The Creditor’s Dilemma - Collecting on Judgments

By: W. Eddie Speed

Just the mere fact of being a real estate investor/landlord or owning a few real estate notes makes the individual investor a creditor. Being a creditor really is not a bad occupation until the customer defaults on making the payments. While not desired, as a investor/landlord or a note holder, you are on occasion faced with having to seek a judgment to collect amounts owed.

So what’s the next step when they don’t pay? Clearly, when a debt goes into default, the first step (although not legally required) is for you to regain control of your property or collateral. When this happens, several questions are commonly asked.

Questions such as, "What about the short fall of money that the debtor still owes me?" "What recourse do I have to regain control of my property?" "What do I now do?" Or, more importantly, "What should I do?"

These are all valid questions that someone in this situation would ask. However, there definitely are solutions to the problem, but you must first educate yourself.

Unless you have a great deal of experience in collections and pursuing judgments, the thought of doing so can be a scary subject. Even with the most astute and sophisticated investor, they will usually contract an attorney to oversee the process, but even then, the investor should have good knowledge of the process and available options.

An old Texas banker gave me some very good advice one time. He said, “Son, the best time to worry about a loan is before you make it”. Obviously, what he meant is that you need to feel comfortable about the borrower and his ability and willingness to repay the loan. But I think that the banker had an even deeper meaning, too. That is… obviously you need to know what your options are when the customer doesn’t pay.

With these things being said, usually anyone that has done a large volume of transactions or has been a creditor for a long enough period of time has dealt with defaults at one time or another. In some cases these investors have pursued the short fall of money due (deficiency) into judgments against the debtor. On the other hand, there are many investors that only purchase delinquent debts because they are knowledgeable in the area of collecting on judgments. Wow, what power knowledge has!

So let’s assume that you had a debt owed to you from a tenant or a note that has not been paid, what are your options in collecting that debt as well as any late fees and reimbursement of your
legal fees? The easy way is to forgo the debt and walk away, or you can exercise your rights as a creditor and litigate the debt and obtain a judgment against the debtor.

Following are a few of the options that you have available to remedy your position after the court has awarded you a judgment. The options listed are not all-inclusive but are meant only to give a brief overview of the process of collecting on a judgment. Throughout this process, it must be remembered that the key leverage to collecting any judgment is to locate and seize the debtor’s assets. Once ownership is determined, you can proceed accordingly.

**Abstract of Judgment** – An abstract of judgment is a copy or summary of a judgment that, when filed with the appropriate public office, creates a lien on the judgment debtor’s nonexempt property.

Any time after you have been granted a judgment, the creditor can file for an abstract of judgment. In order for that judgment to be executable, a judgment lien must be recorded in the counties in which the debtor has a beneficial real property interest. An abstract of judgment must give the amount remaining due to the creditor as of the date the abstract was issued. To protect the creditor's position, it is usually advisable to file the abstract of judgment in every county that you would think the debtor may have any ownership (including partial ownership) in real estate or businesses.

After the judgment has been recorded normally for 30 days in that county, you then basically have two choices:

1) File your judgement and wait until any secured property is sold which requires clear title. Since the subject property will have your lien applied, your lien will have to be paid off at the closing of sale of that property, or

2) Pursue seizure of their assets through foreclosure on any real property debtor interests. Of course, state laws differ, but usually this is the process.

**The Type of Ownership Matters** -- Additionally, it’s important to know how the debtor received title to the property that has been attached with the judgment and in what order the property is recorded. If the debtor owns the subject property through “Tenancy in Common”, the judgment lien you have been granted will attach actually to the debtor's interest in the property. In most cases, the judgment will remain even if the debtor transfers the property into someone else’s name. If title to the property was recorded as "Joint Ownership”, your judgment lien will attach to the debtor’s share and will remain enforceable. It will also remain enforceable if the property is transferred to a third party. However, any judgment attached to "Joint Ownership" property may be erased in the case of the debtor's death.

If the debtor owns property by “Community Property” or "Tenancy by the Entirety”, your judgment lien will attach to the entire property when owned by a married couple. The lien will also be enforceable against the property. Even if transferred to a third party, the lien will again be enforceable against the property.
**Writ of Execution** – Although state laws may differ, usually after the 30th day from the date the judgment is awarded, the creditor may obtain through the court a *Writ of Execution*. This writ will allow a sheriff or Constable or other appointed legality the ability to seize non-exempt property from the debtor and hold an auction. Your judgment would then be paid from the proceeds of the sale.

**Writ of Garnishment** – State laws will again vary, but in most states, after 30 days from the date of the judgment, a *Writ of Garnishment* can be executed. To execute this writ, the creditor will need to gather information such as the debtor’s place of employment, bank account and other potential liquid asset information. Due to new identity theft laws this may be more difficult, but once the writ is executed, the court would then garnish the money and pay it to you. As established by state statutes and laws, *there are maximum amounts* that can be collected at any given time and you can only garnish disposable earnings.

**Commercial Judgment** – A commercial judgment in many ways is handled the same as a personal judgment. Simply, if you are able to locate business assets such as cash, inventories, accounts receivable, real property, or other tangible property, you can seize them. The first step in collecting a commercial judgment is to determine who is responsible for the debt.

A responsible party for the debt can be a proprietorship, partnership, limited partnership, limited liability partnership, corporation and limited liability company. You need to look for personal guarantors, undisclosed principals, or any debtor who signed the contract. You can either hire a private detective or a specialized researcher to do these things or do them yourself. If you choose to do them yourself, then the local court clerk can assist you in a search for all liable owners.

Depending on the type of business, you will also want to search with the State Comptroller’s office and the Secretary of State's office. Once the responsible parties are established, you would then use the same means of collecting the judgment as listed above. Again, an *Abstract of Judgment* can be filed in all of the counties where you think the debtor, or responsible parties holds an interest in property. Personal homesteads are exempt from seizure.

Enforcing a debt can be challenging, even for the most experienced creditor. To the average creditor/investor it could appear to be impossible. States have, however, enacted laws to protect those individuals that have money or assets owed to them and are not being paid by the debtor. If the investor/creditor is not being paid according to the agreed upon terms and conditions, that creditor should take advantage of the judgment laws in their state and proactively collect upon the instruments that provide them relief. As mentioned previously, it is wise to contract a legal counselor in obtaining judgments. It takes time, patience and sleuthing skills to arrive at a successful outcome. If adhered to properly, those assets thought to be lost can be recovered -- it is not insurmountable!

This is not intended as legal advice; rather it is being presented to help you understand your opportunities. In the final analysis, it is always recommended to seek legal advice in your state to obtain the most appropriate plan of action for your particular circumstance.
About the Author: W. Eddie Speed has been in the business of buying both performing and non-performing notes for 25 years with a lifetime volume exceeding 500 million in notes purchased. Considered by most to be the most experienced guy anywhere in the field of buying seller-financed notes. He’s the author of Streetwise Seller Financing which is available for FREE at www.ColonialFundingGroup.com. The book is a complete guide on the best ways to utilize and create seller financing. Eddie is a teacher and coach for people wanting to learn about buying or brokering notes – both performing (seller financing) and non-performing notes.