

# Lien Stripping and Cram Down

## With an Emphasis on Chapter 13

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### *The Claim*

- Bankruptcy Code 101(a)(5) - (A) Right to payment..... (B) right to equitable remedy
- A claim may be secured, unsecured or both secured and unsecured
- Secured claim - Bankruptcy Code 506(a)
  - Creditor's interest in estate's interest in property
  - Determined based on replacement value as of the date of filing without costs of sale or marketing (*Associates Commercial Corp v. Rash*, 520 US 953 (1997) and especially foot note 6)

### *Determination of Claim*

Procedure - a motion to determine secured claim - Section 506(a)

- A Contested Matter; discovery, evidentiary hearing, appraisal testimon

### *Why determine a secured claim?*

*Lien Stripping* - Not 506(d) - *Ryan v. USA* (12-3398 - Seventh Circuit July 8, 2013);  
*Dewsnup v. Timms* 502 U.S. 410 (1992)

Lien stripping is to be accomplished by Section 1322(b)(2) since a plan may modify the rights of a holder of a claim if it is not secured by the debtor's residence - thus a wholly unsecured claim may result in lien avoidance?

*Cram Down* - A secured claim - except for residential real estate - may be paid in full - with interest - pursuant to a plan over the plan period resulting in debtor owning the property free and clear on conclusion of the plan

### *Interest Rate*

*Till v. SSC Credit Corp*, 541 UA 465 (2004) - Formula approach - "prime + adjust"