

BACE LAW REPORT

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Collecting Debts and Past-due Invoices

Many small to mid-sized business are invariably no stranger to unpaid invoices, and mounting late payments from both their clients and their vendors. Eventually, these business relationships can deteriorate to the point where correspondence is sent demanding payment in full. When this initial demand is ignored, what can you do in order to exercise your rights?

Collection Agent vs. Attorney

The most significant difference between hiring an attorney and a collection agent, is an attorney can file a lawsuit. Generally speaking, collection agents send numerous letters, and make regular phone calls demanding payment. However, if those efforts are unsuccessful, recovery is unlikely. Attorney collection efforts normally entail a demand letter, a phone call to the debtor to gain information regarding the merits of the claim, and a second demand letter. If no recovery is attained, an attorney will normally file a lawsuit thirty (30) days subsequent to the initial demand. The filing of a lawsuit is a formal exercise of your claim; it brings to the court's

attention your allegations and begins the legal dispute process. In some cases, when a debtor is served a lawsuit, they understand the seriousness of the unpaid debt; the filing itself may prompt a negotiation and settlement.

Contingency Fee

Generally, debt collection claims are handled on a contingency-fee basis. This means that no legal *fees* are paid until there is a successful recovery. Normally, the client will be responsible for legal *costs* associated with the claim. These costs can include, but are not limited to the following: lawsuit filing fees, costs of investigating debtor, and service of process fees.

Prejudgment Attachment

After the filing of a lawsuit, an attorney may have options of prejudgment attachment to force a settlement. Prejudgment attachment is the attaching of a defendant's assets, real property, or personal property in order to secure a claim. In general, if a plaintiff has a reasonable likelihood of success, assets can be attached in order to secure the claim. There are a number of exemptions, and not all property is available for attachment prior to Judgment.

Judgment ≠ Cash

Unfortunately, the filing of a lawsuit and the entering of a Judgment (either because the defendant has not shown up at court, or a Judge/Jury has declared you the winner) does not equate to instant cash. The Judgment still needs to be satisfied by the debtor's funds. It is a common misconception that if you win a lawsuit, a bag full of money in the amount of the verdict is awarded to you on your way out of the courthouse. In fact, a number of online resources state that the percentage of unsatisfied Judgments may be as high as 80%. After a Judgment has been entered, an attorney typically can file for what is called "Supplementary Process." This is the legal mechanism by which a debtor is brought before the court to explain her ability to pay.

Insolvent Debtor

Further, it is possible that after this process, the defendant is what is commonly referred to as "judgment proof" - they simply do not have assets to satisfy the judgment, and they may never have adequate assets. The debtor may not own any real estate; she may not own a vehicle, have a bank account, or earn enough in a weekly wage to justify wage garnishment. The debtor may have filed for personal Bankruptcy protection. In the case of a corporate debtor, the corporation itself may be dissolved and/or may not have any assets whatsoever. Therefore, it is

advisable to find out prior to the filing of a lawsuit, at least to some degree, the availability of property, funds, or assets to satisfy a Judgment.

Best Practices

There are steps that a small business can take *before* an account deteriorates to the point of collections. Requiring signed written contracts, credit references, and addresses prior to doing business with clients may increase the "collect-ability" of certain accounts. Collect as much information about your business clients as possible - this information can be extremely helpful to your attorney in the event that your Invoice is not paid in full in a timely manner.

This article has attempted to point out, in general, that collecting a debt is not a quick and easy process. However, information about the debtor, prejudgment security tactics, and *persistence* can be your greatest ally in a successful recovery. Collection claims, like all legal rights, are time-sensitive. Delaying action may forfeit your rights. The best advice, as always, is to call your attorney today if you believe you are owed money.

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