

## **APPENDICES**

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 12, 2021

Christopher M. Wolpert  
Clerk of Court

LNV CORPORATION,

Plaintiff - Appellee,

v.

MARY JULIA HOOK,

Defendant - Appellant,

UNITED STATES OF AMERICA,

Defendant - Appellee,

and

DAVID LEE SMITH; PRUDENTIAL  
HOME MORTAGAGE COMPANY,  
INC.; SAINT LUKES LOFTS  
HOMEOWNER ASSOCATION, INC.;  
DEBRA JOHNSON, in her official  
capacity as the Public Trustee of the City  
and County of Denver, Colorado,

Defendants.

No. 20-1167  
(D.C. No. 1:14-CV-00955-RM-SKC)  
(D. Colo.)

ORDER AND JUDGMENT\*

\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).* The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Appendix A

Before PHILLIPS, McHUGH, and CARSON, Circuit Judges.

---

Mary Julia Hook, an attorney proceeding pro se, appeals from the district court's March 2, 2020, Order Confirming Judicial Sale. Exercising jurisdiction under 28 U.S.C. § 1291, we dismiss the appeal as frivolous.

Ms. Hook previously appealed from the judgment in the underlying foreclosure case. *See LNV Corp. v. Hook (Hook I)*, 807 F. App'x 893 (10th Cir.), *cert. denied*, 141 S. Ct. 939 (2020). *Hook I* described Ms. Hook's arguments challenging the judgment as "wholly frivolous." *Id.* at 895. "As an attorney, she should have known that they lacked any merit before she argued them; and in large part, the appellees' briefs make that perfectly clear. We see no need to further educate Hook." *Id.* Accordingly, this court dismissed her appeal in *Hook I*. *See id.*

Ms. Hook's opening brief largely reiterates the "wholly frivolous" arguments she offered in *Hook I*. But given the law of the case doctrine, we will not revisit those arguments. *See Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1099 (10th Cir. 2017) ("[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. An appellate court decision on a particular issue . . . governs the issue during all later stages of the litigation in the district court and thereafter on any further appeal." (citations and internal quotation marks omitted)). There are exceptions to the doctrine, *see id.*, but none applies here. And Ms. Hook's request that this panel vacate and set aside *Hook I* disregards well-established law that one panel cannot

overrule the decision of another panel, absent intervening en banc or Supreme Court authority. *See Strain v. Regalado*, 977 F.3d 984, 993 (10th Cir. 2020).

In addition to previously raised arguments, the opening brief appears to advance new arguments challenging the April 2019 judgment. But the subject of this appeal is the Order Confirming Judicial Sale, not the judgment. All challenges to the judgment could, and should, have been raised in *Hook I*.

The few assertions in the opening brief that may be relevant to the Order Confirming Judicial Sale are inadequately briefed. *See Fuerschbach v. Sw. Airlines Co.*, 439 F.3d 1197, 1209-10 (10th Cir. 2006) (collecting authorities holding that inadequately briefed and underdeveloped theories are waived). Ms. Hook's conclusory assertions of procedural error fail to sufficiently identify or argue any violations. She criticizes the district court for not holding a hearing before it issued the Order Confirming Judicial Sale, but she does not show that she was entitled to such a hearing, or even that she requested one. And she makes no argument for plain error. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1131 (10th Cir. 2011) ("[T]he failure to argue for plain error and its application on appeal . . . surely marks the end of the road for an argument for reversal not first presented to the district court.").

Finally, Ms. Hook asserts that the district court was biased against her because it denied her motion to proceed on appeal without prepayment of fees and costs. But as we have previously explained to her, "adverse rulings alone do not demonstrate judicial bias," meaning that an "argument rel[ying] solely on the district court's

adverse rulings . . . is devoid of merit.” *Hook I*, 807 F. App’x at 895 (brackets and internal quotation marks omitted).

For these reasons, this appeal is dismissed as frivolous. *See Ford v. Pryor*, 552 F.3d 1174, 1180 (10th Cir. 2008) (“An appeal is frivolous when the result is obvious, or the appellant’s arguments of error are wholly without merit.” (internal quotation marks omitted)). LNV Corporation’s pre-briefing motions to dismiss the appeal and to release a notice of lis pendens are denied as moot. The requests in Ms. Hook’s reply briefs for sanctions and attorney discipline are denied.

Entered for the Court

Carolyn B. McHugh  
Circuit Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 14-cv-00955-RM-SKC

**LNV CORPORATION,**

Plaintiff,

v.

**M. JULIA HOOK, an individual,  
THE PRUDENTIAL HOME MORTGAGE, INC.,  
UNITED STATES OF AMERICA,  
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,  
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of  
Denver, Colorado, and  
DAVID L. SMITH, an individual,**

Defendants.

---

**ORDER CONFIRMING JUDICIAL SALE**

---

This matter is before the Court on Plaintiff LNV Corporation's Return of Sale (ECF No. 462) in which it seeks approval and confirmation of a judicial sale. Upon review of the record, and under the facts and circumstances of this case,<sup>1</sup> the Court finds the United States Marshals, pursuant to the Court's Order of Foreclosure and Judicial Sale (ECF No. 443), properly conducted the sale of the real property described as Lot 1, Block 1, Crestmoor Park, City and County of Denver, State of Colorado, commonly known as 5800 East 6th Avenue, Denver, Colorado 80220 (the "Property"). See Notice of Sale (ECF Nos. 457-460) & Certificate of Purchase (ECF No. 461). The Court also finds the Property was sold to LNV Corporation, being the highest credit bid.

---

<sup>1</sup> The Court finds no response is necessary before making its findings and ruling.

*Appendix B*

Accordingly, it is **ORDERED**

- (1) That Plaintiff's Return of Sale with a request for confirmation (ECF No. 462) is GRANTED;
- (2) That the sale of the Property is CONFIRMED;
- (3) That the United States Marshal, or his or her representative, shall execute and deliver to the purchaser a deed of judicial sale conveying the property to the purchaser;
- (4) That on delivery of the deed of judicial sale all right, title, lien, claim, and interest in or to the Property including, but not limited to, those held or asserted against the Property by any of the parties to this action and any successors in interest or transferees of those parties shall be discharged and extinguished, except as otherwise provided by applicable ordinance or regulation of the City and County of Denver, State of Colorado, with respect to liens in favor of such City and County; and
- (5) That the Clerk shall close this case.

DATED this 2nd day of March, 2020.

BY THE COURT:



---

RAYMOND P. MOORE  
United States District Judge

FILED

United States Court of Appeals  
Tenth Circuit

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**July 12, 2021**

**Christopher M. Wolpert  
Clerk of Court**

LNV CORPORATION,

Plaintiff - Appellee,

v.

DAVID LEE SMITH, as Personal  
Representative of the Estate of Mary Julia  
Hook,

Defendant - Appellant,

UNITED STATES OF AMERICA,

Defendant - Appellee,

and

DAVID LEE SMITH, et al.,

Defendants.

No. 20-1167  
(D.C. No. 1:14-CV-00955-RM-SKC)  
(D. Colo.)

**ORDER**

Before PHILLIPS, McHUGH, and CARSON, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court  
who are in regular active service. As no member of the panel and no judge in regular

Appendix C

active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

**EXHIBIT 1**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF COLORADO**

Civil Action No. 14-cv-00955-RM-SKC

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,  
THE PRUDENTIAL HOME MORTGAGE, INC.,  
UNITED STATES OF AMERICA,  
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,  
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of  
Denver, Colorado, and  
DAVID L. SMITH, an individual,

Defendants.

---

**FINAL JUDGMENT**

---

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Pursuant to the Order (Doc. 441) by Judge Raymond P. Moore dated April 5, 2019, it is

ORDERED that pursuant to the Order dated March 13, 2017 (Doc. 301) summary judgment is entered in favor of Plaintiff LNV Corporation as follows: (1) on its first claim for determination of interests - against Defendants Smith, St. Luke's, and the United States; (2) on its second claim for judicial foreclosure – against all defendants; and (3) on its fifth claim for money judgment – against Defendant Hook. It is

*Appendix D*

FURTHER ORDERED that pursuant to the Order dated March 13, 2017 (Doc. 301) summary judgment is entered in favor of Plaintiff LNV Corporation and against Defendants M. Julie Hook and David L. Smith on their counterclaims based on the Loft Property. It is

FURTHER ORDERED that pursuant to the Order dated March 14, 2017 (Doc. 303) summary judgment is entered in favor of Defendant United States of America as to Plaintiff's first claim for determination of interests. It is

FURTHER ORDERED that pursuant to the Order dated June 28, 2017 (Doc. 320) summary judgment is entered in favor of Plaintiff LNV Corporation, and against Defendants The Prudential Home Mortgage, Inc.; Debra Johnson, in her official capacity; and M. Julia Hook. Plaintiff is owed the following: \$610,243.49 in principal; \$1,192.92 in unpaid late charges; \$33.00 in recording fees; and \$955.00 in inspection fees. It is

FURTHER ORDERED that pursuant to the Order dated June 21, 2018 (Doc. 404) judgment shall enter in favor of Plaintiff LNV Corporation as follows: (1) Interest from August 2, 2009 through May 1, 2018, totaling \$390,810.34; (2) Per diem interest of \$121.21; (3) Real property taxes paid of \$50,945.93; (4) Property (hazard) insurance premiums paid of \$30,191.75; and (5) City and County of Denver water/sewer fees, and related late fees, paid of \$543.12. It is

FURTHER ORDERED that pursuant to the Order dated March 5, 2019 (Doc. 436) Plaintiff LNV Corporation is awarded attorney's fees and costs in the amount of \$239,510.00, which is owed under the Promissory Note as of May 31, 2018. It is

FURTHER ORDERED that pursuant to the Order dated December 4, 2015 (Doc. 218) judgment is entered in favor of Defendant United States of America and against Defendant M. Julia Hook. It is

FURTHER ORDERED that this case shall remain open pending the Court's order confirming the judicial sale and distributing the proceeds from the sale.

