

**The Art of Collections in a Down Economy**  
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When driving through any Valley thoroughfares, it is sobering to see the number of storefronts and businesses that have cleared out, with the empty spaces only to be left with giant "For Lease" signs in the window. The downtrodden economy has, and will continue to, affect every fabric of our society. One of the segments hit the hardest is the small business owner. With capital influxes drying up and with nowhere to turn for a personal bailout, many have had to shutter their dreams. Not being able to collect from customers for services rendered or products provided is a major reason small businesses are going under. Yet, remedies are available to collect what is owed.

Customers who have promptly paid in the past are allowing payables to exceed 30, 60, 90 or 120 days. When a friendly reminder from the business owner or a past due notice does not get the job done, a business owner might consider taking the collections efforts to the next level.

Receipt of a letter from an attorney, emblazoned with the firm's letterhead, may be sufficient to get a past due customer's attention. Many individuals will respond to a letter from an attorney because of the fear of a lawsuit, effect of a judgment on their credit rating or even the thought that the individual's public perception will be diminished.

Often, an attorney letter is all it takes for an overdue invoice to be paid. The cost to retain an attorney to write a letter could be well worth the effort. But, what if the letter is not effective? A follow up telephone call to the individual from the attorney will show persistence and will put added pressure on the individual to pay. Although an attorney cannot talk to a defendant who is represented by counsel, there is no prohibition on direct contact before a lawsuit is filed if the individual is not represented by counsel. The only caveat is that the attorney must not run afoul of the Fair Debt Collection Practices Act (<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf>).

At this juncture, the work incurred for the attorney's time (drafting a demand letter and a telephone call or two), can be accomplished in an hour or less and usually be justified. If these tactics are successful, the majority of unpaid invoices will be collected. What if these additional tactics are not successful? A decision must be made: does the size of the unpaid invoice warrant sinking more money into the endeavor to collect? Does the debtor have assets that are collectible? An attorney should explain the process and discuss the costs associated with further collection efforts. While an attorney can never be a predictor of success, the pros and cons of pursuing the matter will allow the small business owner to make the right decision. The next step in the process depends on the amount owed.

**Small Claims**

An individual or sole proprietor can sue in Small Claims Court for \$7,500.00. A

corporation or business can sue for \$5,000.00. A Plaintiff may only file two (2) cases each year for more than \$2,500.00. (<http://lasuperiorcourt.org/smallclaims/ui/>). Small Claims Court is informal, without the customary rules of evidence. There are no juries. A lawyer may advise and prepare a client for the hearing but the actual hearing excludes attorneys. Filing fees range from \$30 (if the claim is for \$1,500 or less) to \$75 (if the claim is more than \$5,000 but less or equal to \$7,500). In Los Angeles County, Small Claims can be filed online (<https://lasuperiorcourt.org/efiling/Login.aspx>).

Upon filing a Small Claims action, the defendant is entitled to file a cross-claim. However, if the matter is simply for non-payment of services rendered or goods sold, the defendant may have no grounds for such a filing or may not have a valid defense. There is little risk in filing a Small Claims action and the costs are low.

If a judgment is entered by the Court and the judgment debtor refuses to pay the judgment willingly, the small business owner's attorney can attempt to collect. An attorney can take a number of actions to enforce the judgment. These include:

--Garnish the judgment debtor's wages until the debt is paid;

--Levy execution on the debtor's bank accounts so the judgment debtor's bank accounts will be accessed to pay the judgment;

--Record an Abstract of Judgment. A lien is placed on any real property owned by the judgment debtor. If the property is sold or refinanced, the creditor should be paid out of proceeds before the title can be transferred;

--Record a personal property judgment lien with the Secretary of State

--Require a "till tap." Money is removed by a sheriff from the cash register of a judgment debtor's business.

--Place a "keeper" in the debtor's business. Here, a sheriff will remain in the judgment debtor's business and collect all funds until the judgment is paid. This can include cash, checks and credit card drafts;

--Conduct a judgment debtor's examination. The judgment debtor appears in court to answer questions, under oath, about money and property that can be used to pay the judgment. The attorney can subpoena documents such as bank statements, pay stubs and property deeds;

--Suspend the judgment debtor's driver's license. The judgment debtor's driver's license can be suspended if the judgment is not paid within 30 day of final judgment. If the judgment is less than \$750, the judgment debtor's license can be suspended for 90 days. If the judgment is more than \$750, the debtor's license can be suspended until the judgment is paid.

## **Limited Jurisdiction**

When the debt is over \$7,500 but less than \$25,000, a complaint can be filed in the Limited Jurisdiction Courts of the Superior Court. The filing fees is \$205 to \$330 (depending on the size of the claim). Once the complaint is filed and served on the defendant, a judge will be assigned and the defendant will have 30 days from the date of service to file a responsive pleading. Again, if the debt is undisputed, the defendant will likely not bother to respond. However, the hope is that the complaint filing will force the defendant into either paying the full amount of the claim or settling for a mutually acceptable amount.

If the defendant fails to respond, a Request for Default is filed and once a judgment is entered by the court, the above collection efforts can be applied. However, if the defendant files a response to the Complaint (which may include a Cross-Complaint), the case will continue.

## **Unlimited Jurisdiction**

When the debt is for over \$25,000, a complaint can be filed in the Unlimited Jurisdiction Courts of the Superior Court. An attorney will draft an initial complaint (filing fee: \$355). As with cases in Limited Jurisdiction, if the defendant fails to appear, the default can be taken and collection efforts ensue. However, if the defendant files a response to the Complaint (which may include a Cross-Complaint), the case will continue.

## **Attorney Fees**

Some contracts or unpaid invoices contain an attorney fee provision in which case, the judgment creditor can request that the Court award fees and costs expended to file and pursue the lawsuit. Any attorneys' fees and costs awarded are added to the total amount of the judgment. This is another incentive for the defendant to pay the amount owed.

With the assistance of the legal system, receivables can be collected efficiently so small businesses owners can put more money in their pocket--and a chance to survive even in times of economic uncertainty.

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