

CREDITORS' RIGHTS COURSE

INTRODUCTION

Do not let the name mislead you. This course is really about rights and remedies of both creditors and debtors. For every right a creditor may have, a failure to follow the law regarding that right creates a right or remedy for the debtor. For example, while a creditor has the right to foreclose on real property, the failure to correctly foreclose will create causes of action for the debtor such as conversion or wrongful foreclosure. Similarly, a creditor may assign a debt to an attorney or collection agency for collection, but to collect the debt attorney or collection agency must comply with the Federal Fair Debt Collection Practices Act, as well as the Texas Debt Collection Statute if the debt is a consumer debt.

Moreover, in commercial or consumer litigation there is generally no insurance to pay a judgment. Often the real battle begins after the judgment is taken when the creditor tries to collect the judgment. Texas is the most difficult state in the United States to collect judgments. In this course we will explore how a successful plaintiff, be it consumer, financial institution or small business, can attempt to collect its judgment.

COURSE TOPICS

In this course we will learn how to collect on debts secured by real or personal property, as well as unsecured debts. We will review both the Texas Property Code, the Texas version of the Uniform Commercial Code. In addition we will learn what property is exempt from collection so as to know what a creditor can or cannot seize. As noted above we will cover the Federal Fair Debt Collection Practices Act and the Texas Debt Collection Act. We will study the specific tools used to enforce judgments such as writs of execution, writs of garnishments, turnover orders and receiverships. We will conclude the course by covering fraudulent conveyances and post judgment discovery which includes unique depositions and jail time for those refusing to obey a court's order.

HIGHLIGHTS

The course begins with a review of the basic elements of a real estate mortgage arrangement. If you don't know the difference between a warranty deed and deed of trust this course is for you. (I know, I graduated without knowing the difference and imagine the shock when my first employer asked me to review some real estate papers). Also, besides learning to find assets to satisfy a judgment, we will learn how a wrongful foreclosure on a motor home worth less than \$15,000 led to a \$307,000 settlement against a credit union.