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Post-Judgment Collections in Today's Economy

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In court you may win, but it's not over until the money comes in...

Obtaining a personal judgment against an owner is a very useful tool in collecting upon a delinquent account, especially in today's current economy. Whereas a lien can be extinguished when a property forecloses, a personal judgment against the owner is not impacted by a foreclosure. However, filing a lawsuit to obtain such a judgment is just the beginning. Once the association obtains a judgment, then next step is to collect on the judgment. Most debtors do not automatically pay the judgments against them. Instead, it is up to the association to work with its legal counsel to attempt collection of the judgment via the garnishment process.

Collection Strategies

It is often most cost-effective for our clients to garnish easy-to-reach assets, like bank accounts and wages.

Bank Garnishments:

Associations can garnish the debtor's checking and savings accounts if the association has reliable information regarding the financial institution and

account numbers. Usually this information can be found on copies of checks the owner has sent to management for payment of previous assessments. With this information, counsel can file an action with the court to garnish the account funds. If there are funds in the account, the court will then order the bank to withhold the funds until payment to the association is made.

Garnishing bank funds is useful because there are few defenses the debtor can raise to challenge the garnishment. One typical defense seen is the debtor's assertion that the funds are exempt from garnishment because they derive from disability, veteran's or social security benefits. If the owner can prove that the funds are from some form of exempt income, the court will order that the garnishment be released. In most cases, this results in no recovery for the association. However, an owner is often unable to prove that all of the funds in his or her account are exempt from garnishment.

Wage Garnishments:

A wage garnishment is a proceeding whereby the court orders the debtor's employer to withhold funds from the debtor's paycheck to pay the judgment. Although these garnishments are often

successful, it is imperative that associations and management have reliable employment information regarding the debtor's employment. Self-employed and independent contractors may present additional difficulties in this regard.

Rent Garnishment:

If the owner leases out the property, it is possible to garnish rent that the debtor receives from the tenant. To do this, however, the association or management must have reliable information about the tenant.

Generally, tenant garnishments present several unique difficulties. Surprisingly, it is not uncommon to find that the debtor's tenant is a family member who does not pay rent. Also, the debtor may convince the tenant to refuse service of the garnishment or to not pay the full rent amount to the association. Sometimes the tenant is delinquent in paying his or her rent. Nonetheless, the filing of a rent garnishment in and of itself will often prompt an owner to either pay the judgment or enter into a payment agreement.

Hire an Expert

If the association does not have credible information about the debtor, the case can be referred to an outside private investigator. For a fee, the investigator can attempt to find asset information on the debtor, such as banking information and employment information. This service can be extremely useful in cases where counsel has obtained a judgment but there is little known about the debtor.

Interrogatories

Another tool for obtaining information about the debtor is for counsel to file interrogatories, which is a court filing requiring the debtor to answer questions under oath about his or her assets. If he or she does not respond to the interrogatories, the debtor can ultimately be put in jail. It is important to note that this remedy does not require the debtor to actually pay the judgment – it is rather an information gaining tool and can also force the debtor to address the debt.

Keep an Eye on the Debtor

Any information associations can garner relating to the debtor's place of employment or banking institution can be helpful in collecting on a judgment. In addition, tenant information, or information about any other real property owned by the debtor can also be useful. Management should share this information with legal counsel once an account is turned over to counsel's office for collection.

Knowing when it's no longer cost-effective to continue.

Although, there are many ways to attempt to collect on a judgment, all of them require time and money. Sometimes there are cases in which the association has obtained a judgment, but counsel recommends that the judgment be reclassified as bad debt. This happens when post-judgment collection remedies have been exhausted or further action is no longer cost-effective. However, even if the account is reclassified as a bad debt and written off the Association's books, the judgment will still remain on the debtor's record and will appear on his or her credit report. This can result in payment sometime down the road when the debtor is trying to rehabilitate his or her credit or obtain financing.