

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.
- Most creditors are willing to accept less than the full amount as it relieves them of the administrative expense and delay in pursuing debt recovery action through the courts.
- If you cannot afford to pay back the amount in full, offer to pay by instalments that are reasonable in the circumstances (this option is usually also available if the matter is taken through the courts).
- If you are unable to pay at all then write a letter to the creditor pointing this out.

Further Information

- The Arts Law Centre of Australia's Information Sheet "Debt Recovery: Small Claims Procedure" for your particular state
- 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 tollfree 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 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 <http://www.naclc.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.

You may photocopy this information sheet for a non-profit purpose, provided you copy all of it, and you do not alter it in any way. Check you have the most recent version by contacting us on (02) 9356 2566 or tollfree outside Sydney on 1800 221 457.

The Arts Law Centre of Australia has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body.