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Judgment for the Plaintiff; Now What?

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For many associations, filing a lawsuit is a routine part of their collections process. Although we may have already recorded a lien against the lot or unit, a judgment can be a very useful tool in collecting a delinquent account. However, many clients do not realize that further action may be required in order to collect the judgment. In many cases, obtaining a judgment is only the beginning. The following discussion provides the various options available in order to collect a judgment and the various considerations involved.

To begin, it is important to note that any legal fees incurred in collecting a judgment are often unrecoverable. Once a court enters a judgment, it specifically states the amount of attorneys' fees awarded. Any attorneys' fees incurred after the judgment has been entered are not a part of that judgment award. In addition, the local courts are often reluctant to award "prospective" legal fees because, as the argument goes, the defendant should not have to pay any legal fees for action that has not yet been taken and may never be taken. Rather, the courts take the position that post-judgment legal fees are simply the "cost of doing business." As a result, clients must decide on a case-by-case basis whether taking action to collect a judgment makes economic sense.

Assuming that post-judgment collection is a viable option in a particular case, there are several options available to either force the debtor to make payment or prompt payment in full. Each option requires us to file an action with the court, which in turn gives us the ability to attach the debtors' wages, bank accounts or other assets.

Wage Garnishment

Simply put, a wage garnishment is a proceeding where the court orders the owner's employer to withhold funds from the debtor's paycheck. In the event the owner's employer fails to withhold funds, we can ask the court to enter a judgment against the employer. Although these garnishments are often successful, it is imperative that you have reliable employment information. Employment information is often very difficult to obtain, and what we can find is often outdated. For obvious reasons, the garnishment will be ineffective if the owner no longer works for that employer. In addition, please note that owners who are self-employed or work as independent contractors may present additional difficulties.

It is important to note that we are often limited to a certain percentage of the debtor's wages – we cannot claim his or her

entire paycheck. While we may not be able to collect the entire balance of the judgment, a wage garnishment will often prompt the debtor to either make full payment or agree to an aggressive payment plan. In Virginia, we are now able to attach an owner's wages for up to 180 days, which has made it easier to collect the entire judgment by way of a wage garnishment.

Bank Garnishment

We can also garnish the debtor's checking and savings accounts. When this is possible, we are often able to collect the entire judgment. Similar to a wage garnishment, it is important that you have reliable information. Frequently, obtaining a recent check copy from management can provide all the information we need. We then file an action with the court, and the court orders the debtor's bank to withhold the funds. This can be very effective if you garnish a checking account, as the debtor will be unable to withdraw any money from that account. This usually prompts the debtor to contact us and enter a payment agreement.

The only defense an owner has to a garnishment is to claim that the funds cannot be attached as they fall into one of the statutory exemptions. For example, a debtor can claim that funds received from disability veteran's benefits or social security are exempt from the garnishment. Although an owner can also claim his or her wages are exempt from garnishment, owners are more likely to claim that the funds held in the bank are exempt from garnishment. If the owner can prove that the funds in the account are the result of 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.

Rent Garnishment

If the owner is a non-resident, it is possible to garnish any rent that the debtor receives from a tenant residing in the property. Like garnishments previously discussed, it is again important to have reliable information. However, if you have reliable information, you can claim all of the rent paid during the time the garnishment is in effect.

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. More than likely, the tenant is delinquent in paying his or her rent, which caused the owner's assessment account to become delinquent. Nonetheless, a rent garnishment will often prompt an owner to either pay the judgment or enter a payment agreement; it may also prompt the owner to remove a non-paying tenant from the property.

Levy on Personal Property

A judgment also gives us the ability to attach the debtor's personal property and sell it at public auction. Typically, we try to attach the debtor's vehicle. Unlike a garnishment, a levy does not require a Court appearance. Instead, we first file an action that directs the Sheriff to tag the specified property as to be auctioned for sale. After the property is tagged, a bond is set that must be paid to proceed with the sale. The bond is usually the amount of the judgment plus any other liens against the property (e.g. the remaining loan balance on a car). We must then schedule a sale date with the Sheriff, and the auction is then conducted at that time.

In our experience, levies are usually not cost-effective. Due to the amount of time

involved in conducting the sale, and the bond costs, the overall cost of the sale can be expensive. Furthermore, most personal property does not have enough value to result in a significant recovery for the Association. While a vehicle is probably the most significant piece of personal property the debtor owns, it is usually encumbered with liens and therefore no one is interested in purchasing it. Generally, when we pursue a levy, we hope that the debtor makes payment as a result of the Sheriff tagging their vehicle for sale.

Interrogatories

A judgment also allows you to summon the debtor to court to answer questions concerning his or her ability to pay the judgment. The debtor is required to answer the questions under oath, and if he or she does not appear, 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, and for that reason, we typically file a summons to answer interrogatories if we have no asset information for the debtor and all other efforts have been unsuccessful. In filing the summons, we are simply trying to obtain some useful information and hopefully persuade the debtor to address the debt.

This memorandum provides only a brief overview of the available options for collecting a judgment. As noted earlier, post-judgment collection requires careful consideration as to what action should be taken and when. If you have any questions regarding this topic, please feel free to contact any one of our community association attorneys.