

Informational Articles For Attorneys

"Discharge" of Judgments Under Section 524 of the Bankruptcy Code

By Thomson S. Sheh

One of the most misunderstood sections of the Bankruptcy Code is Section 524 which deals with the effect of a Discharge in Bankruptcy issued to a debtor under Chapters 7, 9, 11, 12 or 13 of the Bankruptcy Code. This section provides that such a discharge, "voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under Section 727, 944, 1141, 1228, or 1328 of this title, ...etc." (Section 524(a)(1)).

This section also provides that the discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect recover, or offset any such debt as a personal liability of the debtor, ...etc." (Section 524(a)(2)).

What is the legal effect of this discharge on a docketed judgment lien on real property owned by a debtor prior to bankruptcy? A cursory reading of this statute would lead one to believe that if the judgment debt was duly scheduled in the bankruptcy petition and no objection to the issuance of the discharge was filed by the creditor both the judgment lien and the debt upon which it is based would be wiped out by the bankruptcy discharge. Of course this would be an erroneous interpretation. What is discharged by section 524 is the debtor and not his property. The operative language in this section is the qualifying term "as the personal liability of the debtor". While it is true that a bankruptcy discharge will relieve a debtor from any personal obligation to pay the judgment debt IT DOES NOT DISCHARGE JUDGMENT LIENS ON THE DEBTOR'S REAL PROPERTY. Nor will the discharge enjoin a judgment creditor from executing on the debtor's real property after bankruptcy. All liens (not just judgment liens) on the debtor's property survive bankruptcy unless they are avoided as a preferential or fraudulent transfer or dealt with or avoided under some other provision of the Code. The legal effect of the bankruptcy discharge is to convert the judgment into a non-recourse secured debt which can only be enforced against the real property affected by the judgment lien.

While Section 524 will not wipe out pre-existing judgment liens, it will prevent the judgment from being enforced against any other property of the debtor. For instance we know that docketed judgments attach as liens on real property acquired by a judgment debtor after the docketing of the judgment (see section 5203 CPLR). However, if the judgment debt has been discharged in bankruptcy section 524 will supersede local law and prevent the lien from attaching and enjoin the creditor from attempting to enforce his judgment.

The real problem with Section 524 is a practical one. How can a title examiner know whether or not a docketed judgment has been discharged in bankruptcy? Fortunately there is a state statute, Section 150 of the Debtor and Creditor Law, which deals with this problem. This statute authorizes a debtor one year after the issuance of the discharge to commence a proceeding to obtain an order "directing that a discharge or qualified discharge be marked upon the docket of the judgment". A qualified discharge is obtainable on proof the judgment has been discharged in bankruptcy. An unqualified discharge is obtainable only on proof that the judgment was avoided or set aside by the bankruptcy court. Obviously an unqualified discharge noted on the docket of the judgment can form the basis for an omission of the judgment. A qualified discharge can not be utilized to dispose a judgment lien on the debtor's pre-bankruptcy property. However with respect to real property acquired by the debtor after bankruptcy such qualified discharge can be utilized to dispose of the judgment. (See *Bank of New York v Nies*, 1983, 96 A.D. 2d 166, 468 N.Y.S. 2d 278).

Tom Sheh is the Riverhead Branch Counsel for Chicago Title and Ticor Title and is considered one of the leading experts in the title industry on bankruptcy and creditor's rights matters.

[Back to Top](#)

etermine If Chapter 7 Is an Option for You,
 mplete a Free Evaluation
www.chapter7.com

[Get Rid of Business Bankruptcy](#)

ere is a Proven Way to Eliminate Business Debt
 Without Bankruptcy!
www.companyrecovery.com

[Check Public Records](#)

Search Free. Get Instant Results. As Seen In The
 News Try Now

Need Professional Help? Talk to a Lawyer

Enter Your Zip Code to Connect with a Lawyer Serving Your Area

SEARCH



Like Share One person likes this. [Sign Up](#) to see what your friends like.

If you have judgment liens recorded against your property, such as your home or car, you may be able to get rid of those liens in Chapter 7 bankruptcy. This is called "lien avoidance." (If you don't know what a judgment lien is, see [What Is a Judgment Lien?](#))

Here's when you can avoid judgment liens.

What Judgment Liens Can You Avoid?

A nonconsensual judgment lien on property can be avoided if all of the following are true:

- The lien resulted from a money judgment issued by a court.
- You are entitled to claim an exemption in at least some of your equity in the property. (To learn about exemptions, see [Bankruptcy Exemptions](#).)
- The lien would result in a loss of some or all of this exempt equity if the property were sold. (That is, the exemption would be impaired.)

If these three conditions are met, you can remove judgment liens from any exempt property, including real estate and cars.

When You Should Avoid Judgment Liens

Use lien avoidance if it's available, especially if a lien can be completely wiped out. Even if you don't need or want the property, you can avoid the lien, sell the property, and use the money for other things.

To keep things simple, you may want to avoid liens only on property that is completely exempt. The lien will be eliminated entirely and you'll own the property free and clear, without paying anything to the creditor.

Even partial lien avoidance can be beneficial, but sooner or later you'll have to pay the amount remaining on the lien if the property has a title document or is subject to repossession or foreclosure on what's left of the lien. Most often, you'll have to pay off the lien in a lump sum, but some creditors may be willing to accept installments, especially if you compromise on the value of the lien.

How to Avoid a Judgment Lien in Bankruptcy

You request lien avoidance by checking the column "Property is claimed as exempt" on the [Statement of Intention](#), and by filing a motion.

Some bankruptcy filers don't realize they have liens on their property, or don't realize that they could eliminate those liens. Others may not be able to eliminate liens when they file for bankruptcy (typically, because they have no exempt equity in the property), but later they become eligible to do so. Fortunately, bankruptcy courts are very liberal about allowing a debtor to reopen a case in

order to file a motion to avoid a lien.

Avoiding Liens When There Is No Equity in the Property

Some courts have allowed debtors to avoid judicial liens even if there is no equity in the property (and therefore no "impaired" exemption). Their reasoning is convoluted (in our humble opinion) since it would seem impossible for a lien to impair an exemption if there is no equity to exempt. Nonetheless, if a lien has been placed on your home and you have no equity or negative equity, you should still consult with a lawyer on whether that lien can be avoided in your bankruptcy court. Even if the lawyer is pricey, it may be worth your while to get the lien removed.

To learn about avoiding other types of liens, and other ways to deal with liens, see the articles in [Avoiding \(Getting Rid of\) Liens in Chapter 7 Bankruptcy](#).

by: **Stephen Elias, Attorney**