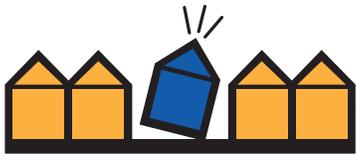


WHAT'S NEW?

a PUBLICATION to INFORM & ENTERTAIN | March 2011



NEW CONCEPTS

ASSOCIATION MANAGEMENT

COMMERCIAL/RESIDENTIAL
REAL ESTATE SERVICES

BUSINESS OPPORTUNITIES

GENERAL CONTRACTING

RENTAL MANAGEMENT

MORTGAGE SERVICES

CONSULTING

FEATURED ARTICLE – Is Collecting Money About to Get Harder?

By **Matt Drewes**, Shareholder with the law firm of Thomsen Nybeck. He leads the firm's nine-member Community Association Representation Group as well as its Creditors' Remedies Group. He can be reached at: mdrewes@tn-law.com or by phone at: **952.835.7000**

It is not uncommon for most associations to turn to foreclosure as a key method for recovering money owed. However, in this challenging economy, one very important tool that an association should not overlook is garnishment.

Garnishment is a vital tool created by statute, which we use to help these clients by seizing a debtor's money from another party who may owe or be holding that money for the debtor. Often this includes a bank where the debtor holds an account.

The garnishment process does not involve the immediate turnover of the seized funds to the creditor; banks typically respond to a garnishment by stating the amount that is in the debtor's account. The bank then holds that money for up to six months until we "levy" on the money, unless the debtor can point to a reason under law that the funds should not be released to the creditor.

A case recently filed in the United States District Court in Minnesota challenges the constitutionality of the garnishment process. The plaintiffs in *Billiar v. Atlantic Credit & Financial, Inc.* claim the rights provided to creditors under the statute violate the 14th Amendment to the U.S. Constitution, the so-called "Due Process Clause". The Due Process Clause provides, essentially, that no person may be deprived of his or her property without first receiving "due process", or in other words notice and an opportunity to be heard.

The claim asserted in *Billiar* is that the creditor, who was owed money by Mark Fiers, garnished an account that Mr. Fiers held jointly with his children and his partner Kristie Billiar. Only Mr. Fiers owed money to the creditor, so the creditor had first obtained a judgment against Mr. Fiers, but it did not have a judgment against the other account holders. So while Mr. Fiers received notice and the opportunity to be heard, Ms. Billiar and the children did not.

A recent Minnesota Supreme Court decision previously established that creditors may seize funds in a joint account until and unless the non-debtor is able to establish that the funds in the account do not belong to the debtor. Ms. Billiar and the other plaintiffs claim that seizing the money of someone other than the debtor is not fair unless you first give them notice and a chance to



Matt Drewes, Shareholder with the law firm of Thomsen Nybeck

object. The plaintiffs and others also point out that even seizing money for a day may cause a check to bounce, causing further damage to the non-debtor.

On the other hand: 1) neither the creditor nor the bank know how much of each account holder's money is in the account, and a creditor who knows of the account may not know it's a joint account, so requiring the creditor to provide notice to a non-debtor is not practical; 2) it is reasonable to assume that anyone who holds an account jointly with another person would (or should) be aware of a judgment against the debtor; and 3) if funds held jointly with another person were automatically protected from creditors, then debtors would have an easy way to stop collection activities simply by opening joint accounts.

As attorneys who perform a lot of this work, we will be watching the outcome of this case. Regardless what happens, however, we will continue to use our creative and results-driven approach to helping clients get paid. ■

What's in the News?

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Featured Article: "How Do You Choose A Contractor?"

– part 1 of a 2 part series

By Mark Schoenfelder, Schoenfelder Painting & CAI Past President.

Other than attorneys, contractors do not have a very good reputation for customer service. This reputation is mostly caused by the public's buying habits. Price is the easiest factor to compare, and too often this is where the decision is made. When hiring a contractor to work on your association or your home, there are several areas that are consistently forgotten.



Mark Schoenfelder,
Schoenfelder Painting & CAI Past President.

You are purchasing both a product (the materials) and a service (the service and installation of the materials).

Buyers gather the bids and then decide based on the easiest factors to compare. By far the easiest factor to compare is the price. Everything else is more complex and involves time and effort, so the decision often comes down strictly to price. The asso-

ciations choose the lowest price bidder and then are frustrated by the scheduling, professionalism and lack of customer service

that they receive. The funny thing is that they blame the contractor for this and pretend that they didn't get what they paid for. Too often they will then go and award the next contract to the lowest bidder and the cycle continues. Contractors are not stupid, they will do the behaviors that get rewarded, which often means eliminating service expenses in order to come in with the lowest price.

The next easiest component to compare is the "What", the materials. I find that after the price, a disproportionate amount of attention is also focused on "what" materials are being installed. The materials generally run 10-30% of a project depend-

ing on the type of project. The service expenses almost always make up the majority. Far too little attention is focused on "why" those particular materials are being chosen, "how" it is being installed, by "whom", and "when." Improper installation can also void any value received from the new materials, so really the service should be the most important factor when choosing any contractor. Unfortunately, the service is the hardest component to quantify.

