

## SPRING 2017 EDITION

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### **PROTECT AND PRESERVE YOUR JUDGMENT**

Many attorneys go to great efforts to secure a money judgment on behalf of their client, either by default or trial, only to find thereafter that the defendant has not rushed to the post office to mail them a check in satisfaction of same.

This article is intended to address both the immediate and long-term steps that an attorney should take to protect the judgment for the best post-judgment enforcement prospects.

#### **A. Notice of Entry of Judgment**

Especially on default judgments, a Notice of Entry of Judgment should always be served on the defendant at their last known address, for two reasons: (1) if it gets returned by the Post Office, then you are on notice that you have to take further steps to try and locate a better address; and (2) service of the Notice of Entry of Judgment will trigger the initiation of the six month time limitation under C.C.P. sec. 473(b) in which to move to set aside the judgment, assuming the defendant wants to later contend that the entry of judgment against them was due to fraud, mistake, surprise, inadvertence, or neglect.

Bear in mind that there are other methods in which to challenge a judgment besides bringing a motion under this section, but service of the Notice of Entry of Judgment can help to defuse those contentions as well.

#### **B. Recordation of the Judgment**

If the attorney for the judgment creditor (aka "JC") has reason to believe that the judgment debtor (aka "JD") is on title to real estate and may transfer title to same to try and evade the judgment, then the most time-expedient maneuver is to obtain a certified copy of the judgment from the court clerk and record it with the county recorder's offices where the property is believed to be situated. A recorder's recordation page should always be attached to the front of the document.

#### **C. The Abstract of Judgment**

If there is no reason to believe that the above may suddenly occur, then the attorney can dispense with the expedited recordation of the judgment, but should still take immediate steps to request the issuance of an abstract of judgment from the court clerk (the time frame in which the court will process an abstract can vary from court to court, in Orange County it may take approximately two weeks).

The abstract form (J.C. form EJ-001) should *always* include either the last four digits of the JD's driver's license number (insert at Line 1b) or the last four digits of their SSN (insert at Line 1c). This information is important if a title search is expected to ascertain the true identify of the JD.

If this information is not readily available to the attorney for the JC, then access to various commercially available public data base programs can almost always supply a correct SSN on anybody.

The abstract should always be recorded in any county in which the JD is believed to own real property. If no real property ownership is known, then the abstract should at least be recorded in the JD's county of residence, and if the judgment is large enough then thought should be given to recording it in other contiguous counties as well.

If multiple abstracts are to be recorded, then depending on the need for immediate action, the JC's attorney can either request the issuance of multiple abstracts from the court clerk at one time and then record them with various county recorders simultaneously, or alternatively request issuance of only one abstract at a time, and which can then be recorded with other county recorders when the original is returned to the JC's attorney by the last county to record same (this may take approximately 30-60 days or so from the date that the abstract is first recorded).

The abstract should be picked up in any title search arising out of a legitimate transfer or re-financing of real property thereafter, although it won't protect the JC from "friendly" transfers wherein there is no title search because the JD is transferring title to a family member or friend, just to try and evade the judgment. However, the recordation may still create title problems if a fraudulent transferee tries to engage in a legitimate transfer to a third party thereafter.

#### **D. Notice of Judgment Lien**

Regardless of the JD's real property ownership, a Notice of Judgment Lien should always be filed with the California Secretary of State. This is an easy procedure to accomplish, as the forms are available for free on-line and the filing fee is only \$10.00.

Filing of the Notice of Judgment Lien creates a lien in favor of the JC on all non-exempt personal property owned by the JD. See Civil Code sec. 697.530 for a list of the various types of personal property it can attach to.

Subject to certain exceptions specified in the statute, the judgment lien is good for up to five years. See C.C.P. sec. 697.510(b). To be renewed, it must be re-filed in the last six months of the last five year period.

The judgment lien is most effective against a commercial JD who may have an inventory of equipment or merchandise that could be sold to a third party, the latter of whom would want to do a credit history search to ensure that the seller can convey good title to same.

However, the judgment lien can also be effective with an individual JD, at least if the latter cares

about their credit and is trying to process a loan or credit application. Most legitimate lenders would do a credit history search for judgment liens against an individual before extending credit.

The judgment lien is supposed to be served on the JD by at least first-class mail, although a failure to serve it does not affect its legality. C.C.P. sec. 697.560. Service of the judgment lien is recommended, as it is another way to secure the JD's attention about the on-going consequences of the judgment.

### **E. Renewal of Judgment**

A judgment is good for ten years and will bear post-judgment interest at .10% per annum. However, the judgment can be kept alive indefinitely by promptly renewing it before the end of the last ten year period of entry or renewal, whichever time is more recent.

Renewing a judgment is relatively easy, and does not require a court order or hearing. The clerk of the court enters the renewal upon the JC's application for same. When renewing the judgment, simply fill out the forms Application For And Renewal of Judgment (J.C. form EJ-190) and a Notice of Renewal of Judgment (J.C. form EJ-195).

