



# 2024 Business Litigation Practice Group Seminar

## September 11-13, 2024

Judgments Are Only Worth the Paper They're Printed On . . .  
Until You Enforce Them

**Amanda Loughmiller**

QUILLING, SELANDER, LOWNDS, WINSLETT & MOSER, P.C.

Dallas, Texas

[aloughmiller@qslwm.com](mailto:aloughmiller@qslwm.com)

**Annette Mijanovic**

HAIGHT BROWN & BONESTEEL, LLP

Los Angeles, California

[amijanovic@hbblaw.com](mailto:amijanovic@hbblaw.com)

# CONGRATULATIONS! You have a judgment ordering someone to pay you money. Now What?

This article discusses how to ensure that you leave no stone unturned in your quest for recovery, including:

- Enforcement Practices to Avoid
- Creating Liens on the Debtor's Property
- Determining What the Debtor Owns
- Levying Assets
- Opposing a Claim of Exemption
- Recovering Post-Judgment Costs and Interest
- What if the Debtor files for Bankruptcy?
- Renewing Your Judgment and Liens
- After the Judgment is Paid

## Enforcement Practices to Avoid

All the federal and state debt collection legislation applies to *consumer* debts. In contrast, only the Federal Trade Commission Act applies to *commercial* debt collection.

Attorneys handling collection and enforcement of judgment matters are subject to the same broad spectrum of ethical obligations and limitations governing all State Bar members. Attorneys are legally and ethically bound to reject meritless actions. An attorney has an ethical and legal duty to “counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just ...” (Cal. Bus. & Prof. C. § 6068(c).) Further, the ABA Model Rules of Professional Conduct forbid bringing, continuing, or defending a case “unless there is a basis in law and fact for doing so that is not frivolous.” (ABA Model R. 3.1.) Pursuing unfounded claims also risks civil tort liability, quite apart from the statutory exposure for “unfair” collection practices, including claims for malicious prosecution and abuse of process. (Fed. R. Civ. Proc. 11.)

An attorney should never attempt to represent both secured and unsecured creditors against the same debtor. For a variety of reasons, such creditors have a clear, actual conflict, and their divergent interests cannot be reconciled. Further, an attorney generally should not represent multiple unsecured creditors against the same debtor unless the attorney obtains informed written consent from each creditor and each creditor agrees in writing to share costs, attorney fees, expenses, and any collections pro rata.

## Creating Liens on the Debtor's Property

A lien is a passive enforcement device. It gives you standing as a creditor to be paid from proceeds if the property is sold or refinanced. It is a legal assertion that you have a claim of a specific value against certain property. A lien changes your general judgment against the debtor into a claim for a specific dollar amount against whatever property is subject to the lien. If the debtor sells or refinances the property, you are entitled to be paid out of the proceeds. No law requires that liens be removed before title to property is transferred. If a lien is not paid off, it simply remains on the property, leaving the new owner to address it. This means that for transfers between relatives, the new owner may take title to the property, liens and all.

## Judgment Enforcement

---

You can create a lien on real estate owned by the debtor by registering your judgment with the recorder's office in any county in which the debtor currently owns real estate, or in which a judgment debtor might acquire it. The steps to create a real estate lien are: (1) complete an Abstract of Judgment (aka Statement of Judgment) form; (2) have the court issue an Abstract of Judgment (you will need one for each county in which you plan to record the Abstract); and (3) record the Abstract of Judgment at the county recorder's office for each county in which you want to create a lien. Ordinarily, the lien remains effective as long as a judgment is valid. States vary as to how long a judgment lasts and how many times it can be renewed.

You can create a lien on business assets by registering your judgment with the Secretary of State. A business asset lien attaches to assets such as accounts receivable, tangible chattel paper, business equipment and furniture, farm products (i.e., crops that have been harvested), certain items of inventory that exceed a threshold worth, and negotiable documents of title. The steps to create a business asset lien are: (1) complete a Notice of Judgment Lien and (2) serve the Notice of Judgment Lien and file it with the Secretary of State.

You can create a lien on personal property by serving the debtor with an order to appear for a debtor's examination. As soon as the papers are served on your debtor, a "silent" lien attaches to the debtor's non-exempt personal property.

