

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

IN RE:

JOHN DOE

CASE NO. XX-XXXXX-ABC
Chapter 13

Debtor(s) _____ /

**DEBTOR'S VERIFIED MOTION TO AVOID LIEN AND DETERMINE SECURED
STATUS OF SOMEBANK COMPANY (CLAIM No. 1)**

PURSUANT TO 11 U.S.C. § 506(D)

**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 123 MAIN STREET, ANYTOWN, FLORIDA 12345, AND SERVE A COPY ON THE MOVANT'S ATTORNEY, JANE DOES, ESQUIRE, 456 ANYSTREET, SOMEOTHERTOWN, FLORIDA 23456.

IF YOU FILE AND SERVE AN OBJECTION WITHIN THE TIME PERMITTED, THE COURT WILL 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.

COMES NOW DEBTOR John Doe, by and through the undersigned counsel, pursuant to 11 U.S.C. § 506(d) and FED. R. BANKR. P. RULE 3012, files this Motion to Avoid the Lien of Claim No. 1 (the "Claim") of SOMEBANK COMPANY ("SOMEBANK"), and to Determine that the Claim is Unsecured. In support thereof, Debtor declares, under penalty of perjury, that the following is true:

1. Debtor filed a voluntary petition under Title 11 Chapter 13 of the U.S. Bankruptcy Code on November 1, 2008.
2. Debtor owns certain real property located in **SOME** County, more precisely described as:

**LOT 12 IN BLOCK 42 OF SOMETOWN SECTION 13,
ACCORDING TO THE MAP OR PLAT THEREOF AS
RECORDED IN PLAT BOOK 1, PAGE 2 OF THE PUBLIC
RECORDS OF SOME COUNTY, FLORIDA**

3. SOMEBANK filed the instant Claim for a junior mortgage on the Debtor's homestead. This claim indicates a balance of \$100,000.00 owing on this junior mortgage. Debtor attaches a true and correct copy of SOMEBANK's claim No. 1 as Exhibit "A".
4. SOMEOTHERBANK filed claim No. 2 for a superior mortgage on the Debtor's homestead. This claim indicates a balance of \$500,000.00 owing on the superior mortgage. Debtor attaches a true and correct copy of SOMEOTHERBANK's claim No. 2 as Exhibit "B".
5. The fair market value of the Debtor's homestead is \$450,000. In support of this valuation, a full professional appraisal was performed on November 30, 2008 and Debtor attaches the resulting Uniform Residential Appraisal Report (URAR) as Exhibit "C". The URAR was performed by a State Certified Florida Residential Property Appraiser.
6. Accordingly, SOMEBANK's junior lien (claim No. 1):
 - (a) Is wholly unsecured and has no value as a secured claim inasmuch as the value of the Property is less than the claim amount of the superior mortgage.
 - (b) Is subject to "stripping off" in accordance with *In Re. Tanner*, 217 F.3d 1357 (11 Cir. 2000) (finding that a "wholly" unsecured claim on a homestead, is not afforded the anti-modification provision of 11 U.S.C. § 1322(b)(2)

WHEREFORE, the Debtor respectfully prays that this Honorable Court enter an order finding that the junior mortgage (Claim No. 1) is wholly unsecured and not subject to protection under 11 U.S.C. § 1322(b)(2); and that the junior lien be "stripped off"; and determining that claim No. 1 be treated as a general unsecured claim; and granting such other relief as is fair and equitable.

Respectfully submitted,

(Jane Doe, *Attorney*)

Dated at SOMEOTHERTOWN, Florida this
_____ day of NOVEMBER 2008.

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**UNSWORN DECLARATION IN SUPPORT OF
DEBTOR'S VERIFIED MOTION TO AVOID LIEN AND DETERMINE SECURED
STATUS OF SOMEBANK COMPANY (CLAIM No. 3)**

I/We, **John and Jamie Doe**, declare under penalty of perjury that I/we have read DEBTOR'S VERIFIED MOTION TO AVOID LIEN AND DETERMINE SECURED STATUS OF SOMEBANK COMPANY (Claim No. 1) and that it is true and correct to the best of my knowledge, information, and belief.

John Doe

Date

Jamie Doe

Date