

Chapter 13 Lien Stripping

1. Getting Started: Documents – What do I need for a successful lien strip?
 - a. Recorded primary mortgage
 - b. Recorded junior mortgage (the one you're trying to strip)
 - c. Any assignments of mortgage(s)
 - d. A valuation of the property
 - e. An affidavit signed by the debtor, indicating debtor's belief as to the property's value

The recorded documents are available at the register of deeds office in the county where the real estate is located. Most are also available online for a fee.

Common Problems at this stage:

1. The "second mortgage" is recorded before the "first mortgage"
 - i. Solution: look for a subordination agreement. Most commonly this occurs when a first mortgage is refinanced after taking a second mortgage.
2. Finding your defendant – Who am I naming?
 - a. You are naming the last holder of the current recorded mortgage, or the last assignee under any assignment of that mortgage. Do not name the servicer of the mortgage.

Common Problems at this stage:

1. The mortgage company was acquired by another mortgage company.
 - i. Solution: if the former mortgage company was FDIC insured, the FDIC Bank Find website will tell you who acquired the company.
<http://research.fdic.gov/bankfind/>
3. Putting together your complaint
 - a. Name the holder of the mortgage, not Green Tree Servicing, LLC. If your mortgage owner is a Trust, name the Trustee - "U.S. Bank, N.A. as Trustee for ____"
 - b. Put both the common address and the legal description in the complaint
 - c. Reference the document numbers for the all mortgages, as well as any assignments or subordination agreements
 - d. Be sure to include the value of the property
 - e. Upon filing the complaint, a summons will be electronically issued by the Court and posted to the docket. Upon receipt of the summons, mail the summons and complaint to all parties. A blank certificate of service will be issued with the summons. Fill it out and efile it listing what parties were served and how.
4. Serving the complaint
 - a. Rule 7004 governs how service must be effected. Pay attention to the following provisions:
 - i. (b)(1): Service on an individual is accomplished by mailing a copy of the summons and complaint to the individual via first class mail postage prepaid.

- ii. (b)(3): Service on a corporation, partnership, or unincorporated association is accomplished by mailing a copy of the summons and complaint via first class mail postage prepaid **to the attention of an officer, a managing or general agent, or to any agent authorized by appointment or by law to receive service of process.** If the agent is authorized by statute to receive service and the statute so requires, a copy must also be mailed to the defendant via first class mail postage prepaid. The Wisconsin Department of Financial Institutions website, www.wdfi.org, allows you to search for active businesses along with authorized agents.
 - iii. (h): Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) is accomplished by mailing a copy of the summons and complaint **via certified mail addressed to an officer of the institution.** To determine whether an institution is an insured depository institution, run a search at <http://research.fdic.gov/bankfind/>. If the bank has appeared by counsel, service may be made on the counsel by first class mail.
 - iv. (b)(9) and (g): Service on the debtor is made by mailing a copy of the summons and complaint by first class mail to the address on the petition (or, if the debtor has filed a change of address, at that address), with a copy to the debtor's attorney.
 - b. The Summons must be served within 14 days of being issued or it is deemed stale. If you miss this deadline, contact the Court to have an amended Summons issued.
 - c. Also serve the servicer of the mortgage – “Green Tree Servicing, LLC as Servicer for Mortgage Company A” – may not be required, but a good idea
 - d. If the holder of the mortgage is a Trust, serve the Trustee – “U.S. Bank, N.A. as Trustee for _____”
5. No one answered, now what?
- a. As stated in the Summons, “Parties are required to file a motion or answer to the complaint...within 30 days after the date of the issuance of this summons, except for the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.”
 - b. If there are no responses to the Complaint, what you do next will depend on your Judge:
 - i. Judge Kelley:
 - 1. Contact the Court to obtain a default judgment hearing date.
 - 2. File your Motion for Default Judgment, and Notice of Hearing on Motion for Default Judgment, and Certificate of Service for the Motion and Notice. Judge Kelley has a form Notice of Hearing on Motion for Default Judgment on the Court's website, under her procedures page.
 - 3. Prior to the hearing, upload an Affidavit from the Debtor/Plaintiffs as an Exhibit. The Affidavit should include:
 - a. The market value of the subject property
 - b. Who holds the first and second mortgages
 - c. Balances of mortgages

