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## Landlord's Guide to Commercial Leasing: Strategies to Protect Your Investment and Enforce Judgments Against Tenants

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If you have ever had to file suit against a non-paying commercial tenant, you know first-hand collecting a monetary judgment can be complicated, especially if the tenant is a business entity (e.g., an LLC, corporation, etc.). The type of entity the tenant is will significantly influence your ability to collect a judgment. However, there are ways to mitigate your risks and increase the likelihood of collecting a money judgment against your tenant if proper planning is done prior to signing the lease.

### Why Not Just Rely on the Lease and Legal Process?

- **Lease Clauses:** Even if you have a lease with clear terms and penalties, without financial backing from an individual or entity, it can still be difficult to collect a judgment if the tenant has no assets, or if the business goes bankrupt or dissolves. For businesses, a personal guarantee provides you a more direct path to collect from individuals with personal assets.
- **Legal Process:** In many cases, if you do need to collect a judgment, you can attempt various legal means such as garnishments, liens, or asset seizure. However, this process can be lengthy and expensive, so the more information you have about the tenant's assets upfront (while the relationship is not adversarial), the better your chances of collecting on your judgment should the tenancy end with an unpaid balance due.

### 1. Social Security Number (SSN) and Driver's License:

- **For Individual Tenants and Guarantors:** If the tenant or guarantor is a sole proprietor or an individual rather than a business entity, then collecting personal information like a Social Security Number (SSN) and driver's license can be helpful in case you need to pursue a judgment. Having the SSN will aid us in pursuing wage garnishments (if they are employed), bank account levies, or asset seizures.
  - **SSN:** The SSN is critical for enforcing a judgment because it is used to locate the tenant's personal assets, bank accounts, and income.
  - **Driver's License:** A driver's license can be useful for identification purposes, particularly if you need to locate the individual or verify their personal details.
- Collecting the individual's SSN and Driver's License can assist us in performing an asset search and subsequently securing garnishments, liens, or asset seizures post-judgment.



## 2. Guarantor or Personal Guarantee:

- **Guarantor Agreement:** For commercial leases, consider having a **personal guarantee** from the business owner or key executives, particularly if the tenant is a limited liability company (LLC) or corporation. A personal guarantee holds the business owner personally liable for the lease obligations if the business defaults, making it easier to collect a judgment if necessary. It can also motivate an entity to avoid defaulting, knowing the guarantor will then be liable for the debt.
  - **Guarantor's Information:** In addition to their SSN, best practices would include collecting the guarantor's contact information and a personal financial statement that details the assets of the guarantor. You should require personal guarantees whenever the tenant is an entity so that a guarantor with assets is liable for the performance of the lease and the debts of the tenant. Also, if the guarantor is married, it is highly recommended that the spouse sign the Guaranty so that all community property assets are available to satisfy a judgment and are not sheltered and unavailable for judgment enforcement.

## 3. Business Entity Information (For Commercial Tenants):

- **Legal Structure of the Tenant:** If your tenant is a business entity (LLC, Corporation, etc.), the ability to collect a judgment will depend on the entity's assets and financial status. For businesses, obtaining the following information is critical:
  - **Employer Identification Number (EIN):** If the tenant is a business, their EIN is a crucial piece of information. It is the business equivalent of an SSN, and it can be used to locate business assets, bank accounts, and other financial data.
  - **Corporate Documents:** Ensure that you collect copies of the tenant's legal formation documents (e.g., Articles of Incorporation, Operating Agreement, or partnership agreement). This can help trace the ownership or management of the entity and assist you in deciding what parties should personally guaranty the lease.
  - **Personal Guarantees from Owners or Executives:** As mentioned, even if the tenant is a corporation or LLC, having a personal guarantee from key individuals (such as the business owners, executives, or partners) can provide additional means of recourse for enforcing a judgment.

## 4. Tenant's Financial Information:

- **Bank Account Information:** Obtaining the tenant's bank account information upfront, whether for a business entity or an individual, can substantially assist us in obtaining a bank levy against a defaulting tenant (provided the tenant does not later change financial institutions).
- **Financial Statements:** Require the tenant's financial statements (e.g., balance sheet, profit and loss statement, or bank references) at the start of the lease. This will help you assess the financial stability of the tenant and better understand their ability to pay rent and identify assets, giving you insights into their financial standing in case of default.



- **Personal or Business Credit Reports:** Running a credit check on the tenant or the business can provide an idea of their creditworthiness and financial stability. This can also give you a better sense of how difficult or easy it may be to collect from them if necessary. However, written authorization may be required.
- **Asset Investigation:** Request us to run an asset investigation. We can **uncover** real property ownership details quickly and provide you with certain details that may aid you in determining whether the prospective tenant is a reasonable risk for the property you are leasing.



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