

Satisfaction of Judgment: Processing a Collection Case

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Evaluating a New Collection Claim

- ◉ Who is a Judgment Debtor?



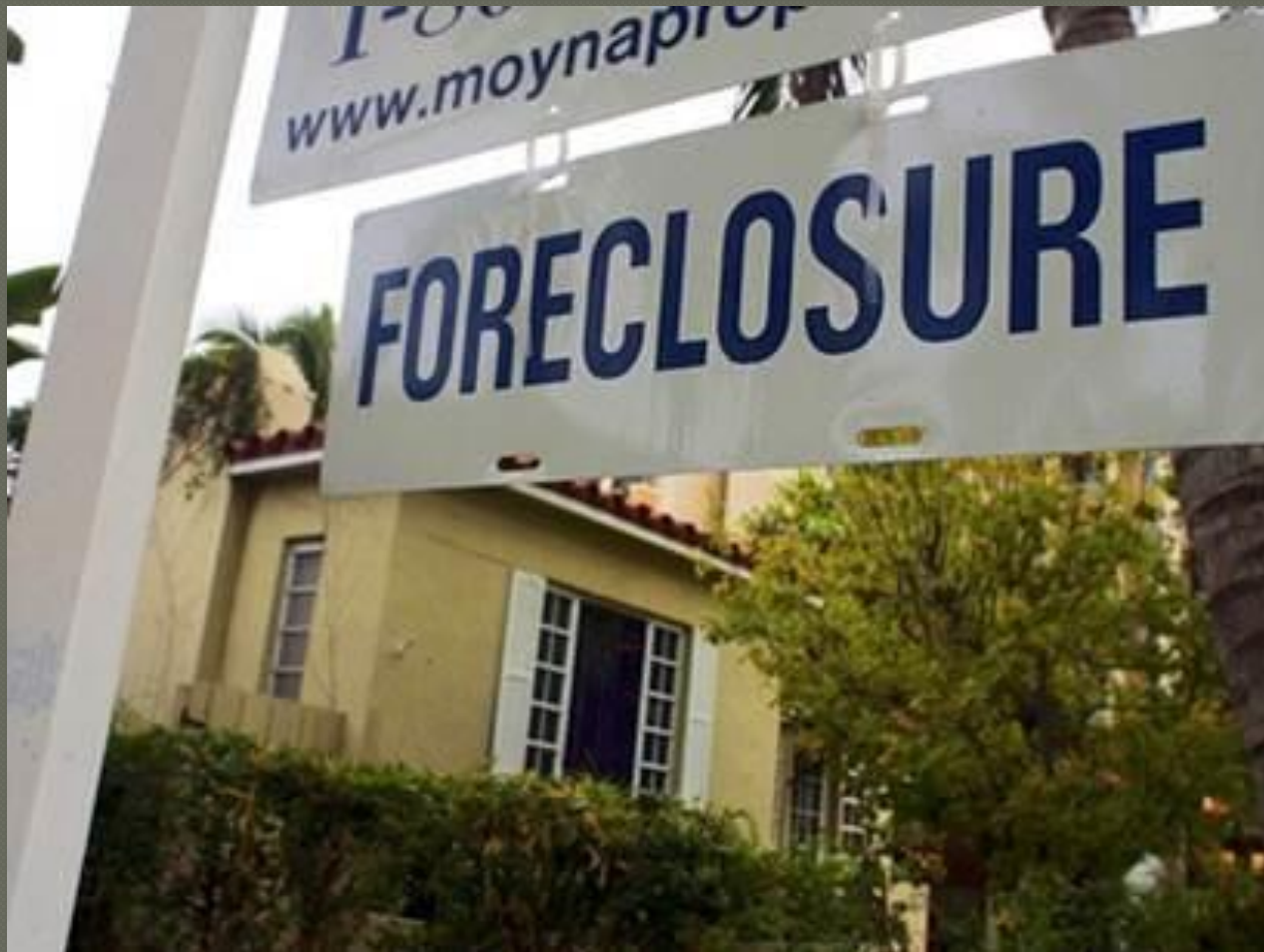
Who is a Judgment Debtor?