Dated this 5<sup>th</sup> day of April, 2019.

FOR THE COURT:  
JEFFREY P. COLWELL

By: s/C. Pearson  
C. Pearson, Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

Civil Action No. 14-cv-00955-RM-SKC

LNV CORPORATION,

Plaintiff,

v.

M. JULIA HOOK, an individual,  
THE PRUDENTIAL HOME MORTGAGE, INC.,  
UNITED STATES OF AMERICA,  
SAINT LUKE'S LOFTS HOMEOWNER ASSOC. INC.,  
DEBRA JOHNSON, in her official capacity as the Public Trustee of the City and County of  
Denver, Colorado, and  
DAVID L. SMITH, an individual,

Defendants.

---

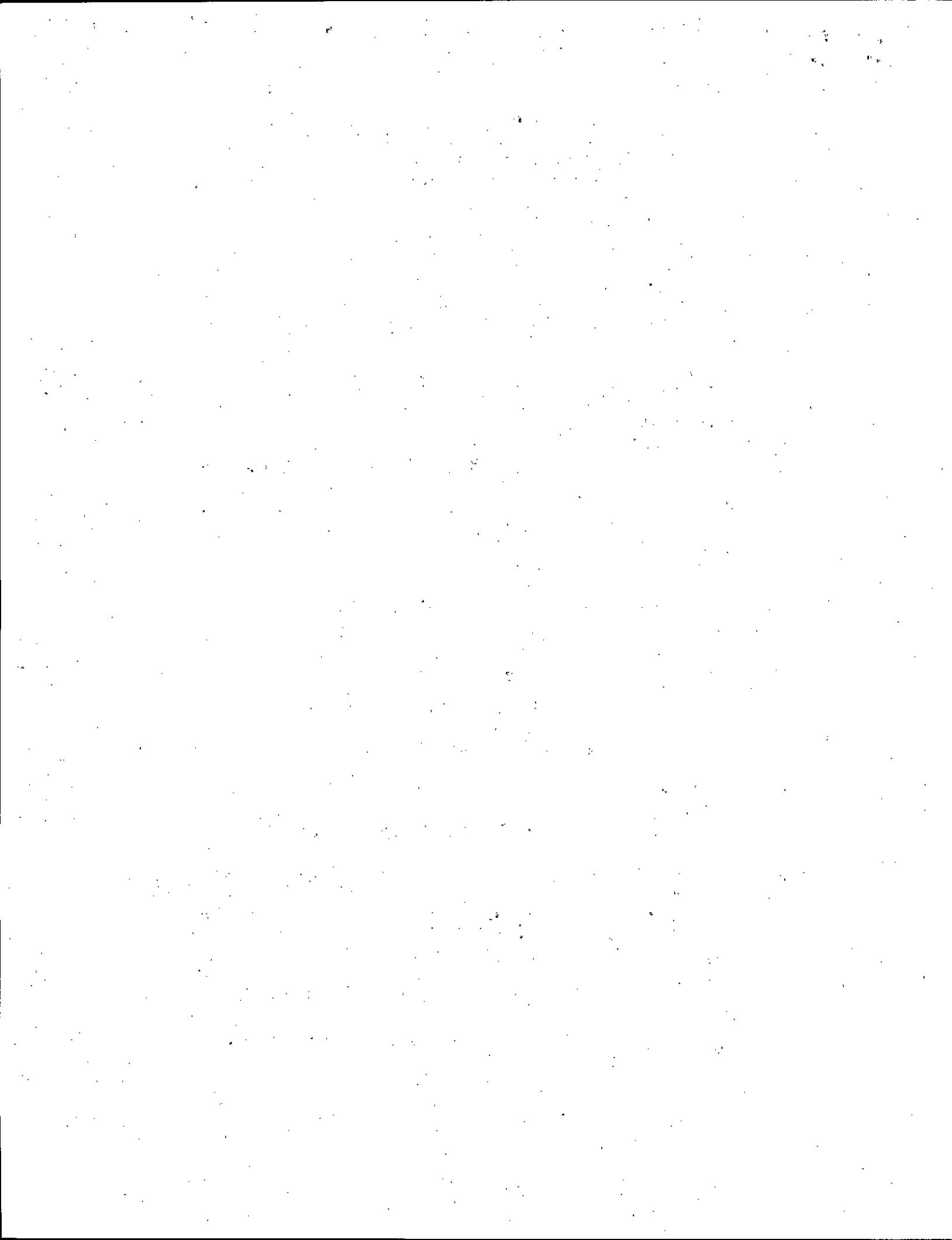
**ORDER OF FORECLOSURE AND JUDICIAL SALE**

---

Based on the findings, conclusions, and orders issued in the Court's previous Orders (ECF Nos. 301, 303, 320, 404, 436) (collectively, "Orders"), the Court enters this Order of Foreclosure and Judicial Sale pursuant to the provisions of 28 U.S.C. §§ 2001 & 2002. In accordance with the foregoing, the Court hereby ORDERS as follows:

1. This Order of Foreclosure and Judicial Sale pertains to a parcel of real property and improvements located in the City and County of Denver, State of Colorado, and more particularly described as Lot 1, Block 1, Crestmoor Park, City and County of Denver, State of Colorado, commonly known as 5800 East 6th Avenue, Denver, Colorado 80220 (the "Property").

2. Plaintiff LNV Corporation ("LNV") has a valid first priority lien on the Property, arising from the Deed of Trust dated May 8, 2002 and recorded on May 16, 2002 in the real



property records of the City and County of Denver, State of Colorado, under Reception No. 2002090105 (the “Deed of Trust”). (See Orders dated March 13, 2017 (ECF No. 301); March 14, 2017 (ECF No. 303); June 28, 2017 (ECF No. 320); and June 21, 2018 (ECF No. 404).)

3. The United States has valid federal tax liens against Defendants M. Julia Hook and David L. Smith (“Hook and Smith”) as set forth in the Court’s March 14, 2017 Order (ECF No. 303), which are second in priority to LNV’s Deed of Trust against the Property.

