

Get Your Money

A Newsletter by Assegai Communications

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Dear Reader

Reading time: 4 minutes

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THE PEN IS (STILL) MIGHTIER ...

In the age of e-mail the old-fashioned 'lawyer's letter' still works! Although the telephone is the quickest method of contacting reticent debtors, there is still a definite place for the letter, in the process of debt recovery.

One of my colleagues, an attorney who specialises in debt collection, mentioned to me that one of his clients, a large furniture retailer, instructed him this week to dispatch 2 000 letters of demand to delinquent customers. The same customer asks him to write to debtors, "about once every quarter". I was interested to hear that the success rate is very high p most of the debtors take immediate steps to catch up with their payments. When I asked why this occurs my colleague explained the reasons for success:

- The letter reminds the debtors that they stand to lose their furniture and appliances, if they do not pay; and
- In any event, the intervention of a third party (the attorney) in the creditor / debtor relationship, usually get the attention of the debtor.

Not everybody has success with letter writing, though this is a vital part of most money recovery systems. If you are one of those who is experiencing a poor response to letters demanding payment, here are some ideas to ponder, in this regard:

- The letter must be sent as soon as possible after the payment fell due, the precision alone, will have a positive affect. It shows that you mean business.
- The letter must be personally addressed to the debtor (e.g. "Dear Mr. Jones) – it should not appear to be mass-produced.
- The letter must give a strict deadline for the outstanding payment and must also make very clear reference to the unfortunate consequences, which will befall the debtor, if payment is not forthcoming.
- You should not send a series of similar letters, for the same debt. If you are seen to be reluctant to institute proceedings, the debtor will, like a naughty child, give you a run for your money.

LIFE SKILLS AND DEBT COLLECTION

A client recently asked us to develop a course to teach her telephone debt collectors some life skills – although they are taught to operate their sophisticated (computerised) call centre equipment, dealing with people is not amongst their strong points. Why is this important?

If the debtor (or any customer, for that matter) gets the idea that you do not understand, or care, that he or she has problems, resistance to payment will increase. Everybody wants to feel that they matter – even a delinquent debtor!

A telephone collector who is able to empathise with the debtor will have greater success in extracting payment, and will be more likely to be able to help the debtor to 'find' the money to pay the debt, than a hard-nosed collector who employs only threats to gain an advantage.

There is, of course, room for both kinds of debt collector, but debtors should be approached by the 'soft' collector before the "rottweiler" is unleashed.

LEGAL NOTE: LIABILITY OF MEMBERS OF CLOSE CORPORATIONS

Like a company, a close corporation acts in most cases as a 'shield' against creditors. But not in all cases. The Close Corporations Act makes specific provision for personal liability of members of close corporations, in certain circumstances:

- Where a close corporation is unable or unwilling to pay a debt, the person who signed a contract, cheque or other document without clearly stating that he was signing in a representative capacity (i.e. 'for Joes Fruits cc') may be held liable.
 - Where any document does not fully disclose the name, nature and registration number of the corporation, a person purporting to contract business on such document, may be held personally liable. People contracting with a close corporation must be left in no doubt that they are doing business with an entity which protects it's members, or the protection may fall away.
 - If it appears to a court that the business of a close corporation has been conducted in a "reckless manner", the members might be held personally liable.
 - If a person enters into oral negotiations and does not indicate absolutely clearly that he is intending to bind a close corporation and not himself, he may be held to be personally liable in respect of any contract which comes into being as a result of those negotiations. If you are in any doubt in any specific case, refer it to an attorney for advice.
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