

YOU'VE GOT A JUDGMENT, NOW WHAT?

Many property managers and landlords are successful in obtaining a money judgment against a defaulting tenant, but are ultimately unable to collect. Why is it that so many money judgment awards go unsatisfied? Once a judgment is rendered it is up to the judgment creditor to pursue collection, and many judgment creditors are unable or unwilling to properly pursue the judgment debtor in order to collect on the judgment. In California, the manner and extent to which civil judgments are enforceable are defined by the Enforcement of Judgments Law, and is found in Sections 680.010 to 724.260 of the California Code of Civil Procedure. This article will provide a brief overview of collection procedures that may help you to collect your money, and the primary advantages and disadvantages of each. These include:

1. Examination of Debtor and Third Parties. A judgment creditor may compel the debtor and third parties to answer either oral or written questions under oath as to the judgment debtor's assets, liabilities and income in order to assist in collection efforts. The service of the examination order creates a lien on the judgment debtor generally and creates a one-year lien on all of the debtor's nonexempt personal property whether or not it is in the debtors possession and control. It also creates a one-year lien on the debtor's interest in property in the third party's possession or control, provided that the property is adequately described. The creditor may use the examination to obtain a turnover order compelling the debtor to deliver assets to the levying officer (sheriff) enforceable by contempt. One disadvantage is that it "tips off" the debtor that his assets are being sought.

2. Judgment Lien on Real Property. The recordation of an abstract of judgment creates a lien on all of the debtor's real property in the county in which the abstract is recorded and preserves the judgment creditor's priority over later

claimants. It is one of the most commonly used and cost effective enforcement procedures. It even attaches to after-acquired real property. One disadvantage is that abstract only creates a lien on the real property, but does nothing to obtain funds to satisfy the judgment. After recordation, the lien may then be enforced by levy and sale. Also, the judgment debtor will be made aware of the existence of the lien by either the county recorder or the judgment creditor.

3. Judgment Lien on Personal Property. A judgment creditor may create a lien on certain types of personal property by filing a prescribed notice with the Secretary of State. The procedure is similar to that used to perfect a security interest in such property under the Commercial Code. It also applies to after acquired property. As with the real property lien, additional steps must be taken in order to actually obtain the assets secured by the lien.

4. Writ of Execution. The most common enforcement procedure is to levy on the judgment debtor's property under a writ of execution. If you can ascertain current information on the whereabouts of debtor assets, such as bank accounts, cash, jewelry or vehicles, the court may issue a writ of execution allowing the levying officer to take the property in order to satisfy the judgment. The major advantage of this process is that it reaches most property owned by the debtor, and authorizes the levying officer to take physical possession of the property for purposes of turning it over to the creditor or for sale. However, this process requires the creditor to have some information about the debtor's assets, and may be expensive, as the creditor is responsible for any moving and storage costs of assets held for sale. Also, many debtors file for bankruptcy protection in response to attempts to levy under a writ of execution, particularly where business assets are seized.

5. Till Taps and Keepers. If the judgment is against a business, especially a retail sales business, a keeper or till tap may make sense. If the judgment creditor instructs the levying officer pursuant to a writ of execution (and deposits

the appropriate fees) the levying officer will install a keeper at the debtor's place of business for the period requested by the judgment creditor. The keeper's function will be to take custody of all sales proceeds on behalf of the levying officer. The primary advantage of a keeper is that it enables the debtor's business to continue to operate while the creditor reaps the benefit. The major disadvantage is that the levying officer will require a sizeable deposit before installing a keeper. In contrast, a till tap is a one time seizure by the levying officer of the contents of the cash register or safe. Unlike a keeper, a till tap does not create a continuing levy.

6. Wage Garnishment. If the judgment debtor is employed, a judgment creditor may compel the debtor's employer to withhold the nonexempt portion of the debtor's disposable earnings for payment directly to the levying officer in order to satisfy the judgment. If the identity of the debtor's employer is known, it is relatively easy and inexpensive to garnish a portion of the debtor's wages. It may also be the only means to enforce a judgment where the other property of the debtor is exempt from levy. The major disadvantage is that at least 75% of the debtor's earnings are automatically exempt from garnishment (except as to judgments for support). Thus, unless the debtor earns a large salary, the judgment creditor may receive relatively little from this procedure. Also, it is necessary to obtain a court order before attempting to garnish the wages of the spouse of a judgment debtor.

This is not an exhaustive list of all of the remedies available to judgment creditors under the Enforcement of Judgments Law. There may be other legal tools available to recover on a judgment. You may want to consult with legal counsel to develop a strategy that best suits your situation and budget. Also, you should keep in mind that a judgment in California remains valid for only 10 years unless it is renewed upon application to the court that issued the judgment initially.

The foregoing is intended for general information purposes only. Specific legal questions should be directed towards your attorney. Craig S. Sunada may be reached at (310) 544-7161 and craig@sunadalawfirm.com.