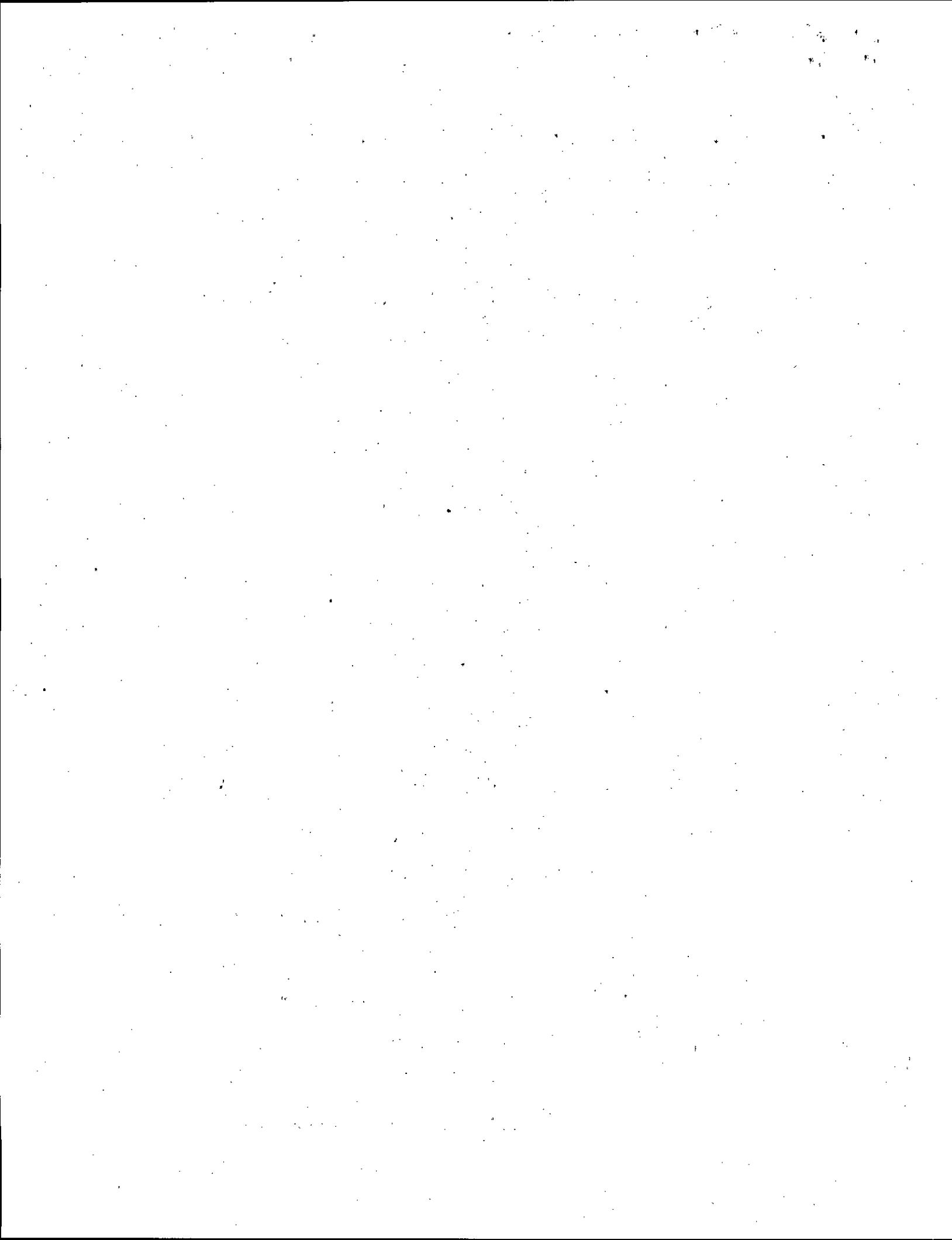
4. Pursuant to this Court’s Orders, the Deed of Trust is to be foreclosed under 28 U.S.C. §§ 2001 and 2002 and in accordance with this Order of Foreclosure and Judicial Sale. The United States Marshal, or his or her representative, is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the Property free and clear of all right, title, lien, claim, and interest in or to the Property.

5. This Order of Foreclosure and Judicial Sale shall act as a special writ of execution and no further orders or process from the Court shall be required.

6. Upon entry of this Order of Foreclosure and Judicial Sale, the United States Marshal, or his or her representative, is authorized to have free access to the Property and to take all actions necessary to preserve the Property, including, without limitation, retaining a locksmith or other person to change or install locks or other security devices on any part thereof, until a deed thereto is delivered to the ultimate purchaser(s).

7. The terms and conditions of the sale are as follows:

a. Except as otherwise stated herein, the sale of the Property shall be by public auction to the highest bidder, free and clear of all right, title, lien, claim, and interest in or to the Property, including, but not limited to, all parties to this



action. The United States Marshal (sometimes referred to herein as "Marshal"), or his or her representative, shall sell the Property and any personal property (as set forth in Paragraph 9) "AS IS," without any warranties, general or implied.

- b. The sale shall be subject to all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the premises, and easements and restrictions of record, if any.
- c. The sale shall be held at the United States District Court for the District of Colorado, on the Property's premises, or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002, at a date and time announced by the United States Marshal, or his or her representative.
- d. Notice of the sale shall be published once a week for at least four consecutive weeks before the date fixed for the sale in at least one newspaper regularly issued and of general circulation in the City and County of Denver, Colorado, and, at the discretion of the Marshal, or his or her representative, by any other notice that it may deem appropriate. State or local law notice requirements for foreclosures or execution sales do not apply to this sale under federal law, and state or local law regarding redemption rights do not apply to this sale. The notice of sale shall describe the Property and shall contain the material terms and conditions of sale in this Order of Foreclosure and Judicial Sale.
- e. The minimum bid will be set by LNV as a credit bid on the amounts owed

LNV as set forth in the Court's Orders of June 28, 2017 (ECF No. 320), June 21, 2018 (ECF No. 404), and March 5, 2019 (ECF No. 436) (collectively, the "Money Judgment"). LNV is authorized and permitted to credit bid at the sale against the Money Judgment.

- f. Bidders (other than LNV) shall be required to deposit, at the time of sale with the Marshal, or his or her representative, a minimum of 10 percent of the bid, with the deposit to be made by a certified or cashier's check payable to the United States District Court for the District of Colorado. Before being permitted to bid at the sale, bidders shall display to the Marshal, or his or her representative, satisfactory proof of compliance with this requirement.
- g. The balance of the purchase price of the Property in excess of the deposit tendered shall be paid to the Marshal, or his or her representative, within 30 business days after the date the bid is accepted, by a certified or cashier's check payable to the United States District Court for the District of Colorado. If the successful bidder or bidders fail to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, including commissions due under 28 U.S.C. § 1921(c), with any amount remaining to be applied as described herein, below. The Property shall be again offered for sale under the terms and conditions of this Order of Foreclosure and Judicial Sale or, in the alternative, sold to the second-highest bidder, as determined by the Marshal, or his or her

representative. LNV may bid as a credit against the Money Judgment without tender of cash.

- h. The sale of the Property shall not be final until confirmed by this Court. The Marshal, or his or her representative, shall file a report of sale with the Court within 15 days from the date of receipt of the balance of the purchase price.
- i. Upon confirmation of the sale by order of this Court, the Marshal, or his or her representative, shall promptly execute and deliver a deed of judicial sale conveying the Property to the purchaser(s).
- j. Upon confirmation of the sale by order of this Court, all right, title, lien, claim, and interest in or to the Property including, but not limited to, those held or asserted against the Property by any of the parties to this action and any successors in interest or transferees of those parties shall be discharged and extinguished, except as otherwise provided by applicable ordinance or regulation of the City and County of Denver, State of Colorado, with respect to liens in favor of such City and County.
- k. The sale is ordered pursuant to 28 U.S.C. § 2001. Redemption rights under state or local law shall not apply to this sale under federal law.
- l. Upon confirmation of the sale by the Court, the purchaser or purchasers are responsible for having the Recorder of Deeds cause the transfer of the Property to be reflected in the county real property records.

8. Until the Property is sold, M. Julia Hook and David L. Smith (hereafter, "Hook and

Smith") shall take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures, and appurtenances thereon) including, without limitation, maintaining fire and casualty insurance policies on the Property. Hook and Smith shall keep current in paying real property taxes as they are assessed. Hook and Smith shall not commit waste against the Property, nor shall they cause or permit anyone else to do so. Hook and Smith shall not do anything that tends to reduce the value or marketability of the Property, nor shall they cause or permit anyone else to do so. Hook and Smith shall not record any instruments, publish any notice, or take any other action that may directly or indirectly tend to adversely affect the value of the Property or that may tend to deter or discourage potential bidders from participating in the public sale, nor shall they cause or permit anyone else to do so. Violation of this paragraph shall be deemed a contempt of Court and punishable as such.

9. All persons occupying the Property shall leave and vacate permanently the Property no later than 15 days after the entry of this Order of Foreclosure and Judicial Sale, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances) when leaving and vacating. If any person fails or refuses to leave the Property by the time specified in this Order of Foreclosure and Judicial Sale, the United States Marshal is authorized to take whatever action it deems appropriate, including using reasonable force to enter into the Property and forcibly remove or eject such person or persons from the premises. The United States Marshal is further authorized and directed to arrest and/or evict from the premises any and all persons who obstruct, attempt to obstruct, or interfere or attempt to interfere in any way with the execution of this Order of Foreclosure and Judicial Sale. If any person fails or refuses to remove his or her personal property from the Property by the time

specified herein, the personal property remaining at the Property thereafter is deemed forfeited and abandoned, and the United States Marshal, or his or her representative, is authorized and directed to remove and dispose of it in any manner they see fit, including sale, in which case the proceeds of sale are to be applied first to the expenses of sale and the balance to be paid into the court registry for further distribution.

10. Notwithstanding the terms of the immediately preceding paragraph, if, after the sale of the Property is confirmed by this Court, the Property remains occupied, a writ of assistance may, without further notice, be issued by the Clerk of Court pursuant to Rule 70 of the Federal Rules of Civil Procedure to compel delivery of possession of the Property to the purchaser or purchasers thereof.

11. If Hook and Smith or any other person occupying the Property vacate the Property prior to the deadline set forth in Paragraph 9, above, such person shall notify counsel for LNV no later than two (2) business days prior to vacating the Property of the date on which he or she is vacating the Property. Notification shall be made by email to attorney Duncan Barber at [dbarber@sbbolaw.com](mailto:dbarber@sbbolaw.com).

