

### 3 Steps To Successful Judgment Enforcement

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Congratulations. After a hard-fought battle, your client's win is secured and the opposition's liability determined. But don't rest easy; obtaining judgment in your client's favor does not mean the fight is over.

Judgment enforcement is typically governed by the law of the state where collection is sought, which frequently means collection efforts are controlled by an arcane body of law replete with debtor-friendly roadblocks. The pursuit of judgment satisfaction requires careful navigation through a minefield of procedural pitfalls and substantive hurdles, just to obtain what a court has already ruled your client is entitled to. Still worse, recalcitrant judgment debtors can make enforcement a time-consuming, expensive and extraterritorial endeavor through evasion, transferring assets and outright fraud.

Fortunately, there are a number of actions a judgment creditor can take to secure satisfaction of a claim. Following these basic steps can help ensure your client's judgment will be swiftly and inexpensively satisfied.

#### Step 1 — Put in the Groundwork

First and foremost, it is imperative to adhere to the cardinal rule of including the language "for which let execution issue forthwith" (or similar) when submitting a proposed judgment for entry. Doing so will often avoid any applicable, statutory delay in enforcement that a debtor may otherwise enjoy, and perhaps use to their advantage. Though seemingly ritualistic, omitting this language can result in a substantive impediment to enforcement. In fact, Florida's appellate courts are in apparent conflict as to whether execution proceedings can even commence if these words are absent from a judgment.[1]

Even when a stay of enforcement is mandatory, a creditor should still issue restraining notices to the debtor and certain third parties, such as financial institutions, to place a hold on the debtor's assets. In New York, a restraining notice can be issued by an attorney without court approval, operating with the threat of contempt and liability for damages if violated.[2] A restraining notice can even be issued prejudgment in some jurisdictions if there is a chance that enforcement would be compromised in the interim.

Most importantly, a judgment creditor should already have a good idea of the extent and location of a debtor's assets by the time the judgment is entered. In the event this information was not sufficiently



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obtained in discovery in the underlying litigation, the use of a private investigator can be an invaluable means of determining where assets are located, and thus, where enforcement is best sought. Once judgment has been entered, there are still various means by which to obtain discovery in aid of execution, such as requests for production, interrogatories, information subpoenas, and taking depositions of the debtor and third parties to locate assets subject to execution.

Should a debtor have assets outside the jurisdiction where judgment was entered, the enforcement process has been streamlined to facilitate collection across state lines. If a state court judgment is at issue, most states have enacted the Uniform Enforcement of Foreign Judgments Act for domesticating a foreign state judgment. In many states, domestication requires initiating a new action with a certified copy of the judgment. With a federal judgment, the process is even easier. Enforcement of a federal judgment outside the state where it was entered is accomplished via 28 U.S.C. § 1963, which provides for registration of judgments. A simple form is available on the U.S. Courts' website, requiring only certification by the district court clerk and a certified copy of the judgment.<sup>[3]</sup> Unlike some state's laws, notice to the debtor is not required when registering a federal judgment, enabling immediate enforcement and often catching a debtor off guard.

Once judgment has been entered (and if prudent, domesticated or registered), a creditor should record the judgment with the state's applicable public records body, which is the secretary of state in many jurisdictions. In nearly every state, recordation of a judgment constitutes a statewide lien on real property in which the debtor holds an interest.

## **Step 2 — Commence Traditional Enforcement Measures with an Eye Toward Maximum Recovery at Minimum Expenditure**

There are several well-known methods for enforcing a judgment. Most are routine, but all depend on the particularities of the situation, and primarily, the extent, type and location of attachable assets. Regardless of the manner in which enforcement is sought, a creditor should move swiftly and on the path of least resistance toward seizing a debtor's most valuable assets.

Under normal circumstances, par for the course is to immediately request that the court issue a writ of execution, which orders the seizure of property to satisfy the judgment. When enforcing a judgment entered by a federal court, creditors should be aware that certain divisions of the U.S. Marshals Service, such as those in Florida and New Jersey, also require a separate "break order" prior to execution. A break order will hold harmless and allow the U.S. Marshals to use whatever force necessary to locate, levy and remove property when executing on a judgment. This is a straightforward request that courts typically grant in a perfunctory manner.

