



THE PORTNOFF REPORTER

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Incentivize Your Delinquents To Change Their Payment Behavior

Accelerating the collection of delinquent municipal obligations and taxes can be summed up in one word—INCENTIVE. This can come in the form of positive incentives, such as allowing delinquent property owners to enter into payment plans or hardship programs. This also can come in the form of negative incentives, by assessing penalties and interest on the balance, or by adding attorney fees and costs to the delinquent claim. Without providing some type of positive or negative incentive, municipalities are unlikely to see a change in the payment patterns of their delinquent property owners.



There are times when property owners knowingly choose to game the system when they realize that there are insignificant negative incentives to force them to pay. In essence, because they benefit from the time value of their money, they hold off paying the municipality. The best way to counteract this behavior is to provide negative incentives that create a monetary impact on those property owners who purposely avoid paying their debt. Passing through a third-party collector’s attorney fees and costs to the delinquent property owner under the Municipal Claims and Tax Liens Act is a strong way to create this negative incentive. By passing through these fees and costs, Portnoff’s clients often see, over time, a lower rate of repeat offenders that have the ability to pay their debts.

Questions/Comments?

Are there any collections issues that you would like to see addressed in the next edition of *The Portnoff Reporter*? Please let us know - we welcome your comments and questions. Contact Kevin Buraks at kburaks@portnoffonline.com.

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In Person

Mar
2015

Portnoff attorney Kevin Buraks was invited to speak at the Pennsylvania Municipal Authority Association's (PMAA) Board Member Training in Allentown. Kevin provided authority representatives with an overview of recent judicial decisions rendered in the areas of municipal collections and bankruptcy law.

Apr
2015

Portnoff Law Associates attended the Pennsylvania Association of Township Supervisors (PSATS) annual conference in Hershey. Attorney Buraks, together with municipal solicitor Vincent M. Pompo, Esquire of Lamb McErlane PC and Antrim Township Administrator Brad Graham, presented a workshop session on "How to Hire a Third-Party Collector."

Portnoff Law Associates attended the Government Finance Officers Association (GFOA) conference at Penn State.

If you would like Portnoff Law Associates to provide programming for your professional association's next training event or conference, please contact us at (800) 561-7989.

Local Event Idea:

Easton's Heritage Day

Looking for something new to do with your family this summer? On **July 12, 2015**, the City of Easton celebrates Heritage Day to mark its historical significance in the founding of our country. Heritage Day is a free, full-day, family festival that showcases local history, offers activities for kids, and concludes with a firework display over the Delaware. For more information, check out the Heritage Day website at www.heritageday.org.

Litigation Holds

In addition to compliance with statutes and regulations governing the requirement to retain records, governmental agencies often are faced with the duty to issue what is known as a "litigation hold" on certain records. This may require retaining such records for periods longer than those mandated by the generally applicable statutes or regulations. The purpose of a litigation hold is to ensure the preservation of potentially relevant evidence whenever litigation is reasonably anticipated. The duty to issue a litigation hold usually will arise before any actual litigation is filed, such as when a demand letter or a threat is received from a potential litigant, or when the agency on its own is aware of an incident that makes litigation reasonably foreseeable. Sometimes a litigation hold may be issued by way of a letter from opposing counsel.

The failure to issue a litigation hold may result in a court awarding sanctions for spoliation of evidence. In determining whether sanctions are appropriate, a court will consider several factors, including: the degree of fault of the party who destroyed the evidence; the degree of prejudice suffered by the opposing party; and the need to deter such conduct by others. Potential sanctions include: the suppression of evidence; an adverse evidentiary inference; the imposition of a fine, attorney's fees, or costs; and/or the entry of judgment in favor of the prejudiced party.

A litigation hold may be drafted by your solicitor or outside counsel. Generally, it is a good idea for counsel familiar with the claim to meet with personnel who have knowledge of the claim and existing agency records, as well as an IT employee familiar with your electronic data storage systems. This meeting should generate sufficient information to draft the litigation hold.

Note of Appreciation

Who says that collectors need to be forceful to be effective? We find that a sensitive conversation usually results in a constructive solution. Portnoff Law Associates regularly receives notes of appreciation from property owners who were happy to resolve their delinquencies. Below is a thank you note that we recently received from a property owner in Lehigh PA:

I just wanted to drop you a note to let you know that I paid the first installment today. I also wanted to thank you again for your help and assistance with working with my family. You are polite and very courteous.

