this issue early in a client relationship before filing a Chapter 13 case because, for clients who cannot afford to pay off the mortgage, a Chapter 13 case is not right for them. Conversely, if the client can afford to pay off the mortgage, a Chapter 13 may be ideal as the mortgage will substantially decrease disposable income and may allow for a plan with a very low percentage payment to general unsecured creditors.

Ms. Doling also pointed out that, since federal tax liens cannot be avoided, it is possible for trustees to “stand in the shoes” of the IRS and sell the debtor’s property. Hence, it is especially critical for practitioners to be certain at the outset of client retention, what, if any tax liens, in addition to any other liens, exist on the debtor’s residence.

Fraudulent liens and related sections 547 and 548 were also discussed as were several of the more important Ninth Circuit and Supreme Court decisions, such as *Nobelman*, *Dewsnup*, *Lam* and *Zimmer*.

Ms. Moradi-Bravia discussed the importance of establishing valuations as soon as possible, since doing so can help with creditor negotiations. Also, if loan payments resume promptly due to agreed upon valuations with creditors, it can also help with the feasibility of a plan. It was noted that Chapter 11 generally allows for more creativity than in Chapter 13 cases in designing a plan that utilizes negotiated values and compromised/bifurcated liens.

The use of experts – appraisers, brokers, etc. – in valuation was also discussed. Some important tips on persuading judges to not merely split the difference when competing values are presented were also provided.

A very lengthy and detailed program outline containing discussions, case authorities and sample motions was provided to all registered participants.

The next CDCBAA members meeting and Zoom MCLE program will be held on September 24, 2022. The topic will be “UPDATES FOR THE CHAPTER 13 PRACTITIONER.” The speakers will include: Aki Koyama | Senior Staff Attorney - Chapter 13 Trustee, Kathy Dockery, Nancy Clark | Borowitz & Clark, LLP and Misty Perry Isaacson | Pagter & Perry Isaacson, APLC. We hope you will join us.



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