

## “The Check Is In The Mail”

### Practical Tips For Successful Collection Of Debts

*By Jack Harari, Esq.*

If you are a business owner, chances are you have encountered “deadbeat customers” at one time or another. Many businesses write off significant amounts of debt each year as a cost of doing business and feel powerless to prevent such debt. Here are some simple suggestions that may help to both reduce the amount of debt your business encounters as well as increase the chances of collecting such debt.

#### **Plan Ahead**

The most important point to remember in fighting bad debt is this: **PLAN AHEAD**. Careful planning is something your business can do before the need for an attorney even arises. For example, if your business extends credit to customers, it would be a good idea to have the customer complete a brief credit application, including such information as social security or taxpayer identification number, address and telephone numbers, email and website addresses, bank account information, and business references. You should contact the bank and business references listed on the credit application to determine the customer’s past history. Generally, a customer who does not pay one creditor behaves similarly with other creditors. If the customer is a business entity, a credit agreement can also include a personal guarantee to be signed by an officer of the company in the event that the customer does not pay. It is also good practice to obtain a voided check from the customer to keep in your business files in the event the account must be turned over to an attorney for collection.

#### **Stay Ahead**

Once a business relationship is established with a customer, it is important to keep accurate financial records. For example, keep copies of any purchase orders from the customer as well as any written correspondence such as a letter in which the customer asks for additional time to make payment. Additionally, keep a log of telephone conversations including the date and time of the call and the substance of the communication. Finally, make sure to regularly review your accounts (on at least a monthly basis) to determine which accounts are delinquent. There’s nothing worse for a business owner than to provide goods or services to a customer and then not get paid. Take an active approach with delinquent accounts instead of sweeping them under the rug. By far the most common mistake made by business owners who encounter bad debt is procrastination. Many business owners are positive thinkers, who like to have faith in their customers and hold out hope of payment to the last minute. However good-natured this approach may be, it is important to know that the law contains a number of specific statutory time frames within which action must be taken, or else those actions may be forever barred. For example, the time frame in which a contractor is required to file a mechanic’s lien or a bond claim in New York can vary from as little as thirty days to eight months or even longer, depending on a number of factors. Another disadvantage to letting time pass is that it gives a

debtor who does not intend to pay greater time to hide assets, move locations, file for bankruptcy protection or even disappear altogether. For all of these reasons, it is best to “strike while the iron is hot,” and pursue bad debt aggressively from the start.

### **Attorneys Can Be Allies**

If you follow the suggestions above, you should be able to obtain payment from many delinquent customers before the need for an attorney arises. It will then become easier to identify those customers who have no intention of making payment. This is the time to consider the services of an attorney. Many business owners are reluctant to refer their accounts to an attorney for collection out of fear of incurring more expenses, and are unwilling to “chase bad money with good money.” What these owners may not realize is that they can find an attorney who offers a number of flexible payment options. In some cases, the attorney may accept payment as some percentage of the amount collected, so in effect, you may not pay a fee unless the attorney is successful. In addition, a collection attorney deals with delinquent accounts on a regular basis, and is familiar with a variety of options and strategies. For example, an experienced attorney should be aware that a contractor in the construction/home improvement industry might have legal remedies in addition to a breach of contract action. Finally, business owners are swayed by the misperception that all attorneys are “sharks and shysters.” This couldn’t be further from the truth. With a little time and effort up front, your business can locate an attorney that will be highly informative, attentive to your needs, successful in collecting money on your behalf, and ultimately, a powerful ally to your company as it encounters much future success and growth.

If you follow these suggestions, and you plan ahead, stay ahead, and act quickly, you will reduce the amount of bad debt you encounter and increase your company’s profitability. By keeping complete and accurate written records of your accounts, you will minimize the need to consult the services of an attorney. Perhaps more importantly, you will reduce the amount of time your attorney will require to prepare your case if you do require legal assistance. Finally, by acting quickly and methodically, you improve your ultimate chances of successfully recovering delinquent accounts, and will gain a reputation within your industry as a business that means business when it comes to bad debt. *JH.*

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