COMMUNITY MATTERS

LUEDER, LARKIN & HUNTER

NEWS AND TRENDS IN
Community Association Law

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I Filed a Garnishment and the Debtor Filed a Traverse. What Happens Now?

by | **Brandon D. Wagner, Esq.**

In light of the new changes to the garnishment statute, many association clients are now faced with wondering what happens when a garnishment gets filed and the debtor files a traverse. Typically, once we obtain a judgment for an association client, we conduct research to locate the debtor's assets, including accounts upon which to garnish. If one is located, an Affidavit of Garnishment is filed and served upon the debtor. The debtor may ignore the garnishment or file what is called a traverse.

Next, let us discuss what a traverse is. A traverse is a legal document filed by the debtor that seeks to either challenge the Affidavit of Garnishment as untrue or legally insufficient or claims that funds subject to garnishment are exempt under state or federal law.

Some of the exemptions that may be claimed are:

- Social Security benefits
- SSI benefits
- Unemployment benefits
- Worker's compensation
- Veteran's compensation
- State pension benefits
- Disability benefits
- Money that belongs to a joint account holder
- Child support or alimony
- Exempt wages, retirement, or pension benefits

Once the debtor files a traverse, the court must hold a hearing on the defendant's traverse within ten days pursuant to statute. At the hearing, the debtor has the burden of proving his or her claims that the garnishment affidavit is untrue or legally insufficient. Typically, this burden is met if the debtor can show that the balance due is less than that claimed in the garnishment affidavit or that the Plaintiff does not have a judgment against the debtor. Likewise, if the debtor is claiming that the funds subject to garnishment are exempt, the debtor also has the burden of proof. The court will review the evidence submitted, and it will usually rule on the debtor's claim at the conclusion of the hearing. Occasionally, it may become necessary for the judge to take the matter "under advisement" to conduct additional research on the issues raised and will render a judgment shortly thereafter.

As always, if your association is faced with a debtor's traverse, it is advisable that the association seek the advice of a competent attorney who specializes in this area of the law. Debtors are required to follow the law, and they may only rely upon admissible evidence in establishing his or her legal burden to challenge the validity of a garnishment. This is where experience and knowledge with regard to evidence and procedure is paramount to the success of an association client fending off an attack on an association's collection efforts.

Tag, you're it!

Grantor to Grantee Liability for Assessments

by | **Stephen A. Finamore, Esq.**

What happens when an owner who owes association assessments (the "grantor"), sells the property to a new owner (the "grantee")? Is the prior owner off the hook? Is the new owner responsible? What happens to the lien? What if the bank forecloses? Should I panic?

If an owner owes assessments to an association when the property is sold, the new owner will typically become responsible for the unpaid amounts. Most declarations provide something similar to the following:

Each Owner and the Owner's grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

For covenants providing for "joint and several liability," both the old owner and the new owner will be responsible for the assessments due at the time of conveyance. This means that the association can pursue legal action against the old owner, the new owner, or against both at the same time.

What if the covenants for the association do not have a provision for joint and several

continued...

liability between the grantor and the grantee? For communities subject to the Georgia Property Owners' Association Act (the "POA") or the Georgia Condominium Act (the "COA"), the grantor and grantee are jointly and severally liable unless the covenants for the association provide otherwise. The POA and COA state:

Unless otherwise provided in the [instrument(s)] …the grantee in a conveyance…shall be jointly and severally liable with the grantor thereof for all unpaid assessments against the latter up to the time of the conveyance.

Even when an association is not subject to the POA or COA and does not have a provision imposing joint and several liability on the grantee, or forbidding it, an argument can be made that the grantee is liable for the amounts due at the time of conveyance. A restrictive covenant containing an obligation to pay assessments is binding on a grantee as long as it was recorded at the time of the conveyance. This is so, even if the grantee does not affirmatively accept the obligation, as stated by the Georgia Supreme Court in the case of Timberstone Homeowners Association v. Summerlin. This same analysis can be applied to debts for unpaid assessments existing at the time of conveyance.

Essentially, a grantee will be liable for unpaid assessments due at the time of conveyance unless the covenants state the contrary. An association's covenants might contain provision like this:

The personal obligation of the owner for assessments will not pass to a successors in title unless expressly assumed by them.

If there are unpaid assessments due at the time of a conveyance with the above provision, the grantee will not automatically be personally responsible for unpaid assessments, but will be responsible for future assessments. The association can still sue the former owner for the amount due at the time of conveyance. Moreover, the lien against the property typically remains unaffected. Therefore, even if the new owner is not personally responsible for paying the pre-conveyance assessments, the property can still be foreclosed for the full lien amount, including assessments due prior to the conveyance. So, if the grantee wants to retain the property, he or she might be forced to pay off the pre-conveyance amounts owed anyway.

Although an association will usually have some recourse against a new owner for assessments due at the time of the conveyance, there is one circumstance when the new owner will not be responsible and the lien will no longer encumber the property. If a superior lien holder, like the mortgage lender, forecloses resulting in conveyance to a new owner, that grantee will not be responsible for unpaid assessments due at the time of foreclosure. The POA, COA, and almost all covenants specifically exclude superior lien holders from liability for pre-foreclosure assessments.

With excellent legal representation, there is no reason to panic. Please consult with your attorney if you have questions about liability of a new owner in your community.

Community Outreach – LLH's Participation in the 6th Annual Legal Food Frenzy

by | **Cynthia C. Hodge, Esq.**

In the Georgia legal community, many people, businesses, and organizations participate in the statewide competition known as the Legal Food Frenzy. This competition is in its sixth year, and our firm has participated for four straight years now. The efforts help food banks across the state raise monies and collect pounds of food to ensure that struggling families, seniors, and children across Georgia have enough to eat this summer.

The state organizers are still tabulating results for the competition, but in the meantime, we wanted to share the raw numbers and current collection results as we know them.

For starters, our team collected **1,466 pounds of donated items** and delivered them directly to the North Fulton Communities Charities in Roswell, Georgia for immediate distribution to its patrons. It took 3 SUVs to transport all of the items!

We set a monetary goal of $3,000 to collect, and our team exceeded that goal and raised **$3,495.00 in online and cash donations**. Every $1 counts for four pounds of food in the competition, so we collected over 15,000 pounds of food and donated items this year. This is the most we have ever collected so far!

We could not have been successful without the assistance of some amazing partners and colleagues in this community service endeavor. A tremendous THANK YOU goes out to several amazing property management companies that assisted in making food donations and monetary donations for the benefit of our firm's team this year, including (in alphabetical order):

- **Access Management Group**
- **Beacon Management Services**
- **CMA (Community Management Associates)**
- **FirstService Residential**
- **Heritage Property Management Services, Inc.**
- **HMS (Homeowner Management Services, Inc.)**
- **Liberty Community Management**

The efforts were tremendous this year, and I am excited for our firm to participate in the food drive/competition next year. It is wonderful to be able to make an impact that will affect the lives of so many. Thank you, again, to all who helped and contributed!

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