The next question is how do you evaluate the contractors to determine which will give you the best service. I will define service as the "who, when and how questions". Who is going to schedule, deliver, supervise, install, clean up and then warrant? How are the materials going to be installed? How will the communication be handled? How experienced is the company? How do I know they will be around in 5 years? How do I know what to believe??

Based on 19 years in the business, having bid on 10,000 projects and completed nearly 7000 of them, I have learned a few ways to make better decisions when hiring contractors. I will discuss those important factors in the next newsletter. ■

Free On Line Seminars – Look what's coming up in March, April & May!

Classes run between 30-60 minutes. You can register anytime right up to the start of any seminar by going to www.webinar.com and click on the "join webinar" button. You will be guided through the registration process. To register you will need to supply your e-mail address and identify the seminar you wish to join by typing in the 9 digit I.D. # assigned to each class below. Here are our upcoming offerings:

"How to Handle an Insurance Claim" – Thurs. March 31, 2011 from 7-8 p.m. I.D. # 545630626. How long should it take to complete a claim after a disaster? If I don't agree with what the insurance company is going to pay out, do I have any recourse? What are the potential issues I have to watch out for? – Instructor Gene Sullivan, President of New Concepts Management.

"Basic Training for the New Landlord" Part 1 – Tues. April 12, 2011 from 7-8 p.m. I.D. # 828865530. A two part series designed to help those who are considering or have just taken the steps to rent out their property. How should you market your property? How do you show your

property and make it stand out from the competition? What do you need to know about writing up a lease that will protect you the owner? How do effectively manage the property month in and month out? Part 1 - Concentrating on Marketing & Showing your property. Taught by Toni Crockett, Vice President of Rental Management for New Concepts Management. – **NEW!**

"Basic Training for the New Landlord" Part 2 – Tues. April 19, 2011 from 7-8 p.m. I.D. # 719906834. A two part series designed to help those who are considering or have just taken the steps to rent out their property. How should you market your property? How do you show your property and make it stand out from the competition? What do you need to know about writing up a lease that will protect you the owner? How do effectively manage the property month in and month out? Part 2 - Concentrating on Writing effective leases and day to day management. Taught by Toni Crockett, Vice President of Rental Management for New Concepts Management. – **NEW!**

"After the snow is gone, how to prepare for next year's ice dams" – Tues. April 26, 2011 from 7-8 p.m. I.D. # 560539586. There is no doubt that this has been one of the snowiest winters we have encountered in a long time. Removing snow from roofs has been a costly proposition, and one that easily breaks any budget. However, there is a much better way than removing snow from your roof. Proper insulation and ventilation and can save you money with utility costs, save from costly insurance claims, and pay for itself over 1-2 winters. A special presentation by Xtreme Exteriors - Jeff and Jeannie Sigler. – **NEW!**

"The components to effective and quick board meetings" – Wed. May 4, 2011 from 7-8 p.m. I.D. # 634875226. Why do some meetings last forever? Why does it seem like nothing ever gets accomplished? Well if there is anything we have done, at New Concepts, it is to have attended a few meetings! What are the basic components that help keep a meeting moving forward with everyone feeling as if they have been heard and respected? This course is being taught by Paul Roth, Executive Vice President, New Concepts Management. – **NEW!** ■

Home Savings Store – Resources, products and services available at special pricing for our homeowners and subscribers. To take part in any of these specific offerings, please contact our Home Savings Store Coordinator **Courtney Sletten** at **952-224-2663** and ask her for full details.

Home Appliances & Cabinets
We are happy to add to our list of preferred vendor relationships – All Inc. Everything you need in appliances, cabinet and counter top refinishing and/ or replacement and all at prices that can't be beat. Call Coordinator **Courtney Sletten** at **952-224-2663** in order to receive the New Concepts special pricing.

Home Maintenance

Don't know where to turn to when you need a new water heater? Who can handle all those handyman tasks that you have been meaning to get to around your home? You can be assured that when Start To Finish is on the job, it will be done right by experienced, licensed, and insured professionals who care about your home as much as you do.

Mortgage Network

Whether you're refinancing to reduce a high rate adjustable mortgage, preparing to pay the cost of a special assessment, or getting back on your feet from near foreclosure, experience the Klein Bank difference. Mortgage Banker Greg Johnson doesn't simply put you into something in order to make a sale. He spends the time to counsel you to see what makes the best sense.

Preferred Realtor Network

Because we are involved with the resale disclosures on every sale at your association, we know who does the best in getting the job done quickly and at top dollar. If you do not have a relationship with an experienced agent, we can help. Discounts are also available on the cost of a re-sale disclosure by going through this program.

Rental Management Services

Your preference was to sell, but your home isn't moving. That new job is calling, and you don't want to walk away from your equity. What do you do? Call New Concepts. We can give you peace of mind knowing your property is being watched closely, and the renters aren't getting you in hot water with the Board or your neighbors. ■