

TRADIE LAW FACT SHEET #24

DEALING WITH DISPUTES



District Court

OVERVIEW

From time to time you may need to take formal steps to recover a debt owed to you in the course of trading. For example, you may enter a contract for certain goods or services, but for the company or entity you have entered agreement with does not or is unable to perform their part of the deal.

There are several steps you can and should take to pursue recovery of debts owed to you. If you have already sent the recipient a letter of demand, but have been unable to recover the debt, you may be able to recover the debt through the Courts.

1. *When should I apply to the District Court for help?*

- The District Court can resolve many disputes including disputes relating to contract or for the recovery of money.
- The District Court can hear claims where the value of property or amount in dispute is \$350,000 or less. If you are owed under \$30,000, you may be able to apply the Disputes Tribunal, which is a more cost effective means of resolving disputes over smaller claims. For more information on the Disputes Tribunal, please refer to our 'Disputes Tribunal' factsheet.
- When you commence a proceeding in the District Court, you are known as the "plaintiff". The person, company or entity who you are filing the claim against is known as the "defendant".
- District Court proceedings can take a lot longer to resolve (when they are defended) and must comply with strict procedural formalities. We encourage you to seek legal advice if you are contemplating initiating Court proceedings.
- We have set out a brief overview of the typical process for initiating Court proceedings.

2. *How do I start a proceeding?*

- You can initiate a proceeding in the District Court by filing:
 - A Statement of Claim;
 - A List of Documents you rely on in relation to your claim;
 - A Notice of Proceeding; and
 - An Application for Summary Judgment (in some circumstances).

- Your **Statement of Claim** should clearly set out with sufficient particularisation the case you are making against the defendant. This is your opportunity to persuade the Judge that your claim has merit, and that you should be awarded the relief sought against the defendant.
- The Statement of Claim must clearly contain:
 - the general nature of the claim and the relief sought (i.e, what is the outcome you are wanting to achieve from the proceedings?)
 - sufficient particulars regarding:
 - **time** - *when* did this happen? Importantly, you must, except in some exceptional circumstances, file your claim within 6 years of the event the claim relates to.
 - **place** – *where* did this happen, what project were you working on?
 - **names of persons** - *who* was involved in the transaction?
 - **nature and dates of instruments** – *what* contracts or other agreements were in place?
 - **amounts** – *how* much monetary relief are you asking for?
 - **other circumstances** to inform the court and the defendant of the cause of action; and
 - where your claim relates to the recovery of money, the basis of any claim for interest and the rate at which interest is claimed.
- In addition to filing your statement of claim, you must also file:
 - **A list of documents** that you rely on in making your claim (this is what will be your evidence). This could include the contract between you and the defendant, and any correspondence you have had with the defendant regarding the claim. If you have sent the defendant a Letter of Demand, and they either have not responded to that letter or have disputed your claim, you can include that letter and any response received from the defendant in your list of documents.
 - A **notice of proceeding** which informs the defendant that you have initiated court proceedings against them. This document will inform the defendant the date by which they are required to file a statement of defence (if they oppose the claim), and warn them that if they do not take steps to defend the claim, that you may take steps to have judgment made against them on an unopposed basis (for more information, see below under “*can I speed up the debt recovery process?*”)

3. What does it cost to lodge a claim?

- The District Court charges an initial fee of \$200 for filing a Statement of Claim. If further steps are taken during the Court process, there may be further fees involved.
- If you have also filed an application for summary judgment, there is an extra filing fee of \$250. For more information on summary judgments, see below.
- Filing fees are known as "disbursements" and may be recoverable against the defendant if your claim is successful.

4. What happens after I file a claim with the District Court?

- Once you have filed your Statement of Claim and paid the filing fee, the Registrar of the Court will allocate a hearing date for the application.
- You will need to ensure the defendant is personally served with the proceedings. Once the defendant has been served, the time will start for them to file a defence to the claim.
- If the defendant opposes the claim, they will file a statement of defence. In their statement of the defence, the defendant is required to admit or deny the allegations of fact in the statement of claim, and plead any affirmative defences relied upon.

5. Can I speed up the judgment process?

- **Summary Judgment – where the defendant has no defence**

Where you believe that the defendant has no lawful defence to the claim you have made against them, you can ask the Court to issue a "summary judgment".

You will need to convince the Court that the defendant has no defence to the claim made against them. To do so, you must file evidence, called an "affidavit" which verifies the allegations made in the statement of claim, states your belief the defendant has no defence to the allegations, and sets out the grounds for that belief.

If the Judge agrees with your view, the Court will make a decision on your claim by way of summary judgment at a hearing in open court.

- **Judgment by default – where the defendant has not responded to the claim**

Where you have served a defendant with your claim and they have failed to respond within the requisite timeframe, you can ask the Court to enter a judgment by default against the defendant.

If the relief you seek is a liquidated demand for money, you can ask the Court to issue final judgment for the sum of money claimed in your statement of claim without being heard by a Judge. This will include any interest payable to you as well as costs and disbursements claimed.

"Liquidated demand" means a sum that:

- has been quantified in, or can be precisely calculated on the basis of, a contract;

- is quantified in, or can be precisely calculated on the basis of, or by reference to, an enactment (or law);
- has been determined by agreement, mediation, arbitration, or previous litigation between you and the defendant;
- is a reasonable price for goods supplied or services rendered (when no contract quantifies the price).

If the relief you seek is an unliquidated demand, you can still ask the Court to consider your request for judgment by default where the defendant has not responded to the claim. You will need to file evidence which establishes (on an unopposed basis) each cause of action you rely on, and enough information for the Court to calculate the damages sought, if any).

The Court will consider your application in relation to an unliquidated demand at a hearing known as a “formal proof”. If you have satisfied the Court of the information above, the Court can issue judgment by default against the defendant.

6. What happens if the claim proceeds to a defended hearing?

If the Court does not issue a summary judgment, and the defendant files a notice of defence, your claim will track towards an ordinary trial or hearing. This will involve:

- case management steps, where you or your lawyer will attend brief conferences with a Judge to discuss getting the proceedings ready for hearing;
- discovery and inspection of documents; where you and the defendant will exchange documents relied upon to establish your claim;
- interrogatories; where written questions will be posed by each party to the other that are designed to elicit facts relevant to the issues in dispute;
- filing a common bundle of evidence and briefs of evidence of witnesses who will be called upon to give evidence at the hearing; and lastly
- attending a trial or hearing, where you and the defendant will put your case to the Judge for determination. If you have filed evidence in the proceedings, you will likely be called as a witness and will be cross examined by the other party or their lawyer on the evidence you give.

Can I recover the costs of legal fees of going to Court?

- In principle, you should be able to recover some of the legal costs of going to Court if you are successful. Costs are ultimately a discretion of the Court. The principles the Court will consider when awarding costs are:
 - The unsuccessful party should pay costs to the successful party.
 - Costs should be based on a reasonable amount of time for each step in the proceeding.
 - Costs should normally be two-thirds of a lawyer's reasonable daily rate.

- The costs should not relate to the skill of the lawyer involved or the actual time spent by the lawyer involved.
- The award of costs should not exceed the actual costs incurred, with special rules for conditional fee arrangements.
- Costs should be predictable and expeditious.

Court proceedings can involve a lot of time and cost, but can also be an effective way of recovering debt owed to you where you have been unsuccessful through other means. If you think you have a claim which needs to be resolved through Court, get in contact with us. We can help:

E helpdesk@tradielaw.nz
W www.tradielaw.co.nz/tradie-law/contact/

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