

What to Include in a Money Judgment to Make It Enforceable/Collectable

REAL PROPERTY LITIGATION | TITLE INSURANCE | DECEMBER 30, 2011



Ilan A. Nieuchowicz

Before the clerk of the court will issue a writ of execution or writ of garnishment on a judgment, the clerk will review the judgment to ensure it is valid and enforceable. Failure to include certain specific language in a judgment could prevent or delay your ability to collect on your judgment.

To avoid potential issues, here are some things you should consider including in your final money judgment:

A money judgment in an action that is primarily equitable (i.e. foreclosure action with count for breach of note) should clearly state that it is a money judgment. The clerk of court is easily confused when it sees a money judgment (not titled a deficiency judgment) in a foreclosure action. Typing the words “Money Judgment” under the title of the judgment may help avoid confusion and expedite the issuance of a writ.

Always specifically identify the defendant(s) against whom the money judgment is entered. Do not use defined terms in a money judgment. Generally, the clerk of court will not issue writs of garnishments or a writ of execution if the judgment does not specifically state the name of the defendant(s) against whom the money judgment is entered. (Proper: “Defendant, John Doe, owes X Dollars to Plaintiff, Bank”; Not Proper: “Defendant owes Plaintiff X”).

Always include “all for which let execution issue forthwith” immediately after the amount of the entire indebtedness, including interest that accrues on the judgment and any award of attorneys fees. The Third DCA requires this language before execution may issue. Other districts may not require the language. That said, it is better to be safe than sorry. Please always include the language in a money judgment. The word “forthwith” allows the judgment creditor to proceed with collection efforts immediately, instead of having to wait 10 days to execute. The word “forthwith” is not required in the execution language and may be stricken if defendant opposes it absent a showing immediate execution is necessary.

Always include the address of the Plaintiff in a money judgment and record a certified copy of the judgment in the county or counties the judgment debtor owns or may come to own real property. The address of the attorney or the firm representing the Plaintiff is insufficient. It must be the Plaintiff’s address. By including Plaintiff’s address and recording a certified copy of the judgment in the public records, the judgment becomes a lien against all real property of the judgment debtor that is located within that county. If you fail to include the address in the judgment, you will need to file an affidavit with a certified copy of the judgment in order to create a lien on the judgment debtor’s real property. Record a certified copy of the judgment (and affidavit if needed) in each county the judgment debtor owns or may later acquire real property. See Section 55.10, Florida Statutes, for additional information on perfecting a judgment lien on real property.

Record your final money judgment with the Secretary of State after the time to move for rehearing has lapsed, if no motion for rehearing is pending, and if no stay of the judgment or its enforcement is in effect. This can be done online at Sunbiz.org in approximately 5 minutes with a credit card. By recording the judgment in this manner, you create a judgment lien on the personal property of the judgment debtor, with some exceptions. See Section 55.202, Florida Statutes, for additional information on perfecting a judgment lien on personal property.

Whenever possible, include specific findings of fact. This could possibly exempt the judgment from discharge in bankruptcy, depending on the circumstances and claims. See Bankruptcy Code § 523. After a court of competent jurisdiction enters a final judgment, it is a final adjudication and the doctrine of res judicata applies. If the debtor files

bankruptcy, the Bankruptcy Court will not look beyond the judgment when it decides whether or not the judgment should be discharged. The Bankruptcy Court will not let you reargue the case in an adversary proceeding after a final judgment is entered. The Bankruptcy Court is compelled to give the debtor a fresh start and will discharge a judgment whenever possible. Specific findings of fact that adhere to the standards/case law that govern Bankruptcy Code § 523 will give the creditor a better chance of avoiding discharge in bankruptcy.

©2020 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.