

LIEN STRIPPING
CHAPTER 7 BANKRUPTCY

Circuit	"Strip Down" Partially Underwater Lien	Authority	Analysis/Court's Ruling	Interpreting Bankruptcy Code Sections
All	No	<i>Dewsnup v. Timm</i> , 502 U.S. 410 (1992)	<p>In <i>Dewsnup</i>, the debtor had one mortgage on his principal residence. When he filed for bankruptcy, the lien was <i>partially</i> underwater. The debtor argued "that §§ 506(a) and 506(d) are complementary and to be read together. Because, under § 506(a), a claim is secured only to the extent of the judicially determined value of the real property on which the lien is fixed, a debtor can void a lien on the property pursuant to § 506(d) to the extent the claim is no longer secured and thus is not an 'allowed secured claim.'" The Court rejected this argument and held that a debtor could not "strip down" a partially underwater lien because Section 506(d) does not permit a debtor to void a lien securing an allowed claim. The Court reasoned that "the words 'allowed secured claim' in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a), which by its terms is not a definitional provision. Rather, the words should be read term-by-term to refer to any claim that is, first, allowed, and, second, secured. Because there is no question that the claim at issue here has been "allowed" pursuant to § 502 of the Code and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of § 506(d), which voids only liens corresponding to claims that have not been allowed and secured."</p>	11 U.S.C. §§ 506(a) and 506(d)

Circuit	"Strip Off" Wholly Underwater Lien	Authority	Analysis/Court's Ruling	Interpreting Bankruptcy Code Sections
All	No	<i>Bank of America v. Caulkett</i> , 135 S.Ct. 1995 (2015)	A debtor in a Chapter 7 bankruptcy proceeding may not "strip off" or void a junior mortgage lien pursuant to § 506(d) of the Bankruptcy Code when the debt owed on a senior mortgage lien exceeds the present value of the property, the United States Supreme Court ruled in <i>Bank of America, N.A. v. Caulkett</i> , 135 S. Ct. 1995, 61 Bankr. Ct. Dec. (CRR) 31 (2015),	11 U.S.C. §§ 506(a) and 506(d)

LIEN STRIPPING
CHAPTER 13 BANKRUPTCY

Circuit	"Strip Down" Partially Underwater Lien	Authority	Analysis/Court's Ruling	Interpreting Bankruptcy Code Sections
All	No	<i>Nobelman v. American Savings Bank</i> , 508 U.S. 324 (1993)	<p>The Nobelmans fell behind on their mortgage encumbering their principal residence and sought relief under Chapter 13 of the Bankruptcy Code. The Bank filed a proof of claim for \$71,335 in principal, interest, and fees owed on the note. The Nobelmans' "modified Chapter 13 plan valued the residence at \$23,500 . . . and proposed to make payments pursuant to the mortgage up to that amount." 508 U.S. at 326. The Nobelmans, relying on § 506(a), proposed to treat the remainder of the bank's claim as unsecured. Under the plan, unsecured creditors received nothing. The Nobelmans' argued that the anti-modification clause in § 1322(b)(2) did not prohibit their plan because its "protection applies only to the extent the mortgagee holds a 'secured claim' in the debtor's residence and that [one] must look first to § 506(a) to determine the value of the mortgagee's 'secured claim.'" <i>Id.</i> at 328. The Court disagreed with the Nobelmans' analysis, concluding that the operative language of section 1322(b)(2), "a claim secured only by a [homestead lien]," included "both the secured and the unsecured components of the claim." <i>Id.</i> at 331. The Court reached this conclusion based upon section 1322(b)(2)'s focus upon the "rights" of a mortgagee, and stated these rights could only be determined by reviewing the relevant state law. <i>Id.</i> at 329. According to Texas law, those rights were found in the mortgage documents and included the term of the note, the interest rate and the amount of each monthly payment. <i>Id.</i> The Court reasoned that these "rights" would be modified by the Nobelmans' proposed bifurcation, and section 1322(b)(2) prohibits such modification. <i>Id.</i></p>	11 U.S.C. §§ 506(a) and 1322(b)(2)

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B.A.P. 1st Cir.	Yes	<i>In re Mann</i> , 249 B.R. 831 (B.A.P. 1st Cir. 2000)	Pursuant to § 506(a) and § 1322(b)(2), and notwithstanding the antimodification provision in the latter, Chapter 13 plans may void residential real property liens that are wholly unsecured. The Court believed that a literal reading of § 1322(b)(2) and § 506(a) mandates this result.	11 U.S.C. §§ 506(a) and 1322(b)(2)
2nd	Yes	<i>In re Pond</i> , 252 F.3d 122 (2d Cir. 2001)	It is correct to look to 11 U.S.C. § 506(a) for a judicial valuation of the collateral to determine the status of a creditor's secured claim. The antimodification exception of 11 U.S.C. § 1322(b)(2) protects a creditor's rights in a mortgage lien only where the debtor's residence retains enough value--after accounting for other encumbrances that have priority over the lien--so that the lien is at least partially secured under § 506(a). Thus, a wholly unsecured claim, as defined under § 506(a) is not protected under the antimodification exception of § 1322(b)(2).	11 U.S.C. §§ 506(a) and 1322(b)(2)
3rd	Yes	<i>In re McDonald</i> , 205 F.3d 606 (3d Cir. 2000)	A wholly unsecured mortgage on Chapter 13 debtor's residence is not subject to the Bankruptcy Code's antimodification clause. 11 U.S.C. §§ 506(a) and 1322(b)(2).	11 U.S.C. §§ 506(a) and 1322(b)(2)
4th	Yes	<i>In re Davis</i> , 716 F.3d 331 (4th Cir. 2013)	A completely valueless lien is classified as an unsecured claim under 11 U.S.C. § 506(a). 11 U.S.C. § 1322(b)(2) expressly permits modification of the rights of unsecured creditors. The end result is that § 506(a), which classifies valueless liens as unsecured claims, operates with § 1322(b)(2) to permit a bankruptcy court to strip off a lien against a primary residence with no value. The courts have generally permitted a "strip off" of completely valueless liens in Chapter 13 cases because, unlike <i>Nobelman</i> , holders of such liens are not "holders of secured claims" and, therefore, are not entitled to the protection of § 1322(b)(2)	11 U.S.C. §§ 506(a) and 1322(b)(2)

