
DEBT RECOVERY LETTER OF DEMAND

What is a letter of demand?

A letter of demand is sent to a person or organisation who owes you money (a debtor) following your supply to them of goods or services (eg. sale of artwork or performance fees). The letter advises the debtor of the amount outstanding and threatens court action to recover the debt if it is not paid within a certain time. A sample is provided below which can be used as a guide.

Why send a letter of demand?

A letter of demand serves two purposes. First, it warns the debtor of your intention to commence legal proceedings unless payment is made and gives the debtor one more opportunity to pay. Secondly, the letter is a document which may be tendered in evidence during court proceedings as written proof of your claim of the debt owed and your attempt to settle the matter.

Copies of any relevant documents such as contracts, letters of agreement, invoices, etc, should be listed and attached to the letter of demand to assist the debtor to identify the transaction and their liability to pay.

It is advisable to send the letter of demand by registered post or fax to confirm receipt and don't forget to retain a copy for your records. Only one letter should be sent and you should be prepared to act on your threat to initiate legal action otherwise the debtor may simply call your bluff.

When sending a letter of demand, you should be careful not to:

- harass the debtor – they have the right to complain about this behaviour to particular government agencies and the police; and
- send a letter which is designed to look like a court document because this is illegal.

How to respond to a letter of demand

- Do not ignore a letter of demand from a creditor or debt collection agency for monies owing.
- Carefully check the letter and if there are any matters that are unclear or if you require further details, write to the creditor (and keep a copy of the letter).

- Seek legal advice if the claim is disputed. For example, if it is an arts-related matter (eg. dispute with an arts agent or organisation) contact the Arts Law Centre of Australia. If it is non-arts related (eg. a dispute with a bank or a retailer) then a community legal centre that specialises in financial counselling may be able to assist.
- If you do not dispute the claim, contact the creditor and attempt to negotiate settlement of the matter on a 'without prejudice' basis. This means that you can try to reach a compromise without putting at risk your legal rights, that is, you are keeping open the option that you may take a different stance if the matter ends up in court.
- If you are the creditor sending the letter of demand and the debtor contacts you in response, negotiating on a 'without prejudice' basis can be particularly useful as you do not give up the right to sue for the full amount if a satisfactory compromise is not made.

SAMPLE LETTER OF DEMAND

Dear *** [name] ***

I enclose *** [attach documents appropriate to identify the amount owing, e.g. a copy of my original invoice dated [date] OR a copy of our contract].***

I demand that payment of the full amount be paid to me at the address stated below within ***[no. of days usually 7 or 14 days]*** days from the date of this letter.

*** [OPTIONAL:** Alternatively, and without prejudice to my rights for full recovery of the debt, I am prepared to:

[include whatever is appropriate, eg

*** accept the amount of \$[a lesser sum] as full and final settlement of the debt if paid within 7 days [or other appropriate period] from the date of this letter.**

*** accept instalments of \$[amount] per week/month until the debt is fully paid, the first instalment to be paid on [date] into [specify address/bank account details] and thereafter on the first working day of every week/month until the debt is fully paid.] ***

If this matter is not resolved by the time specified above, I reserve the right to commence legal proceedings to recover the debt without further notice to you and this letter may be tendered in court as evidence of your failure to pay.

Yours sincerely

[your name, address and other contact details]

Further information

- The Arts Law Centre of Australia's Information Sheet Debt Recovery: Small Claims Procedure for your particular state at www.artslaw.com.au
- Legal Aid Commission NSW at 02 9219 5000; or Law Access NSW at 1300 888 529;
- Legal Aid Commission TAS at 03 6236 8300 or 1300 366 611;
- Legal Aid Commission NT at 08 8999 3000 or toll-free 1800 019 343;
- Legal Aid WA at 08 9261 6222 or 1300 650 579;
- Legal Aid Office ACT at 02 6243 3471 or 1300 654 314;
- Legal Services Commission SA at 08 8463 3555 or 1300 366 424;
- Legal Aid Qld at 07 3238 3444 or 1300 651 188; or
- Victoria Legal Aid at 03 9269 0234 or 1800 677 402 (outside Melbourne)
- Your nearest Local Court of NSW to make an appointment with a Chamber Magistrate, check the White Pages ® Directory or www.lawlink.nsw.gov.au/locations/locnsw.nsf/pages/nswmap
- Your local community legal centre (eg. Inner City Legal Centre in Sydney). For details contact National Association of Community Legal Centres at (02) 9264 9595 or visit www.nacclc.org.au which has a directory of community legal centres in all States and Territories

Your local community welfare organisations, check the White Pages ® Directory.

Disclaimer

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (**Arts Law**) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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