12. The Marshal shall deposit the amount paid by the purchaser into the registry of the Court within 15 days of receipt.

13. All funds tendered to the Court for deposit shall comply with Fed. R. Civ. P. 67 and D.C.COLO.LCivR 67.2.

13. Upon stipulation of the parties or by appropriate motion by LNV for disbursement and confirmation of sale, filed in accordance with D.C.COLO.LCivR 67.2 within 30 days of the completion of the sale of the Property, the Court will issue an order to disburse the funds in the

following order of preference until these expenses and liens are satisfied:

- (a) To LNV for allowed costs and expenses of sale, including any commissions due under 28 U.S.C. §1921(c) and including an amount sufficient to cover the costs of any steps taken to secure or maintain the Property pending sale and confirmation by the Court;
- (b) To LNV to satisfy or partially satisfy the amounts owed LNV as set forth in the Court's Orders of June 28, 2017 (ECF No. 320), June 21, 2018 (ECF No. 404), and March 5, 2019 (ECF No. 46);
- (c) To the United States of America to satisfy or partially satisfy the outstanding federal tax liabilities of Hook and Smith, which are liens against the Property as set forth in the Court's March 14, 2017 Order (ECF No. 303); and
- (d) Any proceeds remaining after the above payments shall be held by the Clerk until further of the Court upon motion filed by the parties.

SO ORDERED.

DATED this 5th day of April, 2019.

BY THE COURT:



---

RAYMOND P. MOORE  
United States District Judge

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 2, 2020

Christopher M. Wolpert  
Clerk of Court

LNV CORPORATION,

Plaintiff - Appellee,

v.

JULIA HOOK,

Defendant - Appellant,

and

UNITED STATES OF AMERICA,

Defendant - Appellee,

and

DAVID L. SMITH; PRUDENTIAL  
HOME MORTAGAGE COMPANY,  
INC.; SAINT LUKES LOFTS  
HOMEOWNER ASSOCIATION, INC.;  
DEBRA JOHNSON, in her official  
capacity as the Public Trustee of the City  
and County of Denver, Colorado,

Defendants.

No. 19-1131  
(D.C. No. 1:14-CV-00955-RM-SKC)  
(D. Colo.)

ORDER AND JUDGMENT\*

\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Appendix E

---

Before **BRISCOE, LUCERO, and HARTZ**, Circuit Judges.

---

Julia Hook, an attorney representing herself, appeals from the district court's final judgment in a foreclosure action. Exercising jurisdiction under 28 U.S.C. § 1291, we dismiss this appeal as frivolous and deny Hook's Motion to Proceed *In Forma Pauperis* On Appeal.

LNV Corporation brought an action against Hook in the District Court for the City and County of Denver, Colorado, seeking to foreclose a deed of trust on a piece of real property she owned—a home. In addition to Hook, LNV named as defendants several other parties potentially holding interests in the property, including the Internal Revenue Service. LNV asked the court to determine the priorities of those interests and to order a foreclosure sale of the property.

The United States (on behalf of the IRS) removed the action to the United States District Court for the District of Colorado. LNV filed an amended complaint, and in its answer the United States asserted a claim asking the district court to consider its tax liens against the property when determining the priority of all liens and to distribute any proceeds of the foreclosure sale in accordance with those relative priorities. Hook and her husband, co-defendant David Smith, filed counterclaims against LNV contesting, in relevant part, LNV's right to foreclose on the home. They also advanced claims against the United States, contesting their tax liability and the tax liens.

The district court ultimately dismissed all of Hook's claims and ruled in favor of LNV on its claims against Hook and Smith, leaving to be decided only the manner of judicial foreclosure and the amount of the judgment.

Although Hook and Smith filed a Chapter 7 bankruptcy petition, requiring the district court to administratively close this case, the bankruptcy court granted LNV relief from the automatic bankruptcy stay so the district court could proceed, and it denied Hook and Smith's motion to vacate the relief order. On the same day it denied the motion to vacate, the bankruptcy court entered a discharge order relieving Hook and Smith of their personal liability for certain debt but allowing "a creditor with a lien [to] enforce a claim against [Hook and Smith's] property subject to that lien unless the lien was avoided or eliminated." U.S. Supp. App. at 254.<sup>1</sup>

After reopening the case the district court eventually entered a final judgment in favor of LNV and the United States and against Hook and Smith. The court also ordered foreclosure and judicial sale of Hook and Smith's home. Only Hook appeals.

Hook's arguments on appeal, which for the most part contend that the district court lacked jurisdiction and denied her due process, are wholly frivolous. As an attorney, she should have known that they lacked any merit before she argued them; and in large part, the appellees' briefs make that perfectly clear. We see no need to further educate Hook.

---

<sup>1</sup> The discharge order did not end the bankruptcy case, but that case was eventually closed.

We add only a word about Hook's suggestion that the district judge was hostile to and biased against her, in violation of her due-process rights. "To demonstrate a violation of due process because of judicial bias, a claimant must show either actual bias or an appearance of bias." *Bixler v. Foster*, 596 F.3d 751, 762 (10th Cir. 2010) (internal quotation marks omitted). But "[a]dverse rulings alone do not demonstrate judicial bias." *Id.* Hook's bias argument relies solely on the district court's adverse rulings and therefore is devoid of merit.

Because this appeal is frivolous, *see Ford v. Pryor*, 552 F.3d 1174, 1180 (10th Cir. 2008) ("An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." (internal quotation marks omitted)), we dismiss the appeal and deny Ms. Hook's Motion to Proceed *In Forma Pauperis* On Appeal, *see* 28 U.S.C. § 1915(e)(2)(B)(i) (requiring dismissal of frivolous appeal filed by party seeking to proceed IFP); *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991) (grant of IFP requires "a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal"). Consequently, Ms. Hook must pay all appellate filing and docketing fees (\$505.00) immediately to the United States District Court for the District of Colorado.

Entered for the Court

Harris L Hartz  
Circuit Judge

**Information to identify the case:**

<b>Debtor 1</b>	<b>David Lee Smith</b>		
First Name	Middle Name	Last Name	
<b>Debtor 2</b>	<b>Mary Julia Hook</b>		
(Spouse, if filing)	First Name	Middle Name	Last Name
<b>United States Bankruptcy Court District of Colorado</b>			
<b>Case number:</b> 17-16354-TBM			

Social Security number or ITIN xxx-xx-8123

EIN \_\_\_\_

Social Security number or ITIN xxx-xx-3612

EIN \_\_\_\_

**Order of Discharge**

12/15

**IT IS ORDERED:** A discharge under 11 U.S.C. § 727 is granted to:

David Lee Smith  
aka David L. Smith, Attorney at Law

11/8/17

Mary Julia Hook  
aka M. Julia Hook, Attorney at Law

**By the court:** Thomas B. McNamara  
United States Bankruptcy Judge

**Explanation of Bankruptcy Discharge in a Chapter 7 Case**

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

**Creditors cannot collect discharged debts**

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally on discharged debts. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

**Most debts are discharged**

Most debts are covered by the discharge, but not all. Generally, a discharge removes the debtors' personal liability for debts owed before the debtors' bankruptcy case was filed.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts owed before the conversion are discharged.

**In a case involving community property:** Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

**For more information, see page 2 >**

**Some debts are not discharged**

Examples of debts that are not discharged are:

- ◆ debts that are domestic support obligations;
- ◆ debts for most student loans;
- ◆ debts for most taxes;
- ◆ debts that the bankruptcy court has decided or will decide are not discharged in this bankruptcy case;
- ◆ debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- ◆ some debts which the debtors did not properly list;
- ◆ debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and
- ◆ debts for death or personal injury caused by operating a vehicle while intoxicated.

Also, debts covered by a valid reaffirmation agreement are not discharged.

In addition, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as an insurance company or a person who cosigned or guaranteed a loan.

**This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of the discharge in this case.**

## First Amendment

The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition. It forbids Congress from both promoting one religion over others and also restricting an individual's religious practices. It guarantees freedom of expression by prohibiting Congress from restricting the press or the rights of individuals to speak freely. It also guarantees the right of citizens to assemble peaceably and to petition their government.

[Learn more...](#)

### Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

### Wex Resources

[First Amendment](#)

[The Establishment Clause](#)

[Establishment Clause](#)

[Lee v. Weisman \(1992\)](#)

[Van Orden v. Perry \(2005\)](#)

[Free Exercise Clause](#)

[Free Exercise Clause](#)

[State Action Requirement](#)

[Free Speech](#)

[Forums](#)

[Captive Audience](#)

[Prior Restraint](#)

## Fifth Amendment

The Fifth Amendment creates a number of rights relevant to both criminal and civil legal proceedings. In criminal cases, the Fifth Amendment guarantees the right to a grand jury, forbids “double jeopardy”, and protects against self-incrimination. It also requires that “due process of law” be part of any proceeding that denies a citizen “life, liberty or property” and requires the government to compensate citizens when it takes private property for public use.

