

Law Currents



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The importance of saving proof of payment.

By Richard A. Klass, Esq.

In 1994, tax payments were made to the NYC Department of Finance for several parcels of real property by a client. In 2001, unbeknownst to the client, the Department of Finance unilaterally reversed the payments made, added interest, created tax liens, and bundled up the liens for public auction sale.

My firm commenced an action against the City of New York in 2002, after learning of the tax lien sales, to declare that the payments made in 1994 had truly been made, and that the Department of Finance acted without authority in reversing the credits. Luckily for the client, he saved the receipts issued by the Department of Finance when he made the payments in 1994 (which receipts are stamped onto the tax bills and actually given to the taxpayer).

The case culminated with the City of New York agreeing to reverse all of the unauthorized charges in 2001, reversing the tax lien sales, and clearing the tax delinquencies on the client's account.

A Win!

What does this teach? The importance of retaining proof of payment in various situations. Here, proof of payment was crucial in winning the case.

Common proofs of payment include a check or credit card statement, showing that the bill was paid. Other forms of proof may be a store receipt, credit card receipt, or paid invoice. If cash is tendered, a signed receipt should be obtained.

The general rule of thumb is that most business records should be maintained for safekeeping for seven years. Many advocate saving records for much longer, if feasible given space considerations.

The ability to prove payment of a debt or bill comes in handy in various situations, including:

1. Many parents pay the custodial parent their child support payments by cash; sometimes, the custodial parent has kept poor records, and will allege non-payment. The burden of proving payment will fall upon the person charged with making the support payments.

2. Distribution companies, such as food wholesalers, will have the drivers pick

Law Offices of:

RICHARD A. KLOSS

16 Court Street, 35th Floor

Brooklyn, NY 11241

(718) COURT ST

(718) 643-6063

Fax: (718) 643-9788

e-mail: richklass@courtstreetlaw.com

up payments at the time of making delivery of goods. The driver may not account for the payments, and the store will be forced to show payment of the invoices.

3. Tenants of smaller rental buildings or two-family houses will pay the landlord (who generally lives at the building) by cash and fail to obtain a rent receipt. Afterwards, the landlord may commence an action for non-payment in the Housing Court, and the tenant will be without proof of payment of the rent.

Since the general burden of proof of payment falls upon the person liable for the same, it is critical that proof be obtained at the first instance and maintained. This will ensure that later mistakes or intentional denials of payment are disproved.

Debt Collection Tips:

A practical guide to collecting on a debt in New York State.

Check out Your Court Street Lawyer's
web-site at:

www.courtstreetlaw.com

Docketing a Judgment Lien:

Once a Judgment has been entered in a court, there are various methods which may be utilized by the judgment creditor to collect the Judgment from the debtor.

Where the debtor owns real estate, a lien may be placed upon the property. This type of lien is referred to as a Judgment lien under Article 52 of the Civil Practice Law and Rules (CPLR).

The Judgment lien is placed upon real estate by the "docketing" of a Transcript of Judgment with the County Clerk's Office. Once the Judgment is docketed or registered, the judgment creditor may issue an Execution to the Sheriff to levy and sell the real estate, or merely leave the lien against the property until the debtor sells or transfers the property (at which time, the Judgment will likely be paid from the proceeds at closing).

If the Judgment was obtained in the Supreme Court of the county in which the property is located, no further action is required to docket the lien.

If the Judgment was obtained in another court (such as the NYC Civil Court, federal court, Family Court, or District Court), that court will issue for a fee a Transcript of Judgment with a raised seal, which Transcript of Judgment will then be filed with the County Clerk's Office, at which point the lien will be effective.

If the debtor owns real estate in a different county other than the county in which the Judgment was entered, a Transcript of Judgment should issue from the County Clerk's Office in which the Judgment was entered and be filed with the County Clerk's Office in which the property is located to effectuate the lien.



YOUR REFERRALS:

Any referrals of business would be greatly appreciated:

- ▶ Real estate transactions
- ▶ Cooperative Apartments
- ▶ Matrimonial law/divorce
- ▶ Commercial litigation
- ▶ Federal Court litigation
- ▶ Bankruptcy
- ▶ Appeals
- ▶ Personal Injury
- ▶ Corporate formation/business transactions
- ▶ Wills/estate proceedings

Richard A. Klass, Esq.

16 Court Street, 35th Floor

Brooklyn, NY 11241