4. Judge Kelley will determine if the evidence submitted is sufficient at the Motion for Default Judgment hearing.
 5. **Required Evidence (which should be attached to both your Complaint, or at the very least, to your Motion for Default Judgment, as Exhibits):**
 - a. Recorded first and second mortgages
 - b. Proof of the balance of the first mortgage – proof of claim or recent mortgage statement
 - c. Any assignments of mortgages
 - d. Any subordination agreements
 - e. Proof of value – CMA, BPO, Appraisal
 - f. Affidavit of the debtor concerning the value of the property or plaintiff attendance
- ii. Judge McGarity:
1. File your Motion for Default Judgment, Notice of Motion (with a 21 day objection period) and Certificate of Service regarding same.
 2. If no objection or response is received, an affidavit or certification of no objection should be filed with the court and a proposed order for default judgment should be uploaded for signature.
 3. **Required Evidence (which should be attached to both your Complaint, or at the very least, to your Motion for Default Judgment, as Exhibits):**
 - a. Recorded first and second mortgages
 - b. Proof of the balance of the first mortgage – proof of claim or recent mortgage statement
 - c. Any assignments of mortgages
 - d. Any subordination agreements
 - e. Proof of value – CMA, BPO, Appraisal
 4. Judge McGarity will usually hold the pretrial conference even if the Motion for Default Judgment is already filed, and make a determination on whether she finds that the mortgage can be avoided, and either direct you to file your Motion for Default Judgment, or submit your Affidavit of No Objection and Proposed Order once the objection period has expired.
- iii. Judge Pepper:
1. File your Motion for Default Judgment, Notice of Motion (with a 21 day objection period) and Certificate of Service regarding same.
 2. If you file your motion for default before the date scheduled for the initial pretrial conference, and there are no service issues, Judge Pepper likely will bump the pretrial conference to a date after the objection for the default judgment motion is due. If no one objects and your evidence is sufficient, Judge Pepper will sign the order, and will cancel the adjourned pretrial conference. If there is an objection, or if your evidence is not sufficient, Judge Pepper will schedule a hearing.

3. If no objection or response is received, an affidavit or certification of no objection should be filed with the court and a proposed order for default judgment should be uploaded for signature.
4. **Required Evidence (which should be attached to both your Complaint, or at the very least, to your Motion for Default Judgment, as Exhibits):**
 - a. Recorded first and second mortgages
 - b. Proof of the balance of the first mortgage – proof of claim or recent mortgage statement
 - c. Any assignments of mortgages
 - d. Any subordination agreements
 - e. Proof of value – CMA, BPO, Appraisal
5. Should Judge Pepper feel your evidence is insufficient, she will set a hearing on the Motion for Default Judgment

iv. Judge Halfenger:

1. File your Motion for Default Judgment, Notice of Motion (with a 21 day objection period) and Certificate of Service regarding same.
2. You need to make sure your paperwork refers to 1322(b)(2) not 506(d)
3. If no objection or response is received, an affidavit or certification of no objection should be filed with the court and a proposed order for default judgment should be uploaded for signature.
4. **Required Evidence (which should be attached to both your Complaint, or at the very least, to your Motion for Default Judgment, as Exhibits):**
 - a. Recorded first and second mortgages
 - b. Proof of the balance of the first mortgage – proof of claim or recent mortgage statement
 - c. Any assignments of mortgages
 - d. Any subordination agreements
 - e. Proof of value – CMA, BPO, Appraisal
5. Should Judge Halfenger feel your evidence is insufficient, he will set a hearing on the Motion for Default Judgment.

6. The Order

- a. IMPORTANT: include the legal description in the Order. I cannot stress this enough. The Register of Deeds Office will give you far less trouble.
- b. The Judges are working on a standard Order, which should eliminate some problems.
- c. Upon completion of the case you need to obtain a certified copy of the order and have that recorded at the register of deeds to legally remove the second mortgage

7. Stipulating:

- a. Everyone is encouraged to attempt to stipulate to the lien strip. I encourage you to include a stipulation when you serve the Complaint, you may actually get it back signed.
- b. Attorney Pitner has provided some sample standard stipulations.