



Debt recovery basics for business

If you are owed money for goods or services that you have supplied to someone, the first step in attempting to recover it is generally to send a letter of demand to the other party setting out the amount of money outstanding and giving them a defined period of time within which to settle the debt by paying you the money owed or face legal action.

Letter of Demand

The letter of demand is sent by you if you (the creditor) or your lawyer if you are owed the money and warns the person owing the money (the debtor) that if they don't pay the debt within a certain time period (often seven days) they will be sued in court to recover the debt.

A letter of demand should be the last letter a creditor sends before issuing court proceedings. While letters of demand are not court documents, they are often an effective means of forcing the debtor to take action.

It is a good idea to contact us first to ascertain whether it is prudent to proceed with court proceedings, and this will usually depend on the size of the debt. Naturally if the sum owed is small it may be uneconomic to pursue the debt by engaging a lawyer or even pursuing the debt at all. You must however ensure that in enforcing your rights to recover the debt, you act within the law.

Principles of debt collection fairness

When sending a letter of demand, you should be careful not to harass the debtor, or send a letter which is designed to look like a court document.

You must not pursue a person for a debt unless you have reasonable grounds for believing the person is liable for the debt.

Time limits

A creditor has a limited period of time to sue for a debt. In most instances for debts owed this will be 6 years.

If the debtor has made no payments towards the debt, or has not acknowledged in writing that they owe the debt for a period of 6 years from when the debt arose, then the debt may no longer be recoverable.

Disputed debts

The debtor has the right to dispute a debt, and may do so on the grounds that:



- it is not their debt;
- they have already paid the money;
- they disagree with the amount of the debt; or
- it is an old debt and they haven't made a payment for at least 6 years, no court judgment has been entered against them and they haven't admitted in writing that they owe the debt in that time.

If the debt is disputed then you, as the creditor, may have no alternative but to commence legal proceedings or to seek to negotiate a compromise with the debtor.

When your lawyer becomes involved

If you, as the creditor, are not willing to negotiate or wait for payment, you may wish to contact us to assist with pursuing the debt.

If you know the debt is due and payable and you want to commence legal proceedings it is prudent to have a legal professional assist you and represent you in court to recover the debt. If the size of the debt does not warrant that, then we may still be able to help you to negotiate a payment plan that is manageable to the debtor and acceptable to you.

It is not in the debtor's interest to ignore your claim and risk the additional costs of the legal fees and interest on top of the original debt. By following the correct process we can help bring the matter to a conclusion satisfactory to you.

Preventative Steps

Before you take on a new customer you should have the correct systems in place to ensure that you are able to assess the customer's credit position, and to ensure you have the best chance of recovering your debt.

Do you have a credit application process for your new customers?

Your credit application and terms of trade should provide you with security over the goods which you have sold to the customer and, if the customer is a corporate entity, ensure that the directors of the company provide you with personal guarantee. You must however ensure that you register any security over goods on the Personal Property Securities Register and we recommend that you speak with us to assist you with this process to ensure that the registration is not void.

If you are a contractor in the building industry, are you aware of your rights under the Building Industry Security of Payments Act and the documentation processes and time limits that apply under that Act which assist you to recover monies owed to you using the adjudication process.

If you do not have a system in place then contact us and we will assist you with putting a system in place to protect you and provide you with security for monies owed to you. It is important that you have the correct system and documentation in place before you do business with a new customer and before you provide the customer with any credit.



Conclusion

You should contact us to discuss your legal rights and obligations if you are owed money or even if you owe money to someone else who is threatening court action.

It is equally important that you contact us to ensure that you know the right contracted documents, terms of trade documents and credit assist application documents in place before you supply goods and service to your customers, so that you have the best choice of recovering your debt.

If you would like more information or require assistance or advice on how to proceed in debt recovery matters please contact [Ken Gray](mailto:Ken.Gray@batemanbattersby.com.au) on 02 4731 5899 or email litigation@batemanbattersby.com.au.