Finkelstein Newman LLP

# Finkelstein Newman LLP

# Newsletter

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## Inside this issue



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## SO YOU'VE WON A MONEY JUDGMENT: NOW WHAT?

If winning a case is half the battle, collecting a money judgment often times feels like the war. And the hurdles that the collection process presents often prove to be more of a challenge than achieving the underlying victory.

Anticipating that a debt will be dishonored and being attentive to detail are two key factors to ensuring collection efforts will be fruitful. The more you know about a debtor before a default occurs, the easier it will be to assess risk and to locate assets should formal collection procedures later become necessary.

Since the goal is to maximize the likelihood of a recovery, it is of utmost importance that vital information be obtained from a debtor at the outset of the relationship. Contact information, social security numbers, federal tax identification numbers, personal, professional, and banking references, credit history, and other pertinent financial data are essential and will serve as the foundation on which your collection efforts will stand. Obviously, the more information, the better. For example, some landlords have even implemented a practice of copying monthly rent checks so as to have an up-to-date paper trail to a debtor's bank accounts.

Whether one should pursue collection will depend, in part, on the dollar amount of the unpaid debt. Obviously, no one wants to expend thousands of dollars in legal fees to recoup "pennies on the dollar," unless, of course, the dispute is being handled on a contingency-fee basis. If the arrangement is not outcome-based, and a law firm or a collection agency is being retained to collect the judgment, it may be wise to discuss a "cap" or budget that one is willing to dedicate to the endeavor.

The practicality of pursuing this kind of case also needs to be juxtaposed against the number of outstanding claims or judgments that may exist against the debtor, for some obligations may take priority over others. In such instances, it may be wise to consider an agreement with the debtor settling the claim for less than the full amount, or allowing payments over time, so as to ensure that at least some portion of the debt actually gets satisfied.

If a debtor does not have the funds now, all is not lost. Money judgments entered in New York State are valid for twenty years. While properly recorded money judgments are liens against real property for only ten years, they may be renewed. But only judgments entered in the Supreme Court or a county court automatically become liens on real property. If you secure a money judgment in Civil Court of the City of New York, for example, it is necessary to "transcribe" or file that judgment with the County Clerk within the jurisdiction where the judgment was

*cont'd pg. 3*

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## IN THE NEWS: QUARTERLY RECAP


Over the last four months, Finkelstein Newman LLP attorneys were again "out and about," speaking, writing, and being quoted on various topics and trends in real-estate law.

In June, founding partner Robert Finkelstein was recognized for his service as a Delegate to the New York State Bar Association. Robert served with distinction from 2004 to 2005, addressing a myriad of issues that impact the practice of law, as well as courts, attorneys, and litigants throughout our great state.

Associate Daniel J. Curtin, Jr., co-authored an article on nuisance law published in the Spring 2005 issue of the New York State Bar Association's Real Property Section's *N.Y. Real Property Law Journal*, and has taught a series of classes at New York County Lawyer's Association's *Bridge-the-Gap* CLE program for newly admitted attorneys. His presentations

*cont'd pg. 4*



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## UPCOMING SEMINARS:

OCTOBER 19, 2005

Advanced Landlord and Tenant Law in New York

On Wednesday, October 19, 2005, from 8:30 A.M. to 4:30 P.M., at Affinia Manhattan, partners Lucas A. Ferrara, Robert Finkelstein, and Jonathan H. Newman will be featured speakers at a continuing legal education ("CLE") seminar sponsored by Lorman Education Services, a national CLE provider.

**ISSUES ON THE AGENDA**

- Avoiding Tenant Conflicts and Litigation
- Landlord-Tenant Litigation: Hot Topics and Trends
- Special Litigation and Trial Considerations
- Let's Make A Deal – Use and Goals of a Stipulation of Settlement
- Special Considerations in Commercial Landlord-Tenant Proceedings

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## SO YOU'VE WON A MONEY JUDGMENT: NOW WHAT?

