

MICHAEL P. MORTON, P.A.

E-Newsletter

September 2015

"Judgments – What Are They Good For?"

By: Nicole M. Faries, Esquire

The process of obtaining judgments against tenants in the Delaware Justice of the Peace Court is tedious and time-consuming. Many landlords have experienced the situation of waiting several weeks to get to Court to evict a non-paying tenant only to have their case thrown out by the Judge on the day of trial because of some deficiency in the demand letter. Once the money judgment against the tenant is finally

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obtained it feels like a huge victory. At this point, you are finally able to lock that non-paying tenant out of your rental unit, and re-rent the space to suitable tenant. This is a victory. However, it feels like something is lacking. That debtor tenant was able to live rent free and all that happened as a consequence was a Court-mandated move. What about the landlord's right to collect monthly rent?

This is where the Justice of the Peace Court's execution process comes into play.

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Execution of a judgment means collecting that judgment. There are four ways to collect a judgment you obtain against a tenant in J.P. Court.

The easiest, but least likely, way to collect a judgment from a debtor tenant is by reaching an agreement with that tenant. If the tenant is interested in paying off the judgment and willing to enter a payment plan with you, you should enter a written agreement with that tenant. Under that written agreement, you will agree to forego your rights to collect the judgment so long as the tenant sticks to the payment agreement. Should the tenant violate the agreement, you can pursue other avenues of collection.

The best way to obtain funds from a debtor tenant is to garnish that tenant's wages. In order to pursue this relief, the tenant must have a wage paying job. Through this garnishment process, the Court will send the garnishment request to the employer and the employer will have to file an answer within 20 days. If the tenant makes a sufficient amount of money and so long as the paycheck is not subject to garnishment of another creditor, the Court will allow you to attach a

portion of the tenant's wages to be paid towards your judgment amount. There is a \$30.00 filing fee for garnishment. If the employer is an out of state company, you have to pursue a wage garnishment through the Secretary of State by sending a copy of the wage garnishment to the J.P. Court where the judgment was obtained, together with a check in the amount of \$50.00 made payable to the Secretary of State for service upon the foreign corporation. This fee is in addition to the \$30.00 filing fee for the garnishment. The same process is followed, i.e., the employer is served by mail through the Secretary of State, and has 20 days to Answer after service upon them of the wage garnishment. The one caveat to wage garnishments on a foreign company is that there is no legal avenue to make the foreign company enforce the Delaware wage garnishment. Most states honor a foreign state's jurisdiction with respect to wage garnishments, however, if they refuse, then alternative avenues to collect on the judgment should be pursued.

A third way to collect a judgment, which is a familiar avenue to most manufactured housing landlords, is levying the debtor tenant's

personal property. If you know where the tenant has personal property, you can request that the constable levy that property. Once the property has been levied, it can be sold at a constable sale. If you know the tenant owns a vehicle, you should request a DMV Certificate of Lien search. With that, you can request that the constable levy that vehicle. However, that levy request will only be valid if you have a judgment against all owners of that vehicle. If you know the tenant has other valuable property and you know where that property is being kept, you can direct the constable to levy on that property. Again, once property has been levied, you can request that it be sold at a constable sale to satisfy your judgment.

A final way to collect a J.P. Court judgment is to attach that judgment to real property. This is accomplished by transferring your J.P. Court judgment to Superior Court in the county in which the tenant owns real property. Real property means real estate. If a tenant does own real property, it is in your best interest to transfer the judgment to Superior Court, in the county in which the property is located, because doing so will create a lien against that real estate. That lien will have to be satisfied for that property to be

Tip of the Month

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BEFORE APPROVING AN
APPLICANT AS A
TENANT, SEARCH
COURT CONNECT TO
DETERMINE IF THERE
ARE PAST JUDGMENTS
FOR UNPAID RENT.

[HTTP://COURTCONNECT.COURTS.DELOWARE.GOV/PUBLIC/CK_PUBLIC_QUERY_MAIN.CP_MAIN_IDX](http://COURTCONNECT.COURTS.DELOWARE.GOV/PUBLIC/CK_PUBLIC_QUERY_MAIN.CP_MAIN_IDX)

sold. Further, you could foreclose your lien against the property; thereby, forcing the tenant to sell that asset for your benefit. A lien sale is very cumbersome and expensive and will be subject to any mortgage that is outstanding on the property. Thus, under most circumstances, forcing a lien sale will not be an economically viable choice. However, having a lien on the real property will prevent a sale of that property. Thus, this is in your best interest.

Finally, you should be aware that J.P. Court judgments are only valid for a period of 5 years. If you have a payment agreement with a tenant or are otherwise trying to collect your judgment, you should seek to revive that judgment for another 5 year term prior to the current term expiring.

As of July 2015, Nicole M. Faries has joined our Firm. Ms. Faries started her law career at Skadden, Arps, and then joined Prickett, Jones, where she developed a specialized practice in the area of manufactured housing law. After leaving Prickett, Ms. Faries worked as a felony prosecutor in Sussex County before joining our Firm. Ms. Faries now works in the areas of landlord/tenant law, manufactured housing law, commercial litigation, and general business law.

A guide for collection methods is available on the Court's website at:
http://courts.delaware.gov/Help/Proceedings/JP_revive.stm.

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Thank you for reading our newsletter.

If you have any topics that you would like to see addressed in future newsletters, please email David Zerbato at
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New Fees in Effect for JP Court Filings as of September 1, 2015

Justice of the Peace Court Civil Fees	Total
Filing Fee for Landlord/Tenant	\$40
Distress for Rent Claim	\$60
Filing Fee for Debt Claims where the amount in controversy exceeds \$5,000	\$45
Filing Fee for Debt Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$40
Filing Fee for Debt Claims where the amount in controversy is less than \$1,000	\$35
Filing Fee for Trespass Claims where the amount in controversy exceeds \$5,000	\$40
Filing Fee for Trespass Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$35
Filing Fee for Trespass Claims where the amount in controversy is less than \$1,000	\$30
Filing Fee for Replevin Action	\$50
Alias (Second Attempt at Service)	\$20
Attachment in Lieu of Summons	\$20
Execution (Wage Attachment/Levy)	\$30
Sale Fee	\$20
Subpoena	\$10
Filing a Garage Keeper Case	\$45
Motion to Vacate a Default/Nonsuit Judgment	\$15
Landlord/Tenant Appeal	\$50
Constable Sale (Vendition Exponas)	\$20
Transcript	\$10
Service of Writ of Summary Possession	\$35
Revival of Judgment (Scire Facias)	\$10
Third Party Action for Landlord/Tenant Claims	\$40
Third Party Action for Debt Claims where the amount in controversy exceeds \$5,000	\$45
Third Party Action for Debt Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$40
Third Party Action for Debt Claims where the amount in controversy is less than \$1,000	\$35
Third Party Action for Trespass Claims where the amount in controversy exceeds \$5,000	\$40
Third Party Action for Trespass Claims where the amount in controversy equals or is between \$1,000-\$5,000	\$35
Third Party Action for Trespass Claims where the amount in controversy is less than \$1,000	\$30
Filing Fee for an Abandoned Property Suit	\$40