

Collection can be harder than judgment

Hon. Tim Dickerson, 12-20-11

Congratulations, you won your lawsuit! Now you must attempt to collect your judgment. In this article, I will refer to the person attempting to collect a judgment as Creditor and the person who owes the money as Debtor. Except in the rare situation where Debtor pays voluntarily, Creditor must take further legal action to collect his or her judgment. The court may not offer advice, nor does the court initiate collection action. As always the court must be evenhanded and neutral. The court cannot help Creditor collect any more than it can help Debtor avoid payment.

The primary collection procedures used in justice court are a *writ of execution* and *writ of garnishment*. A writ of execution directs the Sheriff or Constable to seize Debtor's non-exempt property and sell it to satisfy the judgment. Debtor is allowed to keep certain property, which is referred to as exempt property. The maximum value of exempt property varies from state to state. In Arizona, the following property is exempt from execution: A residence with a value up to \$150,000, certain retirement accounts, household furnishings, furniture and appliances of a value up to \$4000, and one car of a value up to \$5000 (\$10,000 if the debtor is disabled). As you may imagine, many debtors have no non-exempt property, a condition called "judgment proof".

If a Debtor is employed, Creditor may attempt to garnish wages by a garnishment action. Creditor cannot take all of Debtor's wages, as a portion is exempt, but a wage garnishment may result in a steady flow of payments, if Debtor remains employed. Bank accounts can also be garnished, which results in seizure of the money Debtor has on deposit at the time the bank is served, over an exempt amount of \$150. Timing is important, as Creditor will receive none of a large deposit made the day after the bank is served.

Forms for collection actions may be found at the justice court and on-line at www.AZTurboCourt.gov, but the fact that forms are available does not mean that the procedure is easy. The garnishment paperwork in particular is quite long and the procedure requires several steps. a non-attorney Creditor is held responsible to know the law and must follow proper procedure. Besides being complicated, collection actions require payment of additional fees for filing and service of the documents.

The truth is that most judgments are not paid, at least not in a reasonable time or without further effort and expense on behalf of Creditor. When making a decision to file a lawsuit, the odds of collecting should figure equally with the odds of success on the merits of the case; otherwise, the successful litigant may be left with a judgment suitable for framing, but without much monetary value.

Tim Dickerson has served as the Sierra Vista Justice of the Peace since January 2003, prior to which he practiced law for 19 years.