[Learn more...](#)

## Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Wex Resources

- [Fifth Amendment](#)
- [Criminal Law / Criminal Procedure](#)
- [Due Process](#)
- [Substantive Due Process](#)
- [Miranda Warning](#)
- [Indictment](#)
- [Privilege Against Self-Incrimination](#)
- [Self-Incrimination](#)
- [Grand Jury](#)
- [Jury](#)
- [Double Jeopardy](#)

## Seventh Amendment

The Seventh Amendment continues a practice from English common law of distinguishing civil claims which must be tried before a jury (absent waiver by the parties) from claims and issues that may be heard by a judge alone. It only governs federal civil courts and has no application to civil courts set up by the states when those courts are hearing only disputes of state law.

[Learn more...](#)

### Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

#### Wex Resources

- [Criminal Law](#)
- [Criminal Procedure](#)
- [Jury](#)

#### Other Resources

- [US Code: Title 18](#)
- [Federal Rules of Criminal Procedure](#)

[< Sixth Amendment up Eighth Amendment >](#)

LII > U.S. Code > Title 11 > CHAPTER 5 > SUBCHAPTER II > **§ 522**

## 11 U.S. Code § 522 - Exemptions

[U.S. Code](#)   [Notes](#)   [State Regulations](#)

---

**(a) In this section—**

**(1) "dependent"** includes spouse, whether or not actually dependent; and

**(2) "value"** means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

**(b)**

**(1) Notwithstanding section 541 of this title**, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

**(2)** Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

**(3)** Property listed in this paragraph is—

**(A)** subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

**(B)** any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

**(C)** retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

**(4)** For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

**(A)** If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

**(B)** If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

**(i)** no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

**(ii)**

**(I)** the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

**(II)** the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

**(C)** A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

**(D)**

**(i)** Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

**(ii)** A distribution described in this clause is an amount that—

**(I)** has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

**(II)** to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

**(c)** Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or

that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

**(1)** a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

**(2)** a debt secured by a lien that is—

**(A)**

**(i)** not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

**(ii)** not void under section 506(d) of this title; or

**(B)** a tax lien, notice of which is properly filed;

**(3)** a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

**(4)** a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

**(d)** The following property may be exempted under subsection (b)(2) of this section:

**(1)** The debtor's aggregate interest, not to exceed \$15,000<sup>11</sup> in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

**(2)** The debtor's interest, not to exceed \$2,400<sup>1</sup> in value, in one motor vehicle.

**(3)** The debtor's interest, not to exceed \$400<sup>1</sup> in value in any particular item or \$8,000<sup>1</sup> in aggregate value, in household

furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

**(4)** The debtor's aggregate interest, not to exceed \$1,000<sup>1</sup> in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

**(5)** The debtor's aggregate interest in any property, not to exceed in value \$800<sup>1</sup> plus up to \$7,500<sup>1</sup> of any unused amount of the exemption provided under paragraph (1) of this subsection.

**(6)** The debtor's aggregate interest, not to exceed \$1,500<sup>1</sup> in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

**(7)** Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

**(8)** The debtor's aggregate interest, not to exceed in value \$8,000<sup>1</sup> less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

**(9)** Professionally prescribed health aids for the debtor or a dependent of the debtor.

**(10)** The debtor's right to receive—

**(A)** a social security benefit, unemployment compensation, or a local public assistance benefit;

**(B)** a veterans' benefit;

**(C)** a disability, illness, or unemployment benefit;

**(D)** alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

**(E)** a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death,

age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

- (i)** such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;
- (ii)** such payment is on account of age or length of service; and
- (iii)** such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

**(11)** The debtor's right to receive, or property that is traceable to—

- (A)** an award under a crime victim's reparation law;
- (B)** a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
- (C)** a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
- (D)** a payment, not to exceed \$15,000,<sup>1</sup> on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or
- (E)** a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

**(12)** Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

**(e)** A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a

power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

**(f)**

**(1)** Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

**(A)** a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

**(B)** a nonpossessory, nonpurchase-money security interest in any—

**(i)** household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

**(ii)** implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

**(iii)** professionally prescribed health aids for the debtor or a dependent of the debtor.

**(2)**

**(A)** For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

**(i)** the lien;

**(ii)** all other liens on the property; and

**(iii)** the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

**(B)** In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the

calculation under subparagraph (A) with respect to other liens.

**(C)** This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

**(3)** In a case in which State law that is applicable to the debtor—

**(A)** permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

**(B)** either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds \$5,000.<sup>1</sup>

**(4)**

**(A)** Subject to subparagraph (B), for purposes of paragraph (1)(B), the term "household goods" means—

**(i)** clothing;

**(ii)** furniture;

**(iii)** appliances;

**(iv)** 1 radio;

**(v)** 1 television;

**(vi)** 1 VCR;

**(vii)** linens;

**(viii)** china;

- (ix)** crockery;
- (x)** kitchenware;
- (xi)** educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
- (xii)** medical equipment and supplies;
- (xiii)** furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
- (xiv)** personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
- (xv)** 1 personal computer and related equipment.

**(B)** The term "household goods" does not include—

- (i)** works of art (unless by or of the debtor, or any relative of the debtor);
- (ii)** electronic entertainment equipment with a fair market value of more than \$500<sup>1</sup> in the aggregate (except 1 television, 1 radio, and 1 VCR);
- (iii)** items acquired as antiques with a fair market value of more than \$500<sup>1</sup> in the aggregate;
- (iv)** jewelry with a fair market value of more than \$500<sup>1</sup> in the aggregate (except wedding rings); and
- (v)** a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

**(g)** Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if

**(1)**

- (A)** such transfer was not a voluntary transfer of such property by the debtor; and
- (B)** the debtor did not conceal such property; or

**(2)** the debtor could have avoided such transfer under subsection (f) (1)(B) of this section.

**(h)** The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

- (1)** such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and
- (2)** the trustee does not attempt to avoid such transfer.

**(i)**

**(1)** If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

**(2)** Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

**(j)** Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

**(k)** Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

**(1)** the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

**(2)** any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

**(l)** The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

**(m)** Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

**(n)** For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e) (6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed \$1,000,000<sup>1</sup> in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

**(o)** For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

**(1)** real or personal property that the debtor or a dependent of the debtor uses as a residence;

**(2)** a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

**(3)** a burial plot for the debtor or a dependent of the debtor; or

**(4)** real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

**(p)**

**(1)** Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$125,000<sup>1</sup> in value in—

- (A)** real or personal property that the debtor or a dependent of the debtor uses as a residence;
- (B)** a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;
- (C)** a burial plot for the debtor or a dependent of the debtor; or
- (D)** real or personal property that the debtor or dependent of the debtor claims as a homestead.

**(2)**

**(A)** The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

**(B)** For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

**(q)**

**(1)** As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$125,000<sup>1</sup> if—

**(A)** the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

**(B)** the debtor owes a debt arising from—

**(i)** any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

**(ii)** fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

**(iii)** any civil remedy under section 1964 of title 18; or

**(iv)** any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

**(2)** Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2586; Pub. L. 98-353, title III, §§ 306, 453, July 10, 1984, 98 Stat. 353, 375; Pub. L. 99-554, title II, § 283(i), Oct. 27, 1986, 100 Stat. 3117; Pub. L. 101-647, title XXV, § 2522(b), Nov. 29, 1990, 104 Stat. 4866; Pub. L. 103-394, title I, § 108(d), title III, §§ 303, 304(d), 310, title V, § 501(d)(12), Oct. 22, 1994, 108 Stat. 4112, 4132, 4133, 4137, 4145; Pub. L. 106-420, § 4, Nov. 1, 2000, 114 Stat. 1868; Pub. L. 109-8, title II, §§ 216, 224(a), (e)(1), title III, §§ 307, 308,

LII > U.S. Code > Title 11 > CHAPTER 5 > SUBCHAPTER II > **§ 524**

## 11 U.S. Code § 524 - Effect of discharge

[U.S. Code](#)   [Notes](#)   [State Regulations](#)

---

### **(a) A discharge in a case under this title—**

- (1)** 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, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
- (2)** 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, whether or not discharge of such debt is waived; and
- (3)** operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

## 15 U.S. Code § 1648 - Reverse mortgages

### U.S. Code Notes

---

#### **(a) IN GENERAL**

In addition to the disclosures required under this subchapter, for each reverse mortgage, the creditor shall, not less than 3 days prior to consummation of the transaction, disclose to the consumer in conspicuous type a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate shall be based on a projected total future credit extension balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure shall include

—  
**(1)** statements of the annual interest rates for not less than 3 projected appreciation rates and not less than 3 credit transaction periods, as determined by the Bureau, including—

- (A)** a short-term reverse mortgage;
- (B)** a term equaling the actuarial life expectancy of the consumer; and
- (C)** such longer term as the Bureau deems appropriate; and

**(2)** a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure required under this section or has signed an application for the reverse mortgage.

