



Debt Recovery – Letters of Demand

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 the company or entity you have an 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. The first, and if successful, most cost effective means of recovering a debt is to issue a letter or email of demand.

Making a formal demand for repayment of debt

Before instituting any legal proceedings it is best practice to first make a formal, written demand against the person owing you debt ("the recipient") for payment of the debt.

Such a demand needs to be correctly drafted to ensure the recipient can properly consider your claim, and can therefore provide a proper response (or defence).

What should the letter of demand contain?

As a starting point, make sure the letter or email is addressed to the correct recipient. If the recipient is a company and the company is trading under a different name, make sure you address it to the registered company. You can check whether a company is trading under a different name by searching the Companies Register.

In your letter or email 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 would include:

- the factual background to the issues
- the key legal provisions that you are relying on (for example, the clauses of any contract between you, 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.

A letter or email of demand should have an end date, to ensure the recipient responds to you in a timely manner. You should make sure that any timeframe for providing a response is reasonable in the circumstances and properly recognises the objective urgency of the particular situation but also provides the recipient time to arrange to repay the debt.

What if they don't respond?

If the recipient does not respond within the timeframes given (or does not advise you if they need more time to provide a response), it would usually then be appropriate to take further steps to pursue recovery of the debt.

If your matter is urgent and requires a short timeframe, ensure you provide enough reasons to avoid criticism from the Courts later down the track if matters are unable to be resolved.

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

What if the recipient disagrees with me?

If the recipient does not agree 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 will depend on the particular circumstances. Make sure to check the particular provisions of your contract to see if there are prescribed dispute resolution procedures.

For more information about what to look for in contracts, or other methods of dispute resolution, check out our other factsheets.

If you require advice with debt recovery issues, get in touch so we can help.

Contact:

E helpdesk@tradielaw.co.nz

W www.tradielaw.co.nz/contact/

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