

What You Should Know About Judgments

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Most people don't think about court judgments until they are faced with one, either about to be or already issued. Yet everyone should be aware of the basic principles underlying a court judgment so that they can judge the relative importance of avoiding one and develop a plan (and budget) to deal with the possibility of either (i) trying to collect a judgment in their favor or (ii) deal with a judgment about to be or already issued against them. Here are the basics that everyone should know:

A judgment is a judgment is a judgment. In California, as in most states, a court judgment may be enforced through the local sheriff's department seizing bank accounts and other property with only very limited exceptions including for one car, some personal belongings, some retirement accounts, and up to \$100,000.00 of equity in the debtor's home if married, \$75,000.00 if single.¹⁾ A California judgment earns 10% per year and is enforceable essentially for ever until paid or settled.²⁾ Moving to another state is not effective because under the "full faith and credit clause" of the U.S. Constitution, your new state of residence must honor the judgment from a sister state.³⁾ The drastic step of leaving the U.S. may be effective to avoid a civil judgment depending upon the foreign nation's rules, but carries some very negative burdens.⁴⁾

Filing bankruptcy is effective in some cases, but not as many as once was the case. As a result of the banking crisis of 2008, the U.S. Bankruptcy Code was amended at the behest of banks and credit card companies to exclude numerous debts, including any related to a debtor's fraud or misrepresentation. (Fraud being an intentional false statement or non-disclosure and misrepresentation being merely negligent errors.) Thus, if the creditor alleges misrepresentation in connection with a contract or other transaction, it will not be discharged in the debtor's bankruptcy unless the debtor proves that he did not commit the false statement.⁵⁾

On the other hand, getting a judgment in your favor is only the beginning of a long and often frustrating collection process. Recording a judgment with the county where the debtor owns real estate and with the California Secretary of State will give you a lien on the debtor's assets, but it will be subject to all prior liens and the exemptions stated above.⁶⁾ A wage garnishment order can be obtained from the court and the debtor's employer must then deduct 25% of his after-tax wages and pay that to the

creditor.⁷⁾ Note that independent contractors and self-employed persons are not subject to wage garnishment and the creditor must go after their assets directly. Effective collection efforts include discovery of assets procedures and having the sheriff seize non-exempt property. The entire process is often very time-consuming, costly and not very productive.

For all of the foregoing reasons, voluntary settlement of disputes, even after a judgment has been rendered, is the better alternative for all parties. Effective settlement strategies that I have used is the subject of a separate article.

1) See Code of Civil Procedure §703.010 et seq. regarding exemptions from collection generally and §704.730 regarding the homestead exemption in particular.

2) See Code of Civil Procedure §683.110 for renewal of judgments.

3) U.S. Supreme Court decision Roche v. McDonald, 75 U. S. 449; 48 S. Ct. 142 (1928).

4) See U.S. Department of State information at http://travel.state.gov/law/judicial/judicial_691.html and authorities cited therein.

5) See 11 USC §523 for long list of debts that are not dischargeable in a bankruptcy and §523(a)(2) regarding fraud and misrepresentations specifically.

6) Although most liens must be a matter of public record in order to bind subsequent creditors, there are certain liens granted automatically by statute that take priority regardless. This includes the lien granted to agriculture producers by the Food and Agriculture Code §55631 et seq. and Code of Civil Procedure §1204 et seq.

7) See Code of Civil Procedure §706.110 et seq. and 15 USC 1673 regarding federal limits on wage garnishments.