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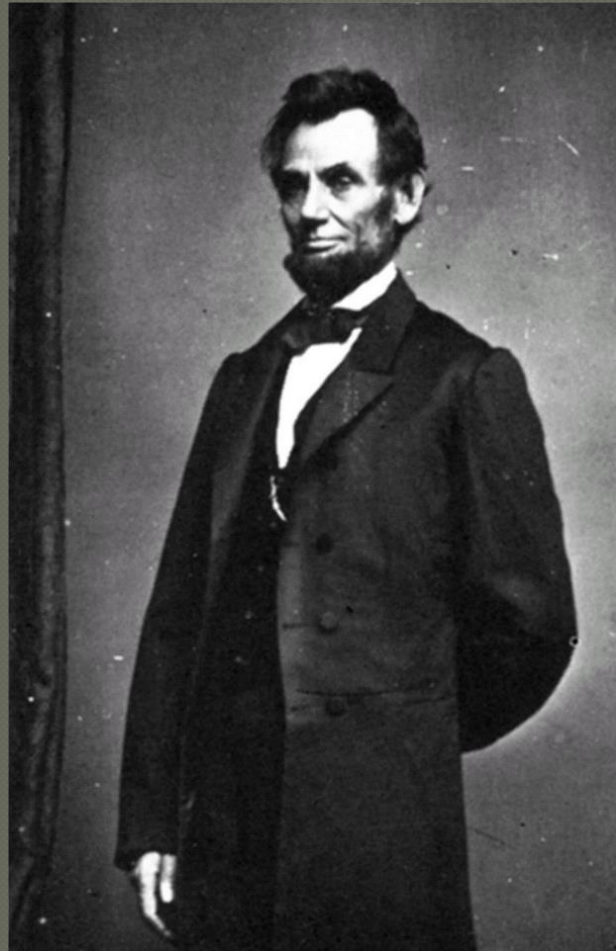
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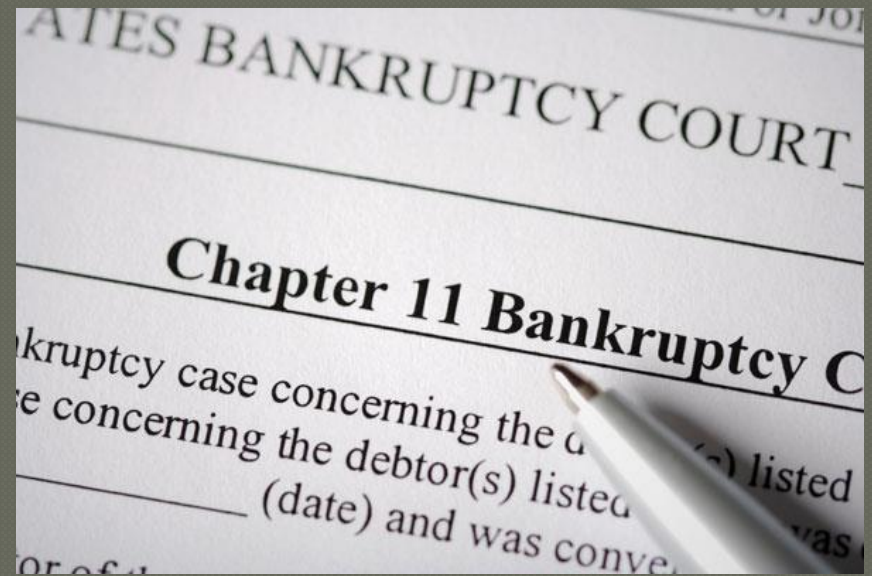
Who is a Judgment Debtor?



Who is a Judgment Debtor?



Who is a commercial debtor?







GM













Evaluating a New Collection Claim

- Demand Letters

- Consumer vs. Commercial

- Skip-Tracing and Pre-Litigation Investigation

- Is the business open?
 - Phone being answered
 - Active/current website
 - Listing with Registrar of Contractors/Corporation Commission
- Other lawsuits?

Evaluating a New Collection Claim

- Validation of debt

- Provide if requested
- Debt must be fully validated before suit can be filed

- Before Starting Legal Proceedings

- Obtain all relevant information
- Look for hidden arbitration clauses
- Review contract for venue/jurisdiction clauses
- Is this a counterclaim waiting to happen?