**A property owner from
Lehigh, PA**

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Customer Service 101

There are many skills required to provide excellent customer service, and one of the most important skills happens to be one of the easiest to provide – listening. When constituents have an issue, they want to be heard. Taking the time to listen and understand your constituents’ individual issues can go a long way in creating a positive image for your office. Even when the answer is “no,” constituents will feel much better knowing that they had the opportunity to convey their side of the story. At Portnoff, we have dedicated employees that are trained specifically to answer property owners’ calls and listen to their issues.

Bankruptcy Corner

Responding to bankruptcy filings is a necessary part of municipal debt collection. The following summary provides a primer on the different bankruptcy chapters that municipalities will typically see their property owners file.

Chapter 7 bankruptcies generally provide for the liquidation of the debtor’s non-exempt assets for the benefit of the debtor’s creditors. Chapter 7 is available to all individuals and most business entities. There are two types of Chapter 7 filings: no-asset cases and asset cases. No-asset cases generally have a short life span, usually lasting no more than seven months. Asset cases can take considerably longer, as the trustee may need to liquidate the debtor’s non-exempt assets to pay creditors.

Chapter 11 bankruptcy cases generally provide for the reorganization and restructuring of a debtor’s finances. This chapter is primarily employed by business entities, but can be filed by individuals. Chapter 11 bankruptcies are the most complex bankruptcy cases and can proceed for many years. The policy behind Chapter 11 is to allow the debtor to continue to operate and reorganize its business as an alternative to the quick liquidation required under Chapter 7.

Chapter 13 bankruptcies provide for the reorganization and adjustment of an individual’s debts. This chapter is only available to individuals who have a regular source of income; corporations and partnerships are not eligible for Chapter 13. Chapter 13 cases encourage repayment of obligations by providing the debtor with more options to deal with their debt. Successful cases filed under this chapter generally last between three and five years.

Municipalities Benefit From *In Rem* Collections

There are many statutory procedures that can be employed to collect delinquent municipal accounts in Pennsylvania. Portnoff Law Associates has found that the *in rem* collection procedures provided for in the Municipal Claims and Tax Liens Act (MCTLA) provides the most benefits to municipalities. “*In rem*” is a Latin phrase that is used to designate actions instituted against a thing, as opposed to personal actions. For collection purposes, *in rem* collections are conducted against a debtor’s property, as opposed to *in personam* actions that are taken against an individual.

By proceeding *in rem* under the MCTLA, municipal claims are provided with a higher priority for payoff purposes than mortgages and judgments obtained *in personam*. For example, an *in rem* municipal claim trumps a mortgage lien, necessitating a payoff at a mortgage foreclosure property sale. Conversely, *in personam* judgments can be extinguished at a sheriff’s sale. In bankruptcy, most *in rem* municipal claims survive discharge, while *in personam* judgments can be subject to bankruptcy discharge. At the end of the day, the heightened priority of an *in rem* claim can be the difference between whether or not a municipality receives payment. And given the fact that real property is generally the delinquent’s most valuable collateral asset, actions taken directly against that asset will generally create the most incentive to instigate payment.

Hiring Portnoff

The word is out - Portnoff now represents over 110 municipalities, school districts and municipal authorities in 23 counties throughout Pennsylvania. Both small municipalities in rural parts of the state and large taxing districts in metropolitan areas benefit from Portnoff’s proven collection process. The process is often tailored to the individualized needs of each community. Most of our new business comes from referrals. We are available to meet with your staff, or attend an executive session or public meeting to discuss the benefits of our services with your elected officials. If you are interested in hiring us or for more information, please contact us at (800) 561-7989.

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PORTNOFF LAW ASSOCIATES HAS SUCCESSFULLY COLLECTED MUNICIPAL CLAIMS AND DELINQUENT REAL ESTATE TAXES IN PENNSYLVANIA FOR 25 YEARS

Portnoff Law Associates has 25 years' experience in Pennsylvania collecting delinquent:

- Real Estate Taxes
- Municipal Service Fees
- Abatement of Nuisance Fees
- Trash Fees
- Sewer Fees
- Water Bills



Michelle Portnoff, President
Portnoff Law Associates

PORTNOFF LAW ASSOCIATES REPRESENTS OVER 110 MUNICIPALITIES, SCHOOL DISTRICTS AND MUNICIPAL AUTHORITIES IN 23 PENNSYLVANIA COUNTIES

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