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# Landlord News

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## RESIDENT COLLECTIONS - THE DIFFERENCE BETWEEN LAW FIRMS AND COLLECTION AGENCIES

Unfortunately, some residents leave owing you rent and damages. You have three options to collect. One, handle it yourself in small claims court. Two, turn the account over to a collection agency. Three, retain an attorney. Because pursuing a resident in small claims court is not an option for many, if not all, management companies and managers, our discussion of collection options is limited to law firms and collection agencies ("agencies"). For the most part, law firms and agencies have the same collection tools available to them. The key difference between law firms and agencies is how they strategically use the collection tools available to them. How and when collection tools are used can make a significant difference in how much and how quickly resident debt is collected.

Law firms and collection agencies both start the collection process the same. Both send legally required col-



lection letters to the resident about the amount and source of the debt, that the law firm or agency has been hired to collect the debt, and that the resident has thirty (30) days to dispute the debt. However,

after the initial legally required demand letter, law firms and agencies use different collection strategies. An agency typically follows the initial demand with phone calls and additional letters at regular intervals. An agency may also report the debt to the credit bureaus, thus negatively impacting the resident's credit. Because the resident may have to clear up the negative report on his credit sometime in the future, the reporting of the debt to the credit bureaus may result in payment of the debt sometime in the future. Obviously, only residents who care about their credit will end up paying you because of negative credit reporting.

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## AT HTS PREVENTIVE LAW IS KING

As we close out 2009 and head into 2010 it is important to remember that it is never too early to set up your training calendar for the coming year. Many of our client management companies require that their employees attend a Fair Housing training program annually as well as other educational programs. Being cognizant of this fact, our HTS teaching team annually reviews our workshop materials and revises our presentations and workbooks to reflect the suggestions and requests of the people who have attended our classes during the year. We, of course, update and incorporate any changes in the law and situations and issues that we have handled for clients in the preceding year in order to provide our clients the most comprehensive and current information available in our educational workshops.



The Firm is pleased to announce that we are adding an exciting new workshop to our curriculum this year. With the addition of a collection attorney to the HTS team, we will now be adding a Landlord Recovery: Minimizing Loss-Maximizing Recovery Workshop to our educational curriculum. Dates for this new workshop will be published in our January Landlord News. Look for the schedule.

Remember that registration for the workshops is continuing to grow and the space is limited. So it is better to register for classes that you or your employees want to attend as early in the year as possible. We will always send you a reminder for your class prior to the date which means you can register well in advance of the scheduled class and we won't let you forget. As a reminder of the 2010 schedule we are again publishing it in this edition of the Landlord News.



## RESIDENT COLLECTIONS - THE DIFFERENCE BETWEEN LAW FIRMS AND COLLECTION AGENCIES

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The goal of most agencies is to collect as much money as possible without having to file lawsuits. Collection agencies are willing to sacrifice time to collect without having to file a lawsuit and rarely employ an in-house attorney. Even collection agencies with attorneys on the payroll almost always hire outside attorneys to represent the collection agency to file lawsuits and represent the collection agency in court. Because hiring attorneys makes collection files less profitable for collection agencies, most agencies utilize extended letter writing and phone call campaigns to collect, and thus put off filing suit as long as possible.

If the resident hasn't paid after the initial demand, rather than engaging in an extended call and letter writing campaign which is the strategy a collection agency follows, a law firm files a lawsuit to obtain a judgment to collect the debt owed by the resident. Without a judgment, you can only continue to ask, request, or demand that the resident pay you. If the resident refuses to pay, you can't do anything to compel payment other than file a lawsuit to get a judgment. Judgments do not guarantee payment. However, unlike calls and letters, a judgment allows you to compel payment when possible. Once you have a judgment, the law firm may pursue a number of post-judgment remedies including wage and bank garnishments. Further, when a judgment is obtained, the judgment will be reported to the credit bureaus negatively affecting the resident's credit.