After the court clerk accepts the former form for filing and stamps the latter form with the court's seal, then service of the forms on the JD is required. Service by first-class mail to the JD's last known address is sufficient. Don't forget to file a proof of service with the court thereafter to prove that service was effectuated (use J.C. form POS-040).

Outside of preserving the judgment, the best thing about the renewal application is that it partially compounds the post-judgment interest, as the post-judgment interest to date is added to the principal amount of the judgment when the renewal application is submitted, and the sum of these two figures then generates post-judgment interest at .10% thereafter. This can significantly increase the amount required to satisfy the judgment thereafter.

Because of this, once a judgment has been renewed it cannot be renewed more frequently than every five years thereafter. C.C.P. sec. 683.110(b).

Once the renewal application and service of same is perfected, the JC's attorney should record a certified copy of the renewal application with all relevant county recorders, in order to extend the ten year period of the judgment as a lien on any real estate in the name of the JD. See C.C.P. sec. 683.180(a).

### **F. Common Procedures of Judgment Enforcement**

Depending on the circumstances and the amount of the judgment, the JC might want to consider doing certain enforcement procedures at the outset in order to test the waters as to possible short-term satisfaction of the judgment.

Among the more common means of judgment collection are the following:

**1. Bank Levy:** If it is known where the JD has a bank account, the lender can obtain a writ of execution from the court which rendered the judgment, and then submit it to the Sheriff's Offices for service upon the debtor's repository. This will cause the account to be frozen by the repository, until such time as it remits the amount due to the Sheriff who in turn remits it to the JC or their attorney. If no bank account is known to the JC, there are private investigative agencies who for a reasonable fee can conduct searches to identify accounts in the name of the debtor, although this usually requires having a current address on the JD and knowing their SSN.

Because it is a relatively fast procedure and may collect the entire amount of the judgment without advance notice to the JD, the bank account levy is a preferred method of judgment collection.

**2. Wage Garnishment:** If it is known where the JD is employed, their wages can be garnished, for up to 25% of their net pay. This procedure doesn't work if the JD is self-employed.

The JD can also claim hardship and file a request for partial or total exemption with the court, which may be granted in whole or in part, depending upon the JD's financial circumstances and the situation with their dependents. The JC can request an evidentiary hearing to contest the claim for exemption.

Because the amount of garnishment per paycheck is relatively small, and because prolonged wage garnishment can give the JD an incentive to file for bankruptcy or to change employment, wage garnishment is generally not that effective in satisfying a large judgment within a reasonable period of time.

The JD's spouse, even if the judgment is not against them, may have their wages garnished because the spouse's earnings are community property. This requires the bringing of a motion to obtain a court order (C.C.P. sec. 706.109).

**3. Judgment Debtor Examination (JDE):** The JD may be served with a court order to appear in court for a JDE, in order to be cross-examined by the JC or their attorney as to their financial situation. If they are also served with a subpoena duces tecum, then the JD's financial records can be compelled to be produced as well. This procedure can only be utilized once every 120 days (C.C.P. sec. 708.110), but it can also be utilized against third parties who may have control or possession of property belonging to the debtor (C.C.P. sec. 708.120).

Depending upon the circumstances and the amount in question, thought should be given to bringing a court reporter to record the JDE hearing, as the court will not supply one. Bear in mind that depending upon any given courthouse's facilities, that most JDEs end up being heard in a court hallway or the courtroom cafeteria. The judge will not get involved in conducting the hearing unless the JD refuses to answer certain questions that the JC deems to be relevant, and the JC's attorney brings such resistance to the court's attention to be addressed.

Sometimes the best outcome of a JDE is to reach an agreement with the JD to voluntarily remit installment payments or a lump sum toward satisfaction of the judgment, in consideration for a discount on the judgment and/or staying further enforcement procedures.

As a cheap alternative to a JDE, written interrogatories and a demand for production of documents may be served upon the JD (C.C.P. secs. 708.020, 708.030), but if the JD elects to ignore such creditor discovery then there isn't much that can be done to press the issue on a practical level.

**4. Seizure of Motor Vehicle:** Pursuant to a writ of execution and instructions to the Sheriff's Offices, a JC may seek to have the JD's motor vehicle seized and sold at a judicial auction. This requires being able to identify the motor vehicle, and having it accessible in a known location.

The JD is entitled to an exemption of \$2,300.00 (C.C.P. sec. 704.010) from the sales proceeds, but given the required up-front fee to tow away a motor vehicle (at least \$800.00 or more, depending upon the county) and the difficulty in getting a fix on the site of the motor vehicle, this is not a preferred means of collection.

### **G. The Long Wait**

Sometimes it can literally take years to collect a judgment, depending upon on how pro-active the JC is willing to be, and given the financial responsibility and known whereabouts of the JD.

### **Conclusion**

At a bare minimum, record an abstract of judgment and diary the event accordingly for renewal. Passive patience thereafter can sometimes be more effective and less costly than aggressively pursuing various judgment enforcement procedures in the short-term, depending upon the JC's legal budget and the JD's known financial circumstances.