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You Got the Judgment: Now You Have to Collect It!

Once the creditor has obtained the collection judgment against the debtor, an experienced collection attorney is imperative for maximum results. The attorney must know *which* remedy will work best and *how* best to enforce it. The first post-judgment step for a creditor is to ensure that the judgment becomes a lien against the debtor's assets in all respects possible.

I) Real Estate. In most states, the docketing of a judgment creates a lien against the real estate belonging to the debtor on the docketing date, generally lasting ten years. Usually there is a procedure to "renew" the judgment after the expiration of the initial period of lien, as a means of extending and continuing the effect of the judgment lien on the debtor's real estate located in the political location where the judgment is docketed.

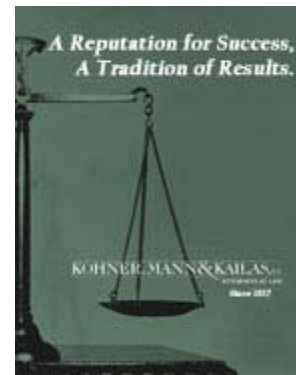
In most states, the judgment lien is created against real estate in the county of the state where the judgment was rendered, or where a transcript of that judgment is docketed. In a few states, the judgment becomes a lien on all real estate in the state as soon as it is rendered by the court. In other states, the judgment does not become a lien on the real estate until levy of execution by the sheriff.

Where several creditors have docketed judgments at various times, the judgment liens have priority in the order in which they were filed. The earliest and oldest lien(s) have the highest priority. Once the judgment lien attaches to the debtor's real estate, it remains attached despite the fact that the debtor may transfer the real estate to a third party. The creditor may proceed to have the real estate liquidated for payment of the judgment lien despite any objection from the third-party owner, to reach any equity available in the real estate. That is, the judgment lien "follows" the real estate, irrespective of ownership changes.

II) Personal Property. Usually, it is necessary to have execution or other post-judgment remedy commenced, or actual levy of execution, before a judgment lien attaches to the debtor's personal property. In a couple of states, judgment liens apply to both real and personal property.

Property Exempt From Creditors

All states have a variation of homestead and personal property exemption laws that exempt an *individual's* interest in homestead real estate and certain personal property items against liquidation or attachment by judgment creditors. These exemptions do not apply against property if the real estate mortgage or personal property security interest/lien is given to the creditor by voluntary transfer as opposed to involuntary creditor action to force payment of a judgment. State laws vary



widely and can differ from federal exemptions. This is why debtors often move to Florida (liberal exemptions available) when chased by creditors.

When the debtor or his property is located in another county from where the judgment was obtained, a transcript of judgment must be obtained and docketed in the county where the debtor and property are located in order to enforce the judgment in such county.

Where the judgment must be enforced against the debtor's property located in other states, particularly real estate, the judgment must be docketed also in the other state, in the county where the assets are located. In the state where the asset is located, the procedure for docketing the "foreign" judgment is generally in accord with the Uniform Enforcement of Foreign Judgments Acts. If the state has not enacted that legislation, then a new suit on the judgment in the "other" state would be necessary in order to proceed with further remedies. Enforcement of judgments from other nations depends on state laws and almost universally a new suit to enforce the judgment from the other nation is required to enforce the judgment.



A judgment rendered in any federal district court can be transcribed over to any state court and enforced through the procedures available under state law in the state in which the federal court is located, under Federal Rules Civil Procedure Rule 69(a). The federal judgment can also be transcribed and docketed over to any other county, or a different state court, for the area in which the debtor or his assets are located.

Repossession/Replevin

Upon debtor's default on a contract to purchase and secure personal property, the statutes of nearly all states provide for repossession of this property in the hands of debtor, upon default of payment by buyer. Collateral used to secure credit can accordingly be recovered ("replevined") by the credit grantor under the statutory replevin action, or under the provision in the U.C.C. and in the contract with the debtor. To recover possession, the creditor needs to show ownership or possession rights that are superior to those rights of the defendant. In most states, in commercial as opposed to consumer cases, it is possible to recover possession of collateral from the debtor/customer upon default, without even the need for a lawsuit or judgment, providing the recovery can be accomplished without a "breach of the peace". Recovery without a breach of the peace is difficult and often risky, as conduct deemed improper can subject a creditor to substantial damages. Clients also sometimes ask whether they can "repossess" equipment or materials that have been sold to their debtor but not properly paid for. Generally, unless the creditor and debtor have a written security interest in place, goods cannot be repossessed as title has passed and no security interest rights are available to creditor. In fact, such repossession may be deemed conversion or theft without the complete agreement of the debtor/customer. Be sure to get it in writing.

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About KMK Collections

KMK Collections is a division of **Kohner, Mann & Kailas, S.C.**, a law firm founded in 1937 as a result of a conviction that businesses deserved more aggressive and cost-effective advocacy for their interests and contractual rights. Over 70 years as leaders in debt liquidation and commercial law, Kohner, Mann & Kailas, S.C. and KMK Collections have earned an industry-wide reputation. Each year we handle many thousands of commercial contract and collection matters for the liquidation of commercial debt and recovery of goods and services provided, delivering the consistently exemplary results that our American and international clientele has come to rely upon and expect of us. **Kohner, Mann & Kailas, S.C.**, is a business law firm listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers that provides exemplary legal service in all areas of law encountered by businesses in the normal course of their operations and growth.