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5th	Yes	<i>In re Bartee</i> , 212 F.3d 277 (5th Cir. 2000)	The court must first look to 11 U.S.C. § 506(a) for a judicial valuation of the collateral to determine the status of the bank's secured claim and this valuation will control the determination of the mortgagee's security interest--i.e., whether it is a secured or unsecured claim. Therefore, a wholly unsecured mortgage holder does not have a secured claim. Without an allowed secured claim, a creditor cannot invoke 11 U.S.C. § 1322(b)(2). Thus, a wholly unsecured lien on debtor's principal residence is not subject to the antimodification clause in § 1322(b)(2). N.B., The court drew support from the legislative history of section 1322(b)(2) and public policy considerations favoring only those mortgage lenders involved with homestead purchases rather than home improvement or debt consolidation.	11 U.S.C. §§ 506(a) and 1322(b)(2)
6th	Yes	<i>In re Lane</i> , 280 F.3d 663 (6th Cir. 2002)	<ul style="list-style-type: none"> — Section 1322(b)(2) prohibits modification of the rights of a holder of a secured claim if the security consists of a lien on the debtor's principal residence; — Section 1322(b)(2) permits modification of the rights of an unsecured claimholder; — Whether a lien claimant is the holder of a "secured claim" or an "unsecured claim" depends, thanks to § 506(a), on whether the claimant's security interest has any actual "value;" — If a claimant's lien on the debtor's homestead has a positive value, no matter how small in relation to the total claim, the claimant holds a "secured claim" and the claimant's contractual rights under the loan documents are not subject to modification by the Chapter 13 plan; — If a claimant's lien on the debtor's homestead has no value at all, on the other hand, the claimant holds an "unsecured claim" and the claimant's contractual rights are subject to modification by the plan 	11 U.S.C. §§ 506(a) and 1322(b)(2)
8th	Yes	<i>In re Schmidt</i> , 765 F.3d 877 (8th Cir. 2014)	Chapter 13 debtor could validly strip off third mortgage lien on the debtor's principal residence, reclassifying the third mortgage lien from secured to unsecured and allowing the debtor to avoid the lien entirely upon discharge, where the value of the residence was far less than the first mortgage lien, and the only collateral that secured the third mortgage was the residence, so that the value of the third mortgage lien was zero. 11 U.S.C.A. §§ 506(a)(1), 1322(b)(2).	11 U.S.C. §§ 506(a) and 1322(b)(2)

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9th	Yes	<i>In re Zimmer</i> , 313 F.3d 1220 (9th Cir. 2002)	Whether a lien claimant is the holder of a "secured claim" or an "unsecured claim" depends on whether the claimant's security interest has any actual "value." 11 U.S.C. § 506(a). Section 506(a) makes clear that the status of a claim depends on the valuation of the property. A claim such as a mortgage is not a "secured claim" to the extent that it exceeds the value of the property that secures it. The antimodification clause of Section 1322(b)(2) does not apply to wholly unsecured homestead liens and permits avoidance of the same.	11 U.S.C. §§ 506(a) and 1322(b)(2)
10th	No	<i>In re Woolsey</i> , 696 F.3d 1266 (10th Cir. 2012)	Chapter 13 debtors sought to strip a wholly unsecured mortgage lien using 11 U.S.C. § 506(d) and argued that the term "allowed secured claim" in 506(d) had a different meaning in Chapter 13 than in Chapter 7. The debtor argued that in Chapter 13, secured claims were valued under §506(a), and so if a claim was not a secured claim under that section, then it was not an "allowed secured claim" under §506(d), and so was void. Following the Supreme Court's reasoning in <i>Dewsnup</i> , it was bound by that decision, and further bound by precedent that the same words in the same statute could not have different meanings in different contexts, otherwise the statute could ultimately have no meaning. Ultimately, the court held that Chapter 13 debtors cannot use §506(d) to strip a wholly unsecured mortgage lien. <u>The court intimated that it would have allowed the Woolseys to remove the wholly unsecured lien if they had invoked § 1322(b)(2); however, the Woolseys made plain that they wanted no part of this argument.</u>	11 U.S.C. § 506(d)
11th	Yes	<i>In re Tanner</i> , 217 F.3d 1357 (11th Cir. 2000)	The only reading of both 11 U.S.C. §§ 506(a) and 1322(b)(2) that renders neither a nullity is one that first requires bankruptcy courts to determine the value of the homestead lender's secured claim under § 506(a) and then to protect from modification any claim that is secured by any amount of collateral in the residence. Any claim that is wholly unsecured, however, would not be protected from modification under section 1322(b)(2).	11 U.S.C. §§ 506(a) and 1322(b)(2)

* In a "strip off" the entire lien is removed, whereas in a "strip down" a lien is bifurcated into secured and unsecured claims with only the unsecured claim component being removed.

** The lien referred to herein is a mortgage on the debtor's principal residence