Like all other debtors, residents know the difference between a letter from a collection agency, and a lawsuit from a law firm. At worst, residents will ignore letters and calls from agencies. Further, under the Fair Debt Collection Practices Act, residents can immediately stop all collection calls by simply requesting in writing that the collection agency stop calling. At best, residents might be upset or nervous from collection letters and calls. When residents will not pay voluntarily, even under pressure from a bill collector, you must have the ability to create an immediate sense of urgency. While a resident can ignore calls and letters, a resident can't ignore a lawsuit. A lawsuit creates an immediate sense of urgency. The former



resident must resolve the lawsuit (the debt owed to you) now. If the resident ignores a collection lawsuit, you end up with a default judgment for the amount the resident owes. Once you have a judgment, you can enforce the judgment through bank and wage garnishments, and other judgment remedies.

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Law firms and collection agencies both accept collection matters on a percentage fee, or contingency fee basis. When a debt is collected on a contingency fee basis, the client does not pay either the agency or attorney unless money is actually collected from the debtor. When money is collected, the agency or law firm keeps a percentage of what is collected as their fee. Collection law firms usually charge a set fee percentage on all funds collected, with costs being reimbursed first. Collection agency fees and percentages can vary widely by agency and are based on a host of factors. An agency may charge a greater percentage for older debts. An agency may have varying percentage depending on the amount of debt you turn over to the agency for collection. An agency may charge more if the agency turns the account over or places the account for lawsuit with a law firm. An agency may also charge a higher percentage for advancing costs of collection.

Based upon ethical rules, law firms can agree to advance costs for you, however, ultimately you have to remain liable for those costs even if no money is ever collected. Some collection agencies have used this limitation on attorney firms as a selling point. Specifically, an agency will argue that this is a significant advantage over law firms because the agency will pay all costs of collection, and if the agency doesn't collect, you don't have to pay these costs. This offer sounds great in theory, but may or may not work out to your advantage. First, an agency might not be advancing significant costs because the agency is not filing lawsuits to collect. If an agency collects the easy accounts but never tries to collect the accounts that are only collectible through suit, the agency will have advanced little in costs, but collected a higher percentage on the debt collected for agreeing to advance costs. Second, whether with a law firm or a collection agency, almost all collection agreements dictate that costs are reimbursed first. Because costs are reimbursed first, a collection agency that has agreed to advance costs is very likely to recoup all money advanced. For example, if an agency has advanced \$3500 in costs to collect from your former residents and the collection agency collects \$4000 from a resident,



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the collection agency will reimburse itself the \$3500, and the remaining \$500 will be split according to your agreement.

It is important to emphasize that some collection agencies do not offer lawsuit services. Because a collection agency that does offer lawsuit services works as a middleman in the lawsuit process, debts placed directly with law firms will be sued upon far quicker than those placed with collection agencies. For example, you have us evict a resident for non-payment. If the resident's account is placed with us, we will sue the resident as soon as possible, in some cases prior to the time the resident vacates the premises. If you place this account with a collection agency, the collection agency won't sue the resident until some time significantly in the future. In some cases, this results in a legal action that is well over a year, or even years later. The sooner serious collection efforts are commenced, especially lawsuits, the more likely you are to ultimately collect from former residents for a host of reasons.



**TIME IS MONEY**

The property management industry is a very mobile industry. People tend to change jobs, properties, and companies frequently. Managers and onsite staff deal with countless residents and accounts over a year. If a lawsuit is brought close to the time a resident has moved out, the matter will be much fresher in the memories of the onsite staff (the witnesses for court). Whereas, if a suit is brought a year or more after a resident has vacated, there is a significant probability that the onsite staff will have changed during this time. This means that critical witnesses might not be available for trial. The new management team that has to testify in court will have to rely entirely on the file. This puts you at a significant disadvantage in court, and may result in you having to compromise the claim.

Even more important than management mobility is resident mobility and attempting to collect when the collection trail is still fresh. For example, a resident (Terry Tenant) moves out and owes you \$4,000.00 for four months rent. When she left, you had a copy of the checks she used to pay rent, knew where she worked, and had a forwarding address. Now, you place the account with ABC Collection Agency. ABC sends out a series of letters, one each month for six months, and makes several phone calls to try to get Terry to pay without success. During that time, Terry moves again, changes jobs, and

closes her bank account.

