

02 APRIL 2007

7 HELPFUL TIPS FOR SUCCESSFUL DEBT RECOVERY

1. AVOIDING THE PROBLEM IN THE FIRST PLACE!

- When dealing with companies you may consider seeking “personal guarantees” from directors before allowing the debt to be incurred.
- You may consider implementing a policy for some customers where goods are not released until paid in cash, or a “mechanic's lien” arrangement (discussed below).
- You may also consider implementing a policy for some customers where an account is suspended if previous invoices are not paid on time.
- You may consider having an account limit for certain customers.
- Some industries (for example the building industry) are required to produce written quotes up front before an amount can be recovered. Is your business complying and providing quotes?
- We can assist you to set up the above procedures.

2. PROMPT REMINDER NOTICES

- Prompt reminders by mailing out overdue account notices and following up with telephone calls.

FOR FURTHER INFORMATION,
PLEASE CONTACT:

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3. SOLICITOR'S LETTER OF DEMAND

- This is usually the first and most cost effective step to recovering a debt.
- A customer who pays no attention to your reminders may pay attention to a Solicitor's Letter of Demand. Such letters will set out invoice numbers, dates and amounts, give a deadline of a certain time and date when the money must be paid (eg. 12:00 pm 1 April 2007), and set out the specific consequences if the money is not paid by the debtor – “if payment is not made our client will immediately commence court proceedings against you”.

4. PAYMENT PLAN

- If the debtor responds to the demand letter by calling and requesting to enter into a payment plan, then you should have this agreement in writing.

5. NO RESPONSE FROM DEBTOR

- If no response is received, then immediately upon the expiry of the Solicitor's Letter of Demand a second letter or facsimile is sent advising that we will now bring proceedings in Court.

6. COURT ACTION

- Court action must be commenced within 6 years of the debt being incurred. If it is not commenced within this timeframe the debt is not recoverable.
- The size of the debt will determine which Court you start your action in. We recommend the following approach:
 - a. Debts Under \$2,000.00—Minor Debt Court**

If the Debt is under \$2,000.00 we recommend that you consider starting your action in the Minor Debt Court.

 - i. A Minor Debt Court has jurisdiction to hear matters up to \$7,500.00. However, we note that you are not entitled to recover legal costs in this Court and solicitors cannot represent you at a hearing.
 - ii. The main advantage of this Court is that it has reduced costs—nominal filing fee.
 - iii. There are simplified procedures to allow people to represent themselves.
 - iv. We can assist with preparation of the documents to be filed in the Minor Debt Court. However, you have to represent yourself in Court.
 - b. Debts between \$2,000.00 and \$50,000.00—Magistrates Court**

For matters between \$2,000.00 and \$50,000.00 the Magistrates Court is the most cost effective approach.

 - i. To begin proceedings, we prepare and file a “Claim and Statement of Claim”.
 - ii. The Court's filing fees start at \$110.40.



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- iii. The “Defendant” has 28 days in which to respond. If they fail to respond we file Default Judgment against the Defendant and you automatically win the Court case. You may also be entitled to recover some of your legal costs and interest at the rate of approximately 10% on the amount outstanding.
 - iv. Please note that if the debtor files a Defence then additional fees will be incurred.
- c. **Debts Above \$50,000.00—District / Supreme Court**
- i. For debts over \$50,000.00 the relevant jurisdiction will be either the District Court or the Supreme Court.
 - ii. The process is exactly the same as the Magistrates Court except that the Court fees and legal costs are normally higher.

7. ALTERNATIVES

- a. **Bankruptcy and Bankruptcy type Arrangements**
 - The Trustee in Bankruptcy will administer the persons estate, selling assets to pay for debts. However, often the fees charged by the Administrator will quickly dwindle the monies recovered.
 - Other arrangements may be made among the creditors where an amount is accepted in final satisfaction of the debt.
- b. **Payment Plans with mortgage by consent**
 - In some cases, the debtor may enter into an arrangement with you to pay off the debt. In these circumstances we recommend investigating the possibility of taking out a mortgage over any property owned by the debtor.
- c. **Statutory Demand**
 - Where the debtor is a Company, we may recommend that a Statutory Demand be made. Often a Company will carefully consider a Statutory Demand as if it is not answered or satisfied in 21 days, you have the right to wind up the Company. There are no filing fees.
- d. **“Workman's Lien”**
 - If your business involves performing work on a customer's property (for example a mechanic working on a customer's car) you may have the ability to retain the property and even sell it if the debt is not paid.
 - Certain criteria must first be satisfied before you can proceed down this track. We can assist you with fulfilling these legal requirements.

FINAL COMMENTS

We hope this short summary is of assistance to your business in planning how to proceed to recover a debt owed. As you can see there are alternatives available and many are cost effective ways to recover monies outstanding.



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