#### **(b) PROJECTED TOTAL COST**

In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection (a), the creditor shall take

into account—

- (1)** any shared appreciation or equity that the lender will, by contract, be entitled to receive;
- (2)** all costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction;
- (3)** all payments to and for the benefit of the consumer, including, in the case in which an associated annuity is purchased (whether or not required by the lender as a condition of making the reverse mortgage), the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and
- (4)** any limitation on the liability of the consumer under reverse mortgage transactions (such as nonrecourse limits and equity conservation agreements).

(Pub. L. 90-321, title I, § 138, as added Pub. L. 103-325, title I, § 154(b), Sept. 23, 1994, 108 Stat. 2196; amended Pub. L. 111-203, title X, § 1100A(2), July 21, 2010, 124 Stat. 2107.)

## U.S. Code Toolbox

[Law about...](#) [Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)

## 26 U.S. Code § 6334 - Property exempt from levy

U.S. Code Notes

---

### **(a) ENUMERATION**

There shall be exempt from levy—

#### **(1) WEARING APPAREL AND SCHOOL BOOKS**

Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

#### **(2) FUEL, PROVISIONS, FURNITURE, AND PERSONAL EFFECTS**

So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$6,250 in value;

#### **(3) BOOKS AND TOOLS OF A TRADE, BUSINESS, OR PROFESSION**

So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$3,125 in value.

#### **(4) UNEMPLOYMENT BENEFITS**

Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

#### **(5) UNDELIVERED MAIL**

Mail, addressed to any person, which has not been delivered to the addressee.

**(6) CERTAIN ANNUITY AND PENSION PAYMENTS**

Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 1562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

**(7) WORKMEN'S COMPENSATION**

Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

**(8) JUDGMENTS FOR SUPPORT OF MINOR CHILDREN**

If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

**(9) MINIMUM EXEMPTION FOR WAGES, SALARY, AND OTHER INCOME**

Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d).

**(10) CERTAIN SERVICE-CONNECTED DISABILITY PAYMENTS**

Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under—

- (A)** subchapter II, III, IV, V, or VI of chapter 11 of such title 38, or
- (B)** chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

**(11) CERTAIN PUBLIC ASSISTANCE PAYMENTS**

Any amount payable to an individual as a recipient of public assistance under—

- (A)** title IV or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

**(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.**

**(12) ASSISTANCE UNDER JOB TRAINING PARTNERSHIP ACT**

Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.

**(13) RESIDENCES EXEMPT IN SMALL DEFICIENCY CASES AND PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS EXEMPT IN ABSENCE OF CERTAIN APPROVAL OR JEOPARDY**

**(A) Residences in small deficiency cases**

If the amount of the levy does not exceed \$5,000—

- (i) any real property used as a residence by the taxpayer; or**
- (ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.**

**(B) Principal residences and certain business assets**

Except to the extent provided in subsection (e)—

- (i) the principal residence of the taxpayer (within the meaning of section 121); and**
- (ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.**

**(b) APPRAISAL**

The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary shall summon three disinterested individuals who shall make the valuation.

**(c) NO OTHER PROPERTY EXEMPT**

Notwithstanding any other law of the United States (including section 207 of the Social Security Act), no property or rights to property shall be exempt from levy other than the property specifically made exempt by

subsection (a).

**(d) EXEMPT AMOUNT OF WAGES, SALARY, OR OTHER INCOME**

**(1) INDIVIDUALS ON WEEKLY BASIS**

In the case of an individual who is paid or receives all of his wages, salary, and other income on a weekly basis, the amount of the wages, salary, and other income payable to or received by him during any week which is exempt from levy under subsection (a)(9) shall be the exempt amount.

**(2) EXEMPT AMOUNT**

For purposes of paragraph (1), the term "exempt amount" means an amount equal to—

**(A) the sum of—**

**(i) the standard deduction, and**

**(ii) the aggregate amount of the deductions for personal exemptions allowed the taxpayer under section 151 in the taxable year in which such levy occurs, divided by**

**(B) 52.**

Unless the taxpayer submits to the Secretary a written and properly verified statement specifying the facts necessary to determine the proper amount under subparagraph (A), subparagraph (A) shall be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption.

**(3) INDIVIDUALS ON BASIS OTHER THAN WEEKLY**

In the case of any individual not described in paragraph (1), the amount of the wages, salary, and other income payable to or received by him during any applicable pay period or other fiscal period (as determined under regulations prescribed by the Secretary) which is exempt from levy under subsection (a)(9) shall be an amount (determined under such regulations) which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as he would have under paragraph (1) if (during such period of time) he were paid or received such wages, salary, and other income on a regular weekly basis.

**(4) YEARS WHEN PERSONAL EXEMPTION AMOUNT IS ZERO**

**(A) In general**

In the case of any taxable year in which the exemption amount under section 151(d) is zero, paragraph (2) shall not apply and for purposes of paragraph (1) the term "exempt amount" means an amount equal to—

- (i)** the sum of the amount determined under subparagraph (B) and the standard deduction, divided by
- (ii)** 52.

**(B) Amount determined**

For purposes of subparagraph (A), the amount determined under this subparagraph is \$4,150 multiplied by the number of the taxpayer's dependents for the taxable year in which the levy occurs.

**(C) Inflation adjustment**

In the case of any taxable year beginning in a calendar year after 2018, the \$4,150 amount in subparagraph (B) shall be increased by an amount equal to—

- (i)** such dollar amount, multiplied by
- (ii)** the cost-of-living adjustment determined under section 1(f) (3) for the calendar year in which the taxable year begins, determined by substituting "2017" for "2016" in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of \$100, such increase shall be rounded to the next lowest multiple of \$100.

**(D) Verified statement**

Unless the taxpayer submits to the Secretary a written and properly verified statement specifying the facts necessary to determine the proper amount under subparagraph (A), subparagraph (A) shall be applied as if the taxpayer were a married individual filing a separate return with no dependents.

**(e) LEVY ALLOWED ON PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS IN CERTAIN CIRCUMSTANCES****(1) PRINCIPAL RESIDENCES**

**(A) Approval required**

A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.

**(B) Jurisdiction**

The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

**(2) CERTAIN BUSINESS ASSETS**

Property (other than a principal residence) described in subsection (a)(13)(B) shall not be exempt from levy if—

**(A)** a district director or assistant district director of the Internal Revenue Service personally approves (in writing) the levy of such property; or

**(B)** the Secretary finds that the collection of tax is in jeopardy.

An official may not approve a levy under subparagraph (A) unless the official determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.

**(f) LEVY ALLOWED ON CERTAIN SPECIFIED PAYMENTS**

Any payment described in subparagraph (B) or (C) of section 6331(h)(2) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).

**(g) INFLATION ADJUSTMENT****(1) IN GENERAL**

In the case of any calendar year beginning after 1999, each dollar amount referred to in paragraphs (2) and (3) of subsection (a) shall be increased by an amount equal to—

**(A)** such dollar amount, multiplied by

**(B)** the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting "calendar year 1998" for "calendar year 2016" in subparagraph (A)(ii) thereof.

**(2) ROUNDING**

If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

(Aug. 16, 1954, ch. 736, 68A Stat. 784; Pub. L. 85-840, title IV, § 406, Aug. 28, 1958, 72 Stat. 1047; Pub. L. 89-44, title VIII, § 812(a), June 21, 1965, 79 Stat. 170; Pub. L. 89-719, title I, § 104(c), Nov. 2, 1966, 80 Stat. 1137; Pub. L. 91-172, title IX, § 945(a), Dec. 30, 1969, 83 Stat. 729; Pub. L. 94-455, title XII, § 1209(a)-(c), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1709, 1710, 1834; Pub. L. 97-248, title III, § 347(a), Sept. 3, 1982, 96 Stat. 638; Pub. L. 98-369, div. B, title VI, § 2661(o)(5), July 18, 1984, 98 Stat. 1159; Pub. L. 99-514, title XV, § 1565(a), Oct. 22, 1986, 100 Stat. 2763; Pub. L. 100-647, title I, § 1015(o), title VI, § 6236(c), Nov. 10, 1988, 102 Stat. 3572, 3738; Pub. L. 102-83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 104-168, title V, § 502(a)-(c), July 30, 1996, 110 Stat. 1461; Pub. L. 104-193, title I, § 110(I)(3), formerly § 110(I)(6), Aug. 22, 1996, 110 Stat. 2173, renumbered and amended Pub. L. 105-33, title V, § 5514(a)(2), (3), Aug. 5, 1997, 111 Stat. 620; Pub. L. 105-34, title III, § 312(d)(1), title X, § 1025(a), Aug. 5, 1997, 111 Stat. 839, 924; Pub. L. 105-206, title III, §§ 3431(a)-(c), 3445(a), (b), July 22, 1998, 112 Stat. 758, 762, 763; Pub. L. 115-97, title I, §§ 11002(d)(1)(II), 11041(d), Dec. 22, 2017, 131 Stat. 2060, 2084; Pub. L. 115-141, div. U, title IV, § 401(a)(283), Mar. 23, 2018, 132 Stat. 1198.)

