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NACM Webinar Overview of the Litigation Process

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Overview

1. Demand Letters
2. The Lawsuit
3. Discovery
4. Disposition Before Trial
5. Trial



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Demand Letter

Demand Letter

1. Everything starts with a demand letter
2. Purpose – resolve dispute before litigation
3. No magic words
4. Include a deadline for compliance (ex: pay \$ within 10 days)



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The Lawsuit

The Lawsuit

Federal Court versus State Court

Federal Court

- Established by the US Constitution
- Generally only 2 types of cases:
 1. Cases involving violations of the US Constitution or Federal law; or
 2. Cases between citizens of different states if the amount in controversy exceeds \$75k



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The Lawsuit

State Court

- Established by state legislature
- Broad jurisdiction – breach of contract, family disputes, traffic violations
- Not allowed to hear: lawsuits against the United States and those involving federal laws – bankruptcy, antitrust, patents, copyrights, etc.



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The Lawsuit

Who is the Defendant? (who am I filing the lawsuit against)

- Individual, Corp., LLC, LP
- Review credit application/contract
- Review invoices
- Do I have a personal guaranty?



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The Lawsuit

Venue – where the lawsuit is filed

- Must decide where the lawsuit will be filed
- Ex: Dallas versus Houston
- General rule is venue lies where the defendant is located, but parties can decide in a contract where the venue for any lawsuit will take place.



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The Lawsuit

What is the lawsuit about?

- Basis for the lawsuit – ex: breach of contract or unpaid invoices
- Remedies – what are you asking the court to award?
 1. Damages – Payment of Damages (ex: unpaid invoices)
 2. Nonmonetary Remedy (ex: injunction)



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The Lawsuit

Service

- Must serve the Defendant with the lawsuit (if not, then court does not obtain jurisdiction and cannot rule in your favor)
- Methods: personal service, mail, publication
- Most states do not allow service through email
- Service the Defendant can take time if you don't have a good address or if the Defendant is dodging service.



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Discovery

Discovery

- Once an answer has been filed, discovery starts.
- Discovery – Fact finding phase of the case
- Usually lasts around 9 months (but could be longer)
- Can be expensive - ex: electronic discovery or voluminous document review



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Discovery

Methods of Discovery

1. Interrogatories (written questions)
2. Request for Admissions
3. Request for Production of Documents
4. Depositions
5. Subpoenas (use with third parties)



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Disposition Before Trial

Disposition Before Trial

Default Judgment and Summary Judgment

Default Judgment (no answer is filed)

- Defendant fails to file an answer
- Motion for Default Judgment
- Defendant admits everything is the lawsuit
- You win!



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Disposition Before Trial

Summary Judgment (an answer has been filed)

- Motion for Summary Judgment
- No genuine issue of material fact
- Asking the court to rule in your favor without going to trial
- High burden



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Trial

Trial

Bench Trial versus Jury Trial

Bench Trial

- Judge is the decider
- Usually moves along faster
- Less expensive
- Generally creditors prefer bench trials



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Trial

Jury Trial

- Jury is the decider (usually 6 or 12 people)
- Takes longer (jury selection, jury charge, deliberations)
- Usually more expensive



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Trial

Judgment

- Awarded if you win
- Will specify what relief you have been granted
- Damages – amount of money
- Nonmonetary Damages, if any (ex: injunction)
- Unfortunately, does not guaranty payment. Once a judgment is obtained you still need to collect it.



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Questions?