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Post-Judgment Collection Strategies: Know Your Basic Options

Credit managers beware! Entry of a judgment against a debtor will most likely not end your payment battle, even after a hard-fought lawsuit concludes. A ruling that is final, due and payable doesn't mean a judgment debtor is automatically required to pay it. Rather, the burden is on the judgment creditor, the party who has won, to enforce the award against the judgment debtor in order to collect. Without enforcement, a judgment is merely a piece of paper that typically does nothing to tie up funds or assets of the judgment debtor. Credit managers must understand their basic options and available procedures for collection so they can assess the risks and benefits of the post-judgment enforcement process.

State Procedural Rules Apply

Each state has its own post-judgment procedures for decisions entered by courts in that state. Even federal judgments are subject to post-judgment enforcement procedures under state court rules in the state where the ruling federal court sits. In addition, assets of a judgment debtor could be in a different state or states. Thus, the particular procedures for enforcement will vary, depending on applicable state law. Credit managers should communicate with their attorneys to understand what state law and procedures may apply to their post-judgment enforcement strategy.

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Cost-Benefit Assessment is Essential

Credit managers should budget for the post-judgment enforcement process, which will involve more attorney time and expenses on the backend. How much you will pay out of pocket depends on the fee arrangement you have with your attorney, including whether your attorney works on an hourly or contingency fee basis. Regardless, you should prepare for these eventual expenses and make a cost-benefit assessment to determine whether it is worth pursuing enforcement.

Most likely, the collectability of your judgment debtor was evaluated at some level, perhaps even prior to the lawsuit being filed. However, the financial condition



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and asset holdings of a judgment debtor are not stagnant and often change—for better or worse. Thus, reassessing collectability and continuing to evaluate the risks and potential benefits of the enforcement process is essential.

Without some basic information about a judgment debtor's assets and liabilities, however, it will be difficult to make an informed decision regarding how much you put into the post-judgment enforcement process. Therefore, some preliminary investigative enforcement efforts may be necessary.

Asset Reports and Bank Account Searches

An asset report is a preliminary tool that provides an overview of a judgment debtor's potential asset holdings and liabilities. Online services, such as Accurint or Westlaw, can run the reports, typically for minimal cost. Investigative firms may offer more comprehensive search options, but they generally cost more.

Temper expectations for these reports, however. They often contain outdated information and might not reflect every detail about the current status of a debtor's assets or liabilities. Even so, asset reports could provide insight by revealing potential addresses or office locations where hard assets might be located; where a company debtor is incorporated; UCC-1 filings reflecting liens on personal property; real property holdings and related liens or mortgages; or associated companies and potential stock or businesses owned by the debtor.

Searching records of the Secretary of State where the debtor is registered or incorporated could reveal further information regarding a debtor company. Real property

holdings may also be further investigated by searching online appraisal records in counties where the debtor may be located.

Creditors should definitely consider conducting a bank account search through an investigator. Costs and results will depend upon the investigator being used. If you have any recent checks from the debtor, provide your investigator with copies to assist in the search. A bank account search may confirm where your debtor banks and, hopefully, current account holdings. It is handy information to have, especially when a debtor professes not to have any money to pay and for evaluating garnishment or other post-judgment enforcement tactics.

Post-Judgment Discovery

Beyond basic asset reports and searches, post-judgment discovery is the next step for digging into the details about a debtor's assets and liabilities. Most states allow creditors leeway to ask for wide categories of documents and information concerning the debtor's holdings. Types of post-judgment discovery may include the following:

- Document requests to the debtor
- Interrogatories to the debtor
- An oral deposition of the debtor
- Subpoenas to third parties requesting documents and/or depositions

The truth about a debtor's assets, and what happened to them, is often found in financial documents. Hence, document requests to the debtor and third parties seeking information concerning a debtor's assets are crucial. Common third-party witnesses who often have information about a debtor's assets

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include a debtor's financial institutions accountants and/or financial advisors, as well as a debtor's officers, principals and business partners. Interrogatories are written questions that may be posed to a debtor in writing and often cover the same topics addressed in an oral deposition. Oral depositions take place before a court reporter, who swears in witnesses questioned by the creditor's attorney about the debtor's assets, liabilities and, importantly, key documents produced in written discovery.

Enforcement is Leverage

The post-judgment discovery process is a basic means to discovering information about collectible assets of a debtor, which can lead to further, more advanced enforcement actions such as garnishments and turnovers. The post-judgment discovery process, however, is not one that judgment debtors relish. It can often be used as leverage to force payment or settlement of a judgment. The key to post-judgment

enforcement is keeping the pressure on so that the judgment debtor will relent and hopefully pay the judgment sooner.

The key to post-judgment enforcement is keeping the pressure on so that the judgment debtor will relent and hopefully pay the judgment sooner rather later.

Join me at NACM's 120th Annual Credit Congress & Expo in Las Vegas to learn more ways to keep the heat on judgment debtors and secure faster payment on judgments. ■

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