 **U.S. Code Toolbox**

[Law about... Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)

## 26 U.S. Code § 7403. Action to enforce lien or to subject property to payment of tax

U.S. Code Notes

---

### **(a) FILING**

In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability. For purposes of the preceding sentence, any acceleration of payment under section 6166(g) shall be treated as a neglect to pay tax.

### **(b) PARTIES**

All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

### **(c) ADJUDICATION AND DECREE**

The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. If the property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Secretary directs.

**(d) RECEIVERSHIP**

In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(Aug. 16, 1954, ch. 736, 68A Stat. 874; Pub. L. 89-719, title I, § 107(b), Nov. 2, 1966, 80 Stat. 1140; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), title XX, § 2004(f)(2), Oct. 4, 1976, 90 Stat. 1834, 1872; Pub. L. 97-34, title IV, § 422(e)(8), Aug. 13, 1981, 95 Stat. 316.)

 **U.S. Code Toolbox**

[Law about... Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)

LII > U.S. Code > Title 28 > PART IV > CHAPTER 83 > **§ 1291**

## 28 U.S. Code § 1291 - Final decisions of district courts

[U.S. Code](#) [Notes](#)

---

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, § 48, 65 Stat. 726; Pub. L. 85-508, § 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 97-164, title I, § 124, Apr. 2, 1982, 96 Stat. 36.)

 [U.S. Code Toolbox](#)

[Law about...](#) [Articles from Wex](#)

LII > U.S. Code > Title 28 > PART V > CHAPTER 127 > **§ 2001**

## 28 U.S. Code § 2001 - Sale of realty generally

[U.S. Code](#) [Notes](#)

---

**(a)** Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

**(b)** After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any

private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

**(c)** This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 958; May 24, 1949, ch. 139, § 99, 63 Stat. 104.)

## U.S. Code Toolbox

[Law about... Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)

LII > U.S. Code > Title 28 > PART V > CHAPTER 127 > **§ 2002**

## 28 U.S. Code § 2002 - Notice of sale of realty

[U.S. Code](#) [Notes](#)

---

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.

If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

(June 25, 1948, ch. 646, 62 Stat. 959; May 24, 1949, ch. 139, § 100, 63 Stat. 104.)

LII > U.S. Code > Title 28 > PART VI > CHAPTER 176 > SUBCHAPTER C > **§ 3202**

## 28 U.S. Code § 3202 - Enforcement of judgments

[U.S. Code](#) [Notes](#)

---

(a) ENFORCEMENT REMEDIES.—A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.

(b) NOTICE.—On the commencement by the United States of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

**"NOTICE"**

"You are hereby notified that this property is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of \$[amount] for [reason of debt].

"In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

"[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that different property may be so exempted with respect to the State in which the debtor resides.]

"If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.

"If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

"At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your property may be sold at public auction and the payment used toward the money you owe the Government.

"If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after your<sup>[1]</sup> receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

"Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information."

(c) SERVICE.—A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

(d) **HEARING.**—By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—

- (1) to the probable validity of any claim of exemption by the judgment debtor;
- (2) to compliance with any statutory requirement for the issuance of the postjudgment remedy granted; and
- (3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—
  - (A) the probable validity of the claim for the debt which is merged in the judgment; and
  - (B) the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.

(e) **SALE OF PROPERTY.**—The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates shall not be sold before such hearing.

(Added Pub. L. 101-647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4949.)

LII > U.S. Code > Title 28 > PART VI > CHAPTER 176 > SUBCHAPTER C > **§ 3203**

## 28 U.S. Code § 3203 - Execution

[U.S. Code](#) [Notes](#)

---

### **(a) PROPERTY SUBJECT TO EXECUTION.—**

All property in which the judgment debtor has a substantial nonexempt interest shall be subject to levy pursuant to a writ of execution. The debtor's earnings shall not be subject to execution while in the possession, custody, or control of the debtor's employer. Co-owned property shall be subject to execution to the extent such property is subject to execution under the law of the State in which it is located.

### **(b) CREATION OF EXECUTION LIEN.—**

A lien shall be created in favor of the United States on all property levied on under a writ of execution and shall date from the time of the levy. Such lien shall have priority over all subsequent liens and shall be for the aggregate amount of the judgment, costs, and interest. The execution lien on any real property as to which the United States has a judgment lien shall relate back to the judgment lien date.

### **(c) WRIT OF EXECUTION.—**

#### **(1) ISSUANCE.—**

On written application of counsel for the United States, the court may issue a writ of execution. Multiple writs may issue simultaneously, and successive writs may issue before the return date of a writ previously issued.

#### **(2) FORM OF WRIT.—**

##### **(A) General contents.—**

A writ of execution shall specify the date that the judgment is entered, the court in which it is entered, the amount of the judgment if for money, the amount of the costs, the amount of interest due, the sum due as of the date the writ is issued, the rate of postjudgment interest, the name of the judgment debtor, and the judgment debtor's last known address.

**(B) Additional contents.—**

- (i)** Except as provided in clauses (ii) and (iii), the writ shall direct the United States marshal to satisfy the judgment by levying on and selling property in which the judgment debtor has a substantial nonexempt interest, but not to exceed property reasonably equivalent in value to the aggregate amount of the judgment, costs, and interest.
- (ii)** A writ of execution issued on a judgment for the delivery to the United States of the possession of personal property, or for the delivery of the possession of real property, shall particularly describe the property, and shall require the marshal to deliver the possession of the property to the United States.
- (iii)** A writ of execution on a judgment for the recovery of personal property or its value shall direct the marshal, in case a delivery of the specific property cannot be had, to levy and collect such value out of any property in which the judgment debtor has a substantial nonexempt interest.

**(d) LEVY OF EXECUTION.—**

**(1) IN GENERAL.—**

Levy on property pursuant to a writ of execution issued under this section shall be made in the same manner as levy on property is made pursuant to a writ of attachment issued under section 3102(d).

**(2) DEATH OF JUDGMENT DEBTOR.**—The death of the judgment debtor after a writ of execution is issued stays the execution proceedings, but any lien acquired by levy of the writ shall be recognized and enforced by the court for the district in which the estate of the deceased is located. The execution lien may be enforced—

- (A)** against the executor, administrator, or personal representative of the estate of the deceased; or

**(B)** if there be none, against the deceased's property coming to the heirs or devisees or at their option against cash in their possession, but only to the extent of the value of the property coming to them.

**(3) RECORDS OF UNITED STATES MARSHAL.—**

**(A)** A United States marshal receiving a writ of execution shall endorse thereon the exact hour and date of receipt.

**(B)** The United States marshal shall make a written record of every levy, specify the property on which levy is made, the date on which levy is made, and the marshal's costs, expenses, and fees.

**(C)** The United States marshal shall make a written return to the court on each writ of execution stating concisely what is done pursuant to the writ and shall deliver a copy to counsel for the United States who requests the writ. The writ shall be returned not more than—

    (i) 90 days after the date of issuance if levy is not made; or

    (ii) 10 days after the date of sale of property on which levy is made.

**(e) APPOINTMENT OF RECEIVER.—**

Pending the levy of execution, the court may appoint a receiver to manage property described in such writ if there is a substantial danger that the property will be removed from the jurisdiction of the court, lost, materially injured or damaged, or mismanaged.

**(f) REPLEVY; REDEMPTION.—**

**(1) BEFORE EXECUTION SALE.—**

**(A)** Before execution sale, the United States marshal may return property<sup>[1]</sup> to the judgment debtor any personal property taken in execution, on—

    (i) satisfaction of the judgment, interest, and costs, and any costs incurred in connection with scheduling the sale; or

    (ii) receipt from the judgment debtor of a bond—

        (I) payable to the United States, with 2 or more good and sufficient sureties to be approved by the marshal, conditioned on the delivery of the property to the marshal at the time

and place named in the bond to be sold under subsection (g); or

**(II)** for the payment to the marshal of a fair value thereof which shall be stated in the bond.

**(B)** A judgment debtor who sells or disposes of property replevied under subparagraph (A) shall pay the United States marshal the stipulated value of such property.

**(C)** If the judgment debtor fails to deliver such property to the United States marshal pursuant to the terms of the delivery described in subparagraph (A)(ii)(I) and fails to pay the United States marshal the stipulated value of such property, the United States marshal shall endorse the bond "forfeited" and return it to the court from which the writ of execution issued. If the judgment is not fully satisfied, the court shall issue a writ of execution against the judgment debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, on which execution no delivery bond shall be taken, which instruction shall be endorsed on the writ.

**(2) AFTER EXECUTION SALE.—**

The judgment debtor shall not be entitled to redeem the property after the execution sale.

**(g) EXECUTION SALE.—**

**(1) GENERAL PROCEDURES.**—An execution sale under this section shall be conducted in a commercially reasonable manner—

**(A) Sale of real property.**—

**(i) In general.**—

**(I)** Except as provided in clause (ii), real property, or any interest therein, shall be sold, after the expiration of the 90-day period beginning on the date of levy under subsection (d), for cash at public auction at the courthouse of the county, parish, or city in which the greater part of the property is located or on the premises or some parcel thereof.