### Determining What the Debtor Owns

Before incurring the expense of the debtor's examination, judgment creditors should search court records (e.g., bankruptcy or family court) and public records (e.g., Westlaw's Public Records database) to identify any assets. You can also hire a vendor to perform a statewide or nationwide asset search. You can even dumpster dive! (California v. Greenwood, 486 U.S. 35 (1988) ("It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public.").)

You can require the judgment debtor to appear in court and answer questions about their income and assets. States vary in their procedures for obtaining a court order for a debtor's examination, but the general procedure is to: (1) obtain a court order for the examination; (2) serve the debtor with the order; and (3) conduct the examination. Have a Turnover Order with you during the examination so that you can have the judge order the debtor to hand over any jewelry or cash the debtor brought to the examination. If the debtor fails to show up, most judges will simply set another date for the examination and the debtor must be served again with notice of the new date. Repeated failures to appear, however, will likely result in an arrest warrant being issued by the court.

### Levying Assets

Unlike a lien, which is a passive enforcement device, levying assets is a proactive approach where you seize a debtor's assets, such as wages, bank accounts, safe-deposit boxes, a business's cash receipts, motor vehicles, and forcing the sale of personal property or real estate.

The first step to levying assets is to obtain a Writ of Execution and have a levying officer (county Sheriff or U.S. Marshall) use the writ to seize the assets. Each levying officer will have their own procedures for how to start an assignment, but the general procedures are the same: you give the levying officer the original Writ plus a few copies and complete their local "creditor instructions" form where you will indicate which assets you would like them to seize.

What personal property can the debtor be forced to sell? All non-exempt physical items of value, such as stock certificates, bonds, cameras, stamps, coins, computers, expensive musical instruments, video equipment, stereos, jewelry, tools, recreational equipment, weapons, luxury clothing (such as a mink coat), animals, pets, art, and precious metal. In theory, you may be able to satisfy your judgment by seizing personal property that the debtor

## Judgment Enforcement

---

owns and has in his or her possession. But it is often in theory only. You will face several possible obstacles, most fundamentally that the amount you will realize from a forced sale is rarely worth the effort and expense, unless you seize items with a ready market value, such as securities or precious metals.

The main concern about forcing the sale of real estate is making sure that there is sufficient equity in the property to justify the effort. Also, if you attempt to force a sale but do not end up with a bid that is sufficient to pay off the mortgages, liens, costs of sale, and homestead exemption, you will not be able to recover your costs from the judgment debtor.

### Opposing a Claim of Exemption

A judgment debtor has the opportunity to claim certain exemptions for assets that you are attempting to levy. If you are served with a Notice of Filing of Claim of Exemption, you will need to act fast because most states have short deadlines to oppose a claim of exemption. (For example, in California, you only have 10 days to oppose the claim.) States vary in their procedures for opposing a claim of exemption, but the general steps are: (1) file and serve a Notice of Opposition to Claim of Exemption; (2) file and serve Notice of Hearing and opposition papers, making sure to give timely notice for a noticed motion; and (3) attend oral argument on the hearing date.

### Recovering Post-Judgment Costs and Interest

Unpaid judgments accrue interest until the judgment is fully paid. You can also tack on most of the costs you incur in trying to enforce the judgment, such as court fees, registered process server fees, and the levying officer's costs.

A simple Excel spreadsheet will help you keep track of the accrued interest on any unpaid portions of the judgment as well as the costs incurred. Most jurisdictions require you to file an additional form (e.g., a Memorandum of Costs) with the court to recover post-judgment costs and interest, and you will only be able to claim your costs if you file the Memorandum of Costs within a certain amount of time after the costs were incurred.

### What if the Debtor Files for Bankruptcy?

Pause all enforcement efforts and hire a bankruptcy attorney.

### After the Judgment is Paid in Full

File with the court a Notice of Satisfaction of Judgment once the judgment is paid in full. If Abstract Judgments were recorded at the county registrar's office, or the judgment was filed with the Secretary of State, have the Notice of Satisfaction of Judgment recorded and filed there, too.

Delays in filing a Notice of Satisfaction of Judgment can subject the judgment creditor to damages caused by the failure to file. Damages can include the failure to obtain a loan or employment as the result of an inaccurate credit report, any attorney's fees related to the suit to acknowledge payment, or statutory awards.