*cont'd from pg. 1*

entered. As a practical matter, the judgment should also be filed in any county where the judgment debtor owns or has an interest in real property, as well as the county where the judgment debtor resides. Proper transcription will ensure that the judgment is a lien on any property and will force the debtor to honor the judgment if an asset is later sold or refinanced.

Another helpful enforcement mechanism is the "restraining notice," a document that may only be issued by the clerk of the court, the attorney for the judgment creditor, or by the support collection unit designated by the appropriate social services agency. Restraining notices may be served on any person or party except the judgment debtor's employer and have the effect of "freezing" any monies or other assets that may be held by that party on the judgment debtor's behalf.

Even if you have relatively little information on the debtor, "subpoenas" are also an effective tool to secure financial data. A "subpoena *ad testificandum*" requires the judgment debtor to appear for a "deposition," or questioning, at an attorney's offices. A "subpoena *duces tecum"* requires the debtor to produce all financial information or documents listed in the subpoena. An "information subpoena" mandates that certain questions be answered in writing and returned via a self-addressed, stamped envelope provided with the subpoena. A judgment debtor (as well as anyone else served with an information subpoena) is not entitled to any fee for compliance. And, should the recipient fail or refuse to comply, the proper remedy is to seek a court order holding that individual or entity in contempt and to request that the associated legal fees and costs be assessed against the "defaulter," together with an order compelling that individual or entity to comply with the subpoena or suffer possible incarceration.

In the event of a "hit"—that is, monies, bank accounts, assets, and/or other personal property are found—the next step is to send an "execution notice" to the marshal or sheriff. That notice should provide as much detail as necessary for the officer to properly seize the property. For example, if a bank account has been restrained, the execution notice should include the debtor's bank information and account number. In the event real property is identified, the proper procedure is to force a sale of the property in the Supreme Court of the county in which the property is located. Be mindful, however, that foreclosures can be expensive and time-consuming.

If the debtor's current employer is known, then an "income execution" may be served on that party by the marshal or sheriff. While certain income is exempt from this process, a creditor is usually permitted to collect at least ten percent of the debtor's wages.

Without question, collection efforts can be infuriating. And, compounding the aggravation are limitations on how "aggressive" these efforts may be. Restrictions include (but are not limited to) the protections afforded by statutes such as New York State's Debt Collection Procedures law and the Federal Fair Debt Collection Act. Finally, the ugly reality is that even if collection attempts are successful, a federal court bankruptcy filing may put a stop to, and even reverse, the process.

So, when one considers all the attendant costs and risks, it's no wonder that at the start of any transaction that involves a loan, a lease, the extension of credit, and/or the expectation of payment, people are being subjected to screening procedures that many consider intrusive and invasive. Yet, to paraphrase Benjamin Franklin, a little precaution before a default arises will likely avoid a lot of aggravation (and lost income) later.

For more information about the collection of judgments, please contact Rebecca A. Hanlon at 212-619-5400 x 216 or RHanlon@FinkelsteinNewman.com.

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# Newsletter

## IN THE NEWS: QUARTERLY RECAP

*cont'd from pg. 2*

examined the "Nuts & Bolts of Landlord-Tenant Proceedings."


Partner Lucas A. Ferrara appeared in the *New York Times* on April 3, addressing a question pertaining to broker's fees, and on July 24, discussing a domestic partner's entitlement to be added as tenant to a rent-stabilized lease. Ferrara also had an article on security and surveillance cameras featured in the June issue of the *Cooperator* published by Yale Robbins Publications. And, together with Robert C. Epstein, Lucas spoke at a full-day commercial leasing seminar held on June 8 in White Plains, New York, sponsored by Lorman Education Services.

Most notably, senior partner Daniel Finkelstein, the "Dean of landlord-tenant lawyers," was recognized on May 3, by CityFeet.com, on May 9, by the *Brooklyn Daily Eagle*, and, in the May 11th issue of *Real Estate Weekly*, for his 50 years of service as an attorney. In response to the media attention, Finkelstein observed, "This has truly been a most fulfilling and challenging career path for me, and, with each passing day, it only keeps getting better."

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