Evaluating a New Collection Claim

◉ Community Property vs. Personal Guaranty

- Arizona – Community Property state
 - Can include Jane/John Doe in most cases
 - A.R.S. § 25-215
- Personal Guaranty
 - Cannot pursue spouse if they did not sign guaranty
 - Limits collection efforts
 - “Judgment proof” assertion

Pleading Preparation



Pleading Preparation

○ Summons and Complaint

- Keep it simple
- Make allegations as undeniable as possible
- Sample Complaints (consumer vs. commercial)
- Redact account numbers/personal information

○ Naming Proper Parties

- Conduct thorough review of supporting documents
 - Prevents later amendments

Pleading Preparation

- Rule 26.2, ARCP – Tier Limits to Discovery
 - Tier 1 – \$50,000 or less
 - Simple cases tried in 1-2 days
 - Minimal documentary evidence/witnesses
 - 5 total hours of fact witness depositions
 - 5 Rule 33 interrogatories
 - 5 Rule 34 requests for production
 - 10 Rule 36 requests for admission
 - 120 days to complete discovery

Pleading Preparation

- Rule 26.2, ARCP – Tier Limits to Discovery
 - Tier 2 – \$50,000 - \$299,999
 - Intermediate complexity
 - More than minimal documentary evidence
 - More than a few witnesses/may have expert witnesses
 - Multiple theories of liability/counterclaims/cross-claims
 - 15 total hours of fact witness depositions
 - 10 Rule 33 interrogatories
 - 10 Rule 34 requests for production
 - 10 Rule 36 requests for admission
 - 180 days to complete discovery

Pleading Preparation

○ Rule 26.2, ARCP – Tier Limits to Discovery

- Tier 3 – \$300,000+

- Logistically or legally complex (e.g. class actions, multi-party commercial cases)
- Voluminous documentary evidence/numerous pretrial motions
- Require management of large number of witnesses
- 30 total hours of fact witness depositions
- 20 Rule 33 interrogatories
- 10 Rule 34 requests for production
- 20 Rule 36 requests for admission
- 240 days to complete discovery

Pleading Preparation

○ Business Cases – Maricopa County

- Commercial Court – Experimental Rule 8.1, ARCP
 - Who can file
 - Eligible claims
 - Benefits of filing
 - Automatic Tier 3 case per new Rules
 - Can change to lower Tier through Joint Report, Motion, or Stipulation
 - Show good cause

Pleading Preparation

- ◉ Naming Fictitious Parties
 - Not usually included in collection cases
- ◉ Community Property Issues
 - Include “John/Jane Doe”
 - Don’t include a Doe if personal guaranty
- ◉ Application for Entry of Default
 - Attorney contact

Pleading Preparation

○ Answer

- Review upon receipt
 - What does it really say?
- Is the Answer a surprise?
- Early Meeting requirement – Rule 16(b), ARCP
 - Early Meeting Report – Arbitration cases
 - Good Faith Consultation Certificate – Both Arbitration and Trial cases (Rule 7.1(h), ARCP)

○ Stipulations for Judgment

Discovery Techniques



Discovery Techniques

○ Litigation Strategies

- Provide a complete Disclosure Statement
- Propound meaningful discovery
- Make the other side prove their case

○ Written Discovery

- Propound after exchange of initial disclosure statements
 - Call the other side out on what information is missing
 - Saves discovery requests if information is provided in initial disclosures

Discovery Techniques

○ Requests for Admission

- You want the other side to admit as many as possible
- Avoid grouping several requests into one
- Send by certified mail

○ Interrogatories

- Play off what other side says in their disclosure statement

Discovery Techniques

◉ Requests for Production of Documents and Things

- If other side should have documentation, need to ask them for it first before subpoenaing a third party
- Cost sharing

◉ Depositions

- Schedule only if necessary

Post-Judgment Enforcement



Post-Judgment Enforcement

- Wage/Earnings Garnishments
 - Issued/served on employer (aka Garnishee)
 - Withholding begins with next applicable check
 - Federal Minimum Wage vs. State Minimum Wage
 - Answer of Garnishee
 - How much to withhold?
 - Independent contractors
 - Tips as earnings
 - Existing wage garnishment/Priority garnishment

Post-Judgment Enforcement

- ◉ Wage/Earnings Garnishments
 - Request for Hearing
 - Continuing liens
 - Order to Show Cause
 - Reporting
 - Release of Garnishment

Post-Judgment Enforcement

- Bank/Non-Earnings Garnishments
 - Issued/served on banking institution (aka Garnishee)
 - Search fee
 - Funds immediately frozen by bank
 - Personal exemptions
 - Answer of Garnishee
 - Seizure of safe deposit boxes/CDs
 - Additional parties

Post-Judgment Enforcement

- Bank/Non-Earnings Garnishments
 - Request for Hearing
 - Judgment Against Garnishee/Satisfaction
 - Release of Garnishment

Post-Judgment Enforcement

◉ Informal Interviews

- Set based on attorney/collector's convenience
- Conducted in office/by phone
- Collect same financial information as you would during a formal debtor's exam
- Could lead to payment arrangement/garnishment
- Inexpensive
- If debtor fails to appear, can proceed with formal exam in court

