

# Landlord News

Volume 6, Issue 8

HOPKINS TSCHETTER SULZER, P.C.

August , 2004

A Full Service Law Firm

Pavilion Tower II

2821 South Parker Road, Suite 228, Aurora, Colorado 80014

[hopkinstschetter@htspcT.com](mailto:hopkinstschetter@htspcT.com)

Phone (303) 766-8004 Fax Completed Eviction Forms To (303) 766-1181 or (303) 766-1819

## COLLECTING FROM RESIDENTS

Clients frequently approach the firm with various questions related to the collection of money owed to them by residents and whether our firm handles such collections. While our firm does handle collection related matters, we tend to handle complex and complicated collection matters, which involve an hourly fee agreement with the client. Collecting from residents raises various issues.

Most of the time residents owe for unpaid rent and physical damage to the premises. Typically damages arise when a resident skips or after a landlord has evicted a tenant.

### Available Options for Collection

Collecting money can be a time intensive process and can often involve trying to locate the resident who owes the money. As many of you know, residents often skip out and leave no forwarding address. In addition, many residents who owe money do not voluntarily pay it and the creditor (e.g. landlord) has to find a way to attach the residents' assets to recover the money. Often, wage garnishments and other forms of judicial enforcement are necessary. All of this can take time, effort and a certain expertise. Consequently, landlord clients have to consider what method will end up being most cost effective for them when attempting to collect money owed by tenants.



**TIME IS MONEY**

### We recommend three options:

- ✓ Assign the debt owed by the resident over to a collection agency.

- ✓ Sue the tenant in small claims court and then pursue collection of the judgment on your own.
- ✓ Hire the firm on an hourly basis to handle the collection matter.

### Option 1: Pros and Cons of using A Collection Agency

Most if not all collection agencies do not require an hourly fee and only get paid if they recover all or a portion of the debt owed. Thus, if you assign a debt to a collection agency, there is little up front expense. Some, collection agencies insist that you cover the costs associated with collection up front, but such costs are minimal. Even if you are not required to advance collection costs such as costs for service process or filing fees, agreements with collection agencies almost uniformly provide that you are ultimately liable for these costs in the event

(Continued Page 2)

\* \* \* \* \*

## WATER ON -WATER OFF ??

You have a tenant who has failed to tender his rent. "Can you turn off the water to the tenant's apartment? Why should you continue to provide basic utilities when the tenant is not paying rent, either before or during the eviction process?" This issue has not been addressed specifically in Colorado, but there is case law from Tennessee that suggests it is not a good idea for the landlord to shut-off the water.



In the Tennessee case the tenant was behind in the rent, the landlord then shut-off the water and posted

(continued page 4)

(Continued From Page 1)

that the collection agency does not collect. Collection agencies hire lawyers at their own expense and have the ability to file suit against residents for lease-break damages, i.e. rent owed under the lease, damages to the premises, or both. Thus, they can pursue the same course of action on a debt as any law firm. Further, collection agencies usually have wonderful tools available to skip down residents and find residents' assets. Best of all, collection agencies charge a contingent fee (percentage of the amount recovered from the resident), which minimizes the financial risk to you in pursuing your claim.

Collection agencies also report to credit bureaus before even filing suit, which can create good leverage for collection of a debt. It is not uncommon for people who have had a debt turned over to a credit bureau as a "collection item" to apply for some type of credit, be denied, and then pay the creditor in full in order to get the collection item removed.

Collection agencies work on a volume basis and that is why they can charge a contingent fee. Our firm is first and foremost an eviction firm. Our number one priority is to get non-paying tenants to court as fast as possible. Frequently, the prospect of

being evicted in itself results in payment. For this reason, the firm decided at its formation that being involved in volume collections would interfere with the basic philosophical tenet of the firm ---the most rapid removal of non-paying tenants. Accordingly the firm purposefully does not handle

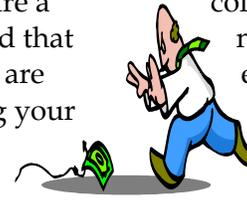
volume collections, and therefore does not offer a contingent fee for landlord collections.