**(II)** The court may order the sale of any real property after the expiration of the 30-day period beginning on the date of levy under subsection (d) if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during the 90-day period beginning on the date of levy.

**(III)** The time and place of sale of real property, or any interest therein, under execution shall be advertised by the United States marshal, by publication of notice, once a week for at least 3 weeks prior to the sale, in at least one newspaper of general circulation in the county or parish where the property is located. The first publication shall appear not less than 25 days preceding the day of sale. The notice shall contain a statement of the authority by which the sale is to be made, the time of levy, the time and place of sale, and a brief description of the property to be sold, sufficient to identify the property (such as a street address for urban property and the survey identification and location for rural property), but it shall not be necessary for the notice to contain field notes. Such property shall be open for inspection and appraisal, subject to the judgment debtor's reasonable objections, for a reasonable period before the day of sale.

**(IV)** The United States marshal shall serve written notice of public sale by personal delivery, or certified or registered mail, to each person whom the marshal has reasonable cause to believe, after a title search is conducted by the United States, has an interest in property under execution, including lienholders, co-owners, and tenants, at least 25 days before the day of sale, to the last known address of each such person.

**(ii) Sale of city lots.—**

If the real property consists of several lots, tracts, or parcels in a city or town, each lot, tract, or parcel shall be offered for sale separately, unless not susceptible to separate sale because of the character of improvements.

**(iii) Sale of rural property.—**If the real property is not located in a city or town, the judgment debtor may—

- (I)** divide the property into lots of not less than 50 acres or in such greater or lesser amounts as ordered by the court;
- (II)** furnish a survey of such prepared by a registered surveyor; and
- (III)** designate the order in which those lots shall be sold.

When a sufficient number of lots are sold to satisfy the amount of the execution and costs of sale, the marshal shall stop the sale.

**(B) Sale of personal property.—**

**(i)** Personal property levied on shall be offered for sale on the premises where it is located at the time of levy, at the courthouse of the county, parish or city wherein it is located, or at another location if ordered by the court. Personal property susceptible of being exhibited shall not be sold unless it is present and subject to the view of those attending the sale unless—

- (I)** the property consists of shares of stock in corporations;
- (II)** by reason of the nature of the property, it is impractical to exhibit it; or
- (III)** the debtor's interest in the property does not include the right to the exclusive possession.

**(ii)**

**(I)** Except as provided in subclause (II), personal property, or any interest therein, shall be sold after the expiration of the 30-day period beginning on the date of levy under subsection (d).

**(II)** The court may order the sale of any personal property before the expiration of such 30-day period if the court determines that such property is likely to perish, waste, be destroyed, or otherwise substantially depreciate in value during such 30-day period.

**(iii)** Notice of the time and place of the sale of personal property shall be given by the United States marshal by posting notice

thereof for not less than 10 days successively immediately before the day of sale at the courthouse of any county, parish, or city, and at the place where the sale is to be made.

**(iv)** The United States marshal shall serve written notice of public sale by personal delivery, or registered or certified mail at their last known addresses, on the judgment debtor and other persons who the marshal has reasonable cause to believe, after diligent inquiry, have a substantial interest in the property.

**(2) POSTPONEMENT OF SALE.—**

The United States marshal may postpone an execution sale from time to time by continuing the required posting or publication of notice until the date to which the sale is postponed, and appending, at the foot of each such notice of a current copy of the following:

"The above sale is postponed until the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock .M., \_\_\_\_\_, United States Marshal for the District of \_\_\_\_\_, by \_\_\_\_\_, Deputy, dated \_\_\_\_\_."

**(3) SALE PROCEDURES.—**

**(A) Bidding requirements.—**

A bidder at an execution sale of property, may be required by the United States marshal to make a cash deposit of as much as 20 percent of the sale price proposed before the bid is accepted.

**(B) Resale of property.—**

If the terms of the sale are not complied with by the successful bidder, the United States marshal shall proceed to sell the property again on the same day if there is sufficient time. If there is insufficient time, the marshal shall schedule and notice a subsequent sale of the property as provided in paragraphs (1) and (2).

**(4) RIGHTS AND LIABILITIES OF PURCHASERS.—**

**(A) Transfer of title after sale.—**

**(i)** If property is sold under this subsection and the successful bidder complies with the terms of the sale, the United States marshal shall execute and deliver all documents necessary to transfer to the successful bidder, without warranty, all the rights,

titles, interests, and claims of the judgment debtor in the property.

**(ii)** If the successful bidder dies before execution and delivery of the documents needed to transfer ownership, the United States marshal shall execute and deliver them to the successful bidder's estate. Such delivery to the estate shall have the same effect as if accomplished during the lifetime of the purchaser.

**(B)** Purchaser considered innocent purchaser without notice.— The purchaser of property sold under execution shall be deemed to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice had the sale been made voluntarily and in person by the judgment debtor.

**(C)** Liability of successful bidder who fails to comply.— A successful bidder at an execution sale who fails to comply with the terms of the sale shall forfeit to the United States the cash deposit or, at the election of the United States, shall be liable to the United States, on a subsequent sale of the property, for all net losses incurred by the United States as a result of such failure.

**(h) DISPOSITION OF PROCEEDS; FURTHER LEVY.—**

**(1) DISTRIBUTION OF SALE PROCEEDS.—**

**(A)** The United States marshal shall first deliver to the judgment debtor such amounts to which the judgment debtor is entitled from the sale of partially exempt property.

**(B)** The United States marshal shall next deduct from the proceeds of an execution sale of property an amount equal to the reasonable expenses incurred in making the levy of execution and in keeping and maintaining the property.

**(C)** Except as provided in subparagraph (D), the United States marshal shall deliver the balance of the proceeds to the counsel for the United States as soon as practicable.

**(D)** If more proceeds are received from the execution sale than is necessary to satisfy the executions held by the United States marshal, the marshal shall pay the surplus to the judgment debtor.

**(2) FURTHER LEVY IF EXECUTION NOT SATISFIED.—**

If the proceeds of the execution sale of the property levied on are insufficient to satisfy the execution, the United States marshal shall proceed on the same writ of execution to levy other property of the judgment debtor.

(Added Pub. L. 101-647, title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4950.)

## U.S. Code Toolbox

[Law about... Articles from Wex](#)

[Table of Popular Names](#)

[Parallel Table of Authorities](#)

[How current is this?](#)

LII > Federal Rules of Appellate Procedure

**> Rule 38. Frivolous Appeal—Damages and Costs**

## Rule 38. Frivolous Appeal—Damages and Costs

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

### NOTES

(As amended Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 24, 1998, eff. Dec. 1, 1998.)

#### NOTES OF ADVISORY COMMITTEE ON RULES—1967

Compare 28 U.S.C. §1912. While both the statute and the usual rule on the subject by courts of appeals (Fourth Circuit Rule 20 is a typical rule) speak of "damages for delay," the courts of appeals quite properly allow damages, attorney's fees and other expenses incurred by an appellee if the appeal is frivolous without requiring a showing that the appeal resulted in delay. See *Dunscombe v. Sayle*, 340 F.2d 311 (5th Cir., 1965), cert. den., 382 U.S. 814, 86 S.Ct. 32, 15 L.Ed.2d 62 (1965); *Lowe v. Willacy*, 239 F.2d 179 (9th Cir., 1956); *Griffith Wellpoint Corp. v. Munro-Langstroth, Inc.*, 269 F.2d 64 (1st Cir., 1959); *Ginsburg v. Stern*, 295 F.2d 698 (3d Cir., 1961). The subjects of interest and damages are separately regulated, contrary to the present practice of combining the two (see Fourth Circuit Rule 20) to make it clear that the awards are distinct and independent. Interest is provided for by law; damages are awarded by the court in its discretion in the case of a frivolous appeal as a matter of justice to the appellee and as a penalty against the appellant.

#### NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

The amendment requires that before a court of appeals may impose sanctions, the person to be sanctioned must have notice and an opportunity to respond. The amendment reflects the basic principle enunciated in the Supreme Court's opinion in *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980), that notice and opportunity to respond must precede the imposition of sanctions. A separately filed

motion requesting sanctions constitutes notice. A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice. Requests in briefs for sanctions have become so commonplace that it is unrealistic to expect careful responses to such requests without any indication that the court is actually contemplating such measures. Only a motion, the purpose of which is to request sanctions, is sufficient. If there is no such motion filed, notice must come from the court. The form of notice from the court and of the opportunity for comment purposely are left to the court's discretion.

#### **COMMITTEE NOTES ON RULES—1998 AMENDMENT**

Only the caption of this rule has been amended. The changes are intended to be stylistic only.

[< Rule 37. Interest on Judgment up Rule 39. Costs >](#)

#### **Federal Rules of Appellate Procedure Toolbox**

- [Wex: Appellate Procedure: Overview](#)