

Creditors Trade Association

Critical Issues on the Agenda

8:30 a.m. – 10:10 a.m.

I. Overview

- A. General Credit and Collections Issues
 - 1. Consumer Accounts vs. Commercial Accounts
 - 2. Credit Applications
 - 3. Personal Guaranties
 - 4. Directions and Application of Payments
 - 5. "Payments in full" checks
 - 6. Accord and Satisfaction
 - 7. Interest
 - 8. Attorney's Fees Provisions
 - 9. Credit Checks
- B. Restrictions on Debt Collection (California)
 - 1. Federal Fair Debt Collection practices Act ("FDCPA")
 - 2. Federal Fair Credit Reporting Act
 - 3. Corporate vs. Individual Liability, i.e., Alter-Ego
 - 4. Types of Company
 - a. Corporation
 - b. Proprietorship
 - c. Partnership
 - d. Limited Partnership
 - e. Limited Liability Company

10:10 a.m. – 10:20 a.m. – Break

II. Alternatives to Litigation: Collection Tools

- A. Promissory Notes
- B. Security Interests
 - 1. Security Liens
 - 2. Real Property (Deeds of Trust)
- C. Confessions of Judgment
- D. Arbitration
 - 1. Court Annexed
 - 2. Arbitration Pursuant to an Agreement Between the parties
 - 3. Binding Arbitration

- E. Mediation
 - 1. Court annexed
 - 2. Private
- F. Liens
 - 1. Contract Interests/Risk of Loss
 - 2. Mechanics and Garagemen's Liens
 - 3. Chattel Mortgages
 - 4. Leases

12:00 p.m. – 1:00 p.m. – Lunch (On Your Own)

1:00 p.m. – 2:40 p.m.

III. Litigation

- A. What to Provide Your Counsel
 - 1. Necessary Documentation
 - a. Contracts, guaranties, Credit Applications, Banking Information, Lien/Judgment/Litigation Searches
- B. Strategic Considerations; "Pressure Points"
 - 1. Prejudgment Relief
 - a. Orders of Attachment
 - b. Conservators
 - c. Injunctions
 - d. Repossession
 - e. Criminal Liability
- C. Venue Considerations
 - 1. Small Claims Court, Local Courts
- D. Pressure Point
- E. After Suit: How to Proceed Against the Debtor
 - 1. Pressure Points: Manner and Timing of Discovery, Selection of Deposition witnesses
- F. Default Judgments
- G. Judgment Liens
 - 1. Transcribing Judgments to other Courts
 - a. Effect on Real estate Title
 - 2. Foreign Judgments
- H. The Five W's
 - 1. Who is the Debtor? (Legal Composition)
 - 2. When Can you Sue? (Statute of Limitations)
 - 3. Where can you sue? (Venue/Jurisdiction)
 - 4. What will it Cost to Sue? (Cost, Fees, etc.)
 - 5. Why am I suing? (Collectibility, business considerations)

2:40 p.m. – 2:50 p.m. – Break

2:50 p.m. – 4:30 p.m.

IV. Post-Judgment Collections

- A. Notice to Judgment Debtor
- B. Service of order/Judgment Where There has been an Appearance
- C. Restraining Notices to Debtor(s) and Possible Others
- D. Discovery: Asset Depositions and Information Subpoenas
- E. Post-Judgment Attorney's Fees, Recouping Cost Expended to Enforce the judgment
- F. Execution
 - 1. Sheriff
 - 2. Marshal
 - 3. Bank Information Subpoenas
 - 4. Garnishments
 - 5. Using Public Information and file information (Search Firms)
 - 6. Internet
 - 7. Contempt Proceedings
- G. Obstacles to Collection
 - 1. Exemptions
 - 2. Prior Liens
 - 3. Bulk Sales Issues
 - 4. Fraudulent conveyances
- H. Bankruptcy
 - 1. Generally
 - 2. Preferential Transfers
 - 3. Reaffirmation Agreements
 - 4. Filing of Claims
 - 5. Objections to Discharge/Confirmation
 - 6. Automatic Stay and Obtaining relief From it
 - 7. Involuntary Bankruptcies
 - 8. Type of Bankruptcy
 - a. Chapter 7
 - b. Chapter 11
 - c. Chapter 13