In contrast, you place the debt with a collection law firm immediately after Terry moves out. The firm sends out a single letter, then generates a lawsuit, and gets a judgment against Terry approximately ninety days later. A bank garnishment takes \$800 from Terry's bank account and several payments are received from Terry's employer from a wage garnishment before Terry leaves the job. When Terry starts the new job, she calls and is ready to set up payments for the remaining balance to avoid a wage garnishment at her new job. These two scenarios illustrate what everybody knows. The longer money is owed to you, the less likely you are to collect it. Consequently, it is imperative to collect money sooner than later. The sooner a judgment is obtained and contact is made in connection with the judgment, the better the chances are at recovery.



Very few collection agencies have in-house attorneys who handle court appearances or trial work. Rather, collection agencies almost always hire outside attorneys to handle court appearances and trial work. The compensation structure that collection agencies use to pay outside attorneys provides disincentives to maximize recovery at two levels. First, if a former resident disputes a collection suit by filing an answer, the resident has a right to a trial. Because collection agencies have to pay additional fees to outside attorneys for trial work, agencies may request authority from you to settle a case for a lower amount to avoid paying these additional fees. Second, if the case is not settled after a resident answers and the case goes to the outside collection attorney, the attorney is almost always better compensated if the case is settled prior to the court hearing the case because flat trial fees are set so low. Further, the collection agency's attorney is paid the flat trial fee regardless of result. However, a law firm that handles collecting the debt directly for you, and not for an agency, understands that going to trial is part of the work necessary to earn the fee. This is because their fee is results-driven and based on recovering the actual debt. Accordingly, the law firm who represents the creditor directly must win to get paid. Unless the creditor wins the collection case trial, then there is no court-ordered judgment to collect on.



The most effective tool to collect money from residents is to obtain judgments. Almost without

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exception, collection agencies put off filing lawsuits to collect money from residents. Rather, collection agencies continue your efforts to get the resident to voluntarily pay. While a collection agency's efforts to obtain voluntary



payment are likely to be more aggressive than your efforts, until the collection agency files a lawsuit any resident payment is still voluntary. If the resident would pay voluntarily,

you wouldn't have had to turn the resident's account over to a collection agency. Thus, for residents that won't pay until a collection agency files lawsuit, a main benefit of a collection agency is that they will make the collection calls and write the collection letters for you. This may be all you want or need. If you are not willing to take your residents to court for past due rents, then there's probably no reason to send the account to a law firm. Additionally, for companies with very few accounts or accounts with very small balances, the expense of filing a lawsuit may be prohibitive compared to the balances owed. In these situations, placing your accounts with a collection agency, makes good sense. For larger debts, multiple accounts, and much quicker legal action, a law firm is probably a better route.



**HTS SUPPORTS TOYS FOR TOTS**

Recognizing the tough economic times that everyone is dealing with, the Firm and staff made a collective decision



to do something for a worthy cause in lieu of holiday parties and internal gift exchanges. We have taken the funds normally available for our Firm Holiday activities

**2010 WORKSHOP SCHEDULE**

MONTH	DATE	CLASS
JANUARY	20TH	BASIC FAIR HOUSING
FEBRUARY	10TH	BASIC EVICTIONS
MARCH	10TH	ADVANCED FAIR HOUSING
APRIL	14TH	NON-MONETARY EVICTIONS
MAY	12TH	BASIC FAIR HOUSING
JUNE	9TH	BASIC EVICTIONS
JULY	14TH	ADVANCED FAIR HOUSING
AUGUST	11TH	NON-MONETARY EVICTIONS
SEPTEMBER	15TH	BASIC FAIR HOUSING
OCTOBER	13TH	BASIC EVICTIONS
NOVEMBER	10TH	ADVANCED FAIR HOUSING

**IMPORTANT HTS DECEMBER DATES**

- December 11th - **HTS Closed At Noon**
- December 25th **All Courts Closed Christmas Holiday**
- December 25th **HTS Closed Christmas Holiday**
- January 1st **All Courts Closed New Year Holiday**
- January 1st **HTS Closed New Year Holiday**

and purchased toys for the 'Toys for Tots' program. This program, which is run by the Marine Corp, collects and distributes new toys to children ages infant through teen who would not receive any present this holiday season. The 'Toys for Tots' program gives away millions of toys every year but would not be able to do so without the help of businesses and individuals throughout the community. We encourage anyone who wants to reach out this season to consider giving a toy to the 'Toys for Tots' collection centers located throughout your communities.