Post-Judgment Enforcement

○ Supplemental Proceedings/Debtor's Exams

- Formal proceeding in court
- Purpose
 - To determine assets/employment of debtor
 - To set up formal payment arrangement
- Fees/costs
- Petition/Order filed
- Court sets date/time of exam

Post-Judgment Enforcement

○ Supplemental Proceedings/Debtor's Exams

- Debtor personally served with Petition/Order
- Special exhibits for individuals/corporations
- Debtor meets with judgment creditor or its counsel
- Failure to cooperate – contempt of court
- Failure to appear – civil arrest warrant

Post-Judgment Enforcement

◉ Writs of Execution

- Prepared after Judgment is obtained
- Involves sheriff
- Items recovered to cover Judgment balance
 - Debtor must have complete ownership
- Not a preferred way of recovery
- Expensive

Post-Judgment Enforcement

◉ Driver's License Suspension

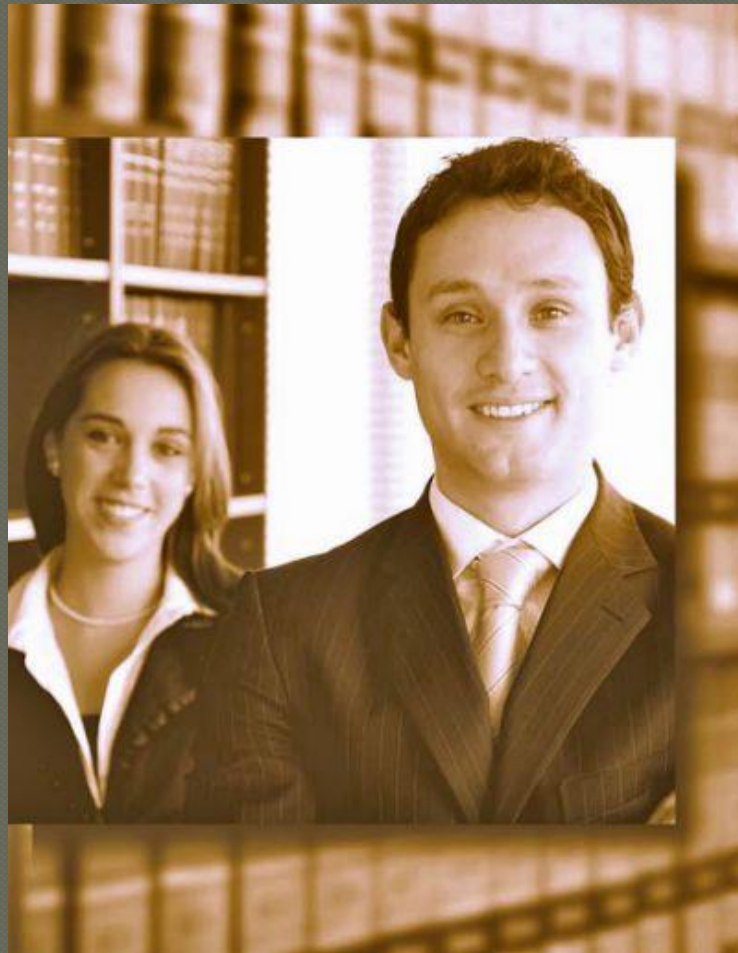
- Unique remedy
- Must have judgment resulting from motor vehicle accident in Arizona involving an uninsured driver
- Allows creditor to suspend debtor's license after proof of judgment is provided to ADOT
- Very effective

Post-Judgment Enforcement

◉ Judgment Renewals

- AZ Judgments valid for 10 years
- Must renew within 90 days of expiration date
- Can renew every 10 years until Judgment is paid
- Should renew at least once

Attorney/Paralegal Teamwork



Attorney/Paralegal Teamwork

○ Fee Agreements

- Attorney negotiates rates/fees
- Paralegal prepares fee agreement

○ Client Contact

- Attorney is usually initial point of contact
- Paralegal may correspond with client regarding status of case and to obtain information for attorney
- Paralegal should be extension of supervising attorney
- Beneficial for paralegal to establish professional relationship with client

Attorney/Paralegal Teamwork

○ The Team

- Should be on the same page when it comes to the law
- Paralegal should make recommendations to attorney regarding the flow of a case
- Paralegals draft pleadings and other documents including the Complaint, Answer, disclosure statements, discovery requests, and discovery responses
- Paralegals/Attorneys should “nag” each other about complying with time requirements
- Be courteous to clients, court staff, and other members of your firm

Q & A