TRADIE LAW FACT SHEET

Debt Recovery: Letters of Demand

OVERVIEW

From time to time, you may need to take formal steps to recover a debt owed to you, where a client refuses or neglects to pay an invoice for services provided.

There are several steps you can take to pursue recovery of debts owed to you.

The simplest and most cost-effective way of recovering the debt is to issue **a letter of demand.** This can be drafted by yourself, or a lawyer.

What is a letter of demand?

A letter of demand is a formal demand for repayment of a debt, which is issued to the person or entity owing you the debt ("the **recipient**").

The cost and time involved in issuing a letter of demand, will be significantly less than taking more formal steps such initiating as Court proceedings or engaging a debt collector right off the bat.

What should the letter of demand contain?

Who: The letter of demand must be addressed to the correct recipient, who is the person or entity *responsible* for paying the debt, in other words, who you are contracted with. If the recipient is a company and the company is trading under a different name, make sure you get it right!

You can check whether a company is trading under a different name by searching the companies register.

What is at issue: In your letter of demand, you should formally notify the recipient of all the issues that require resolution, including whether payment of any money is sought. The relevant issues include:

- the factual background to the issue;
- the key legal provisions that you are relying on (for example, contractual clauses or the legislative clauses relied on if you are exercising your rights under statutory or common law);
- your reasons why the recipient is in breach of their legal and/or contractual obligations to you; and
- what or how much you believe the recipient owes you.

Clear timeframes: A letter of demand should have an end date, to ensure the recipient responds to you in a timely manner and to make them aware that if they do not respond, your intent to take further steps to pursue recover. Make sure any timeframe for providing a response is reasonable in those circumstances.

If you have given a short timeframe for providing a response, you need to outline clear reasons why that is necessary, to avoid criticism from the Courts later down the track (if the matter is unable to be resolved earlier).

What if they don't respond to your letter of demand?

If the recipient does not respond to your letter of demand within the specified timeframe (or does not advise that they need more time to provide a response), it is usually appropriate to take further steps to pursue recovery of the debt.

You should notify the recipient of the consequences of not complying with your demand for repayment, including that you may take legal action. Some matters may prescribe (by contract or law) a particular process for pursuing recovery of debt before court proceedings can be initiated.

You can use the letter of demand to demonstrate your attempts to recover the debts and show that the recipient was provided the opportunity to respond and failed to do so.

What if the recipient disagrees with me?

If the other party does not consider that they owe you anything, there are other more formal steps you can take to resolve your dispute.

What process you would need to follow then, will depend on the particular circumstances. Be sure to check the particular provisions of your contract to see if there are prescribed dispute resolution procedures, and seek legal advice.

If you would like more advice about debt recovery and issuing letters of demand, get in touch so we can help.

Contact:

E **helpdesk@tradielaw.nz**

W **www.tradielaw.co.nz/contact**

One of our team will be in touch to assist you within 24 hours.