## MS. LEGAL PERSON ANSWERS YOUR HOLIDAY QUESTIONS

**Q:** I just got a Christmas card from somebody I hate. And another from someone I don't even know. Do I have to reciprocate?

**A:** Yes. You're required to send a card within ten days. Otherwise, you can be imprisoned pursuant to the Hall-mark Profits Enhancement Act.

**Q:** Don't I have any other option?

**A:** Yes. Try a mutual fund with greeting card stocks.



**Q:** I made a Christmas wreath out of eucalyptus leaves, berry sprigs, muslin, yarn and colorful votive candles.

**A:** Very nice, but how can I help you?

**Q:** Well, it looked great for a couple of days. Then it caught fire and destroyed everything I own.

**A:** I'm sorry to hear that. Next time you might consider using pine cones and potpourri.

**Q:** That sounds just lovely. But what I really want to know is, can I hold Martha Stewart liable?

**A:** Probably not, though you should ask for a subscription refund.



**Q:** My birthday falls right before Christmas and I always get short-changed. Do I have any legal recourse?

**A:** You suffer from Badly Timed Birthday Syndrome. Fortunately, last year's Anti-Discrimination and Mental Health Care Reform Bill included the Birthday Rehabilitation Act. It allows you to petition any federal judge to modify your birthday by no more than 30 days.

**Q:** That's great news!

**A:** You need only prove that your birthday coincides with a key holiday, causing pain and suffering and depriving you of your fair share of attention and gifts.

**Q:** Wow! Can I also modify my birth year?

**A:** How old are you?

**Q:** 37.

**A:** I'm afraid not. But you're free to lie like everyone else.



**Q:** Every year our best friends invite us over for New Year's brunch and make us watch home videos and help dismantle their Christmas tree.

**A:** Ah ha! Tortious Invititious Falsious Pretentious.

**Q:** That sounds serious. What can we do?

**A:** Bring your own home videos and last year's fruit cake.



## POLITICALLY CORRECT ZERO LIABILITY SEASON'S GREETINGS

**Please accept with no obligation implied or implicit best wishes for an environmentally conscious, socially responsible, low stress, non-addictive and gender neutral celebration of the winter solstice holiday, practiced within the enjoyable traditions of the religious persuasion or secular practices of your choice and with respect to the religious and/or secular persuasions and traditions of others or their choice not to practice religious or secular traditions at all.**

**Wishing you a fiscally successful personally fulfilling, and/or medically uncomplicated recognition of the onset of the generally accepted calendar year, although with due respect for the calendars of other cultures whose contributions have helped make America great. Not to imply that America is necessarily greater than any other country or is the only "AMERICA" in the western hemisphere or for that matter the universe.**

**This greeting implies no promises by the wisher or wishers to actually implement any of the wishes. And further without disregard to the gender, race, creed, age, physical ability or religious faith, and/or practice of any person or persons.**

**By accepting these greetings you are accepting the following terms; these greetings are subject to clarification or withdrawal, freely transferable with or without alterations to the original greetings, are revocable at the sole descriptions of the wisher and or wishers, warranted to perform within the usual application of good tidings for a period of one year, or until the issuance of a subsequent holiday greeting, whichever comes first and further this warranty is limited to issuance of a replacement wish and wishes at the sole discretion of the wisher and or wishers, to be named at a later date.**

**Void where prohibited by law.**



The HTS Team wants to thank all of our clients for their support and loyalty.

We extend our very best wishes to each and every one of you for a happy holiday season and a joyous and prosperous New Year!