Once a writ of execution is issued, it is incumbent on a judgment creditor to coordinate the seizure with the office of the local sheriff or U.S. Marshals Service. Many details require confirmation well in advance of the execution, beyond the mere date, time, and other logistics. For example, consider whether the execution will require the assistance of multiple sheriff's deputies or U.S. marshals, a moving company with trucks and available storage units, a locksmith, or a property appraiser. Attention to these issues will streamline the process and save expenses in the long run, as many of these personnel charge by the hour. No matter the situation, a successful execution can be achieved by adhering to the familiar adage of measuring twice and cutting once.

In the event attachable assets belong to or are owed to a debtor, but possessed by a third party, a creditor should obtain a writ of garnishment. A writ of garnishment can be issued with respect to

particular property, such as bank accounts and safe deposit boxes, which will oftentimes surprise an unwitting debtor when they learn their accounts have been frozen. A judgment creditor can also garnish a percentage of a debtor's wages via a writ of garnishment. It is highly unlikely a debtor will quit their job to avoid garnishment, so a creditor can sit back and collect income every month until their judgment is satisfied or the debtor agrees to settle the debt.

Another traditional but less-utilized method of enforcement is obtaining a charging order for a limited liability company or partnership. This remedy "charges" a debtor's interest in the entity, so any distribution will be paid to the judgment creditor, rather than the debtor.

Whether enforcing a state or federal judgment, it is imperative to remember that the law of the state where enforcement is sought will largely govern the proceedings.[4] Therefore, there may be more (or fewer) collection devices at a creditor's disposal. When planning to enforce a federal judgment, a creditor should also consider whether it would be more advantageous to utilize the local sheriff (once the judgment is domesticated) or the U.S. Marshals Service. In any given situation, a sheriff's office may have valuable, local intel to facilitate the execution, whereas some seizures are better suited by a team of U.S. marshals knocking on a debtor's door.

### **Step 3 — If Necessary, Aggressively Engage Evasive and Uncooperative Debtors Head-On**

As if tracking down a debtor and their assets was not hard enough, it is unusual for a debtor, still stinging from their loss in court, to voluntarily turn over property. Unfortunately, it is all too frequent for debtors to ignore or otherwise refuse to comply with the enforcement process, resulting in increased costs and delay. Should a debtor seek to evade or otherwise hinder the lawful satisfaction of a judgment, swift action should be taken to prevent a judgment from becoming an uncollectable and otherwise hollow victory.

Fortunately, additional remedies become available as the extent of a debtor's recalcitrance increases. If a debtor disobeys a court order or refuses to comply with discovery in aid of execution, the first step is to immediately seek an order holding the debtor in contempt and enforcing compliance. Many states, like New Jersey, have intricate local procedures governing contempt proceedings, which often culminate in the debtor's arrest if their refusal to cooperate continues.[5]

Depending on the situation, a creditor may require even more extraordinary relief. If collectible assets are being concealed or fraudulently transferred, many states also permit the appointment of a receiver over a debtor or their business. In this instance, a receiver will not only step in a debtor's shoes to identify attachable assets, but it can also marshal their assets in aid of execution. More drastic remedies may be available if assets have already been fraudulently transferred out of the jurisdiction, or if a debtor is a flight risk. For example, the Seventh Circuit has affirmed a district court order seizing a debtor's passport under these circumstances.[6]

No matter how many proactive measures are taken, sometimes even the most diligent creditor can fall victim to a truly recalcitrant debtor. In the worst scenario, a creditor will be forced to initiate new litigation just to satisfy the judgment already obtained. The most common of these actions sound in fraudulent transfer, and many seek to impose a constructive trust over property or to pierce the corporate veil to enable recovery.

Evasive and uncooperative debtors can easily hinder the enforcement process, so it is essential to take initiative and be adaptable. In nearly every situation, there are a variety of methods and means at a

creditor's disposal to deal with a wayward debtor, all while staying within the confines of the Fair Debt Collection Practices Act and comparable state law.

### **Conclusion.**

While judgment enforcement may be a challenging process, following these steps can significantly increase the chances of economically and efficiently satisfying your client's judgment and obtaining finality.

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[1] Compare *Du Breuil v. Regnvall*, 527 So.2d 249 (Fla. 3d DCA 1988), with *Haines v. Black Diamond Props.*, 176 So.3d 1023 (Fla. 5th DCA 2015).

[2] See NY CPLR § 5222.

[3] See <http://www.uscourts.gov/forms/civil-judgment-forms> (AO 451).

[4] See, e.g. Fed.R.Civ.P. 69.

[5] See N.J. Court Rule 4:59-1.

[6] See *Bank of America NA v. Veluchamy*, 643 F.3d 185 (7th Cir. 2011).