Collection agencies are not without their drawbacks as well. The high volume nature of the collection business means that sometimes it takes a collection agency awhile to find a resident who owes money and get money coming in on the debt. Further, collection agencies tend to collect the gravy, and thus tougher collection cases can languish for years sometimes until the former tenant applies for a loan or otherwise seeks credit. A collection agency will never devote the time and effort to a collection matter that you would receive if you hired an attorney on an hourly basis. For this reason you may



want to consider hiring an attorney on an hourly basis when the dollar amount is significant, attorneys' fees are recoverable, and the debt is collectable. Absent the foregoing factors, we often recommend to clients that they consider assigning their debt to a collection agency because the typical amounts owed do not make it cost efficient to hire us on an hourly basis. Hiring a collection agency minimizes the out-of-pocket financial risk.

If you do hire a collection agency, please keep in mind that not all collection agencies are diligently pursuing your money. The gold standard for any collection agency is the agency's liquidity rate or sometimes referred to as collection rate. The liquidity rate is the percentage of dollars collected for every \$100 in debt you turn over to a collection agency. Thus, if a collection agency has a 20% liquidity rate, this means that the agency collects \$20.00 for every \$100.00 in debt you turn over to it. Landlord collections are frequently referred to as break lease debt.



Before you retain a collection agency, you should have realistic expectations about the liquidity rate for break lease debt. The liquidity rate on break lease debt has been historically low. Reported break lease liquidity rates on a national average have never exceeded 30%. Break lease liquidity rates can also vary greatly depending on property type. The liquidity rate for C- properties might not exceed 10% whereas A properties should see rates between 20% to 30% or the high end of the liquidity range for break lease debt. When hiring or deciding to retain a particular collection agency, be sure to inquire as to their liquidity averages for break lease debt. If you already have an agency and they do not have a liquidity rate of over 10% you probably want to switch agencies.

Finally, if you do hire a collection agency, please keep in mind that this will not relieve you from all responsibilities in collecting the debt, you will be required to testify in court regarding the debt.

### **Option 2: Pros and Cons of Filing A Small Claim Action**

Your second option is to collect the outstanding debt yourself by filing suit in small claims court to obtain a judgment. The advantage of this option is very narrow: You do not have to pay (Continued Page 3)

(Continued From Page 2)

anyone to pursue the action nor do you have to split any recovery because you do all of the work yourself. The downsides to this option are time and expertise. Most clients want to spend time managing their properties and not collecting money from former residents. Further, you may not have the sufficient knowledge or experience necessary to collect on judgments that you are awarded. Specifically, once you obtain a judgment, you still have to collect it either through garnishment, levy or execution. Most clients simply do not know how to issue and serve garnishments and other devices that seek to attach a tenant's assets. This option is excellent for clients who have the time and experience to pursue small claim suits. However, this second option is not a good option for most landlord clients.



**Option 3: Hiring our Firm to Handle The Collection Action**

Clients are welcome to hire our firm to handle their collection matter. Our firm is well equipped to handle any type of collection. Because we only handle these matters on an hourly basis, it is not always cost effective for you to hire us to collect your money. If a resident disputes the amount of damages you seek and wants his or her day in court you can often expect to spend a fourth of the debt to even the bulk of the debt depending on the amount just trying to get a judgment. If you cannot recover attorneys' fees and costs, then this is a



risky proposition. Even if you win a judgment which includes amounts paid to us, you still have to collect the principal judgment plus any fees paid to us. The clear disadvantage of hiring any attorney on an hourly basis to

pursue a collection is you may be throwing good money after bad.

The advantage of hiring our firm over a collection agency is that we will likely take much swifter action and provide overall better service. For all residential resident collection matters, we have to abide by a federal law known as the Fair Debt Collection Practices Act, and its state counterpart, which means we have to give the tenant 30 days to

dispute the debt. Because you are paying for high quality representation, we obtain judgments quicker than a collection agency and begin collecting on the judgment upon obtaining it. We have attorneys who have handled collection matters for a number of years and have specific training in how to persuade tenants to pay up before the matter gets more expensive. Nevertheless, it takes time and effort to try to collect outstanding debt and paying for it hourly has its definite risks.

