

SECRETS OF COLLECTING JUDGMENTS

You just won your trial, now what? Do you have a judgment collecting dust in your file cabinet? Perhaps you have a potential contingency fee case, but you are concerned you may end up with an uncollectible judgment.

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GOAL: LEVERAGE & PRESSURE

Statutory Scheme

- A. CCP §708.000 – Written Interrogatories and Inspection Demands
- B. CCP §708.100 – Examination Proceedings
- C. CCP §708.200 – Creditors Suits (use Assignment Order instead)
- D. CCP §708.300 – Charging Orders
- E. CCP §708.400 – Liens on Pending Suits
- F. CCP §708.500 – Assignment Orders (very effective)
- G. CCP §708.600 – Receivers (and alcohol beverage licenses)
- H. CCP §709.000, et seq. – Enforcement Against Trusts

Step One: Investigation

- A. Client Information
- B. Public Records
- C. Credit Report
- D. Written Discovery (Discovery Act)
- E. Judgment Debtor Examinations
- F. Proprietary Databases
- G. Private Investigators (see Noble v. Sears, Roebuck & Company, 33 Cal.App.3d 654 (1973))

Step Two: Secure Judgment

- A. Abstract
- B. Personal Property Lien with Secretary of State
- C. Serve a Judgment Debtor Examination

Step Three: Strategic Strategies

- 1. Identify Asset – Writ of Execution
 - a. Bank Accounts
 - b. Money Owed from Third Parties (and Accounts Receivables)
 - c. Turnover Order (usually in conjunction w/judgment debtor examination)
 - d. Till Tap
 - e. Charging Orders
 - f. Receiverships
 - g. Liens on Active Cases/Other Judgments
 - h. Motions for Fraudulent Transfers

Step Four: Special Judgments

- A. Family Code (child, family or spousal support order)
- B. Government Code (judgments against state, state agency or local public entity)
- C. Federal Judgments
- D. Bankruptcy Judgments

Step Five: Liability from Enforcement Practices

- A. Fair Debt Collections Practices Act/Rosenthal Act
- B. Common Law
 - a. Conversion
 - b. Trespass
- C. Statutory Liability
 - a. Erroneous Lien on Real Property (CCP 697.410)
 - b. Erroneous Lien on Personal Property (CCP 697.660)
- D. Bankruptcy Automatic Stay/Discharge of Debt
- E. AVOID LIABILITY: LITIGATION PRIVILEGE - Rusheen v. Cohen, 9 Cal. Rptr. 3d 516 (2006).