In short, the disadvantages and advantages of hiring us or any other attorney on an hourly basis to collect your money can be summarized as follows. The major disadvantage is a monetary one. The advantages are that your case will be handled quicker, more diligently, and by an experienced attorney from the start. If you have to go to trial, we will be prepared. Whereas collection agencies pay their trial attorneys little and thus they simply will not and cannot match the level of preparedness you would get with an hourly attorney. The vast majority of collection cases do not require a tremendous level of preparedness and thus the collection agency route and handling may be sufficient. However, some collection cases do require extensive expertise and a high degree of preparation. For example, firm clients usually retain us to recover their money when the case involves several if not all of the following factors: The amount of damages is high thus fees spent will be much less than the likely recovery, attorneys' fees are recoverable, the issues are complex requiring a high degree of attention and preparedness and the tenant has assets making final recovery to the client very likely.



**Conclusion**

Only you, can decide which collection option is best. As pointed out above, different collection scenarios may require at some point that you utilize several if not all of the foregoing collection options. If the balance is large, then you want counsel who knows how to win landlord-tenant disputes and who can collect the money afterwards. In that scenario, choosing our firm to represent you may be the best option. If the balance is smaller and you do not want to incur a lot of financial risk and don't know how to collect money yourself, then definitely consider assigning the debt to a collection agency.



(Continued From Page 1)

**WATER ON -WATER OFF ??**

the tenant with a demand for payment or possession. The tenant lived in a mobile home; the home became unbearable to live in during the summertime with no air conditioning. The court, found that the shutting off of the utilities interfered with the tenant’s right to quiet enjoyment of the premises. The court awarded damages for spoiled food, the cost of eating out, and the harm to the use of the trailer.

Shutting off the utilities is a bad idea, unless the tenant is responsible for paying the utilities and the utility company shuts them off. When you are going through the eviction process the tenant is still in possession of the property, and shutting off the utilities interferes with the tenant’s possession of the property. Turning off the water prior to obtaining possession could create a claim against the landlord by the tenant.



\* \* \* \* \*

***DID YOU KNOW ???***

The first Monday in August is Colorado Day the official state holiday that commemorates Colorado statehood. *Although we have been a state for only 128 years, prehistoric civilizations have existed in this area since 1 A.D. and in fact the Anaszi Cliff Dwellings might qualify as the very first multi-family living units in this area.* (\*Note Hopkins-Tschetter-Sulzer were not responsible for their eviction from the cliff dwellings) In 1541 the Spanish entered what is now Colorado and the growth has never stopped.

Some interesting facts about our state include the fact that France once owned some of this area and the U.S. acquired eastern Colorado as part of the Louisiana Purchase. Texas claimed a narrow strip of Colorado as part of its territory when they became an independent republic in 1836. At this same time Mexico was granting lands to wealthy individuals for claims in the San Luis Valley and the western slope to keep the United States and Texas from claiming the land. It wasn’t until 1848 that Mexico ceded, by treaty, their claims to Colorado and the U.S. Government purchased Texas’ claims in 1850. Our historically confusing record of having belonged to France, Mexico and Texas before the

final boundaries were defined as a territory are just the beginning of our patchwork start in the evolution of statehood. Before becoming its own U.S. territory the land that constitutes Colorado was cut up into parcels that belonged to Nebraska, Utah, Kansas and the New Mexico Territory. It was only when we were officially declared a U.S. territory in 1859 that the present day boundaries for Colorado were established.

The Spanish were the first to call this area “Colorado” because of our predominantly red colored earth. Our State was initially called the Jefferson Territory by the U.S. government but the name was permanently changed to the Colorado Territory in 1861.



Admitted to the Union as the 38<sup>th</sup> State in 1876 Colorado was the second state in the country to give women the vote in 1894. The official state flag symbolizes the geographical features of Colorado. Gold for abundant sunshine and the precious metal found in our mountains, white for the snowcapped mountains, blue for our clear blue skies and the red is representative of the ruddy color of much of our states earth.

Having been the location of multifamily housing for over 2000 years, Colorado truly has an interesting and “colorful” history. What a great place to live and work! Happy Colorado Day!

\* \* \* \* \*

**AUGUST FIRM LUNCHEON**

Mark your calendar now and join us at our monthly free client lunch on Friday August 20<sup>th</sup> at 11:30. This month’s lunch is at CB & Potts on 120<sup>th</sup> in Thornton. Meet our attorneys, get an update on current issues and bring your questions. We’ll be there and hope to see you there!

\* \* \* \* \*

“Don’t be afraid to take one large step because you can’t cross a chasm in two small leaps.”



*Unknown*