DIY Debt Collection

Introduction

The purpose of this pack is to provide you with some practical steps you can take yourself, to get paid in your business, before deciding whether to instruct a solicitor. It is intended to help you to get paid without throwing good money after bad.

Everything in this pack is general information only and **nothing in this pack is legal advice**. The only advice that I will give you is, when it comes to something as important as your legal business; you should use a qualified professional.

This pack is a useful resource that I have developed to help you to get paid without incurring legal costs. I intend developing different products in a variety of areas that may also be very helpful for you.

I will be sharing these products free with people on my e-mail list. So, if you find this pack useful and you are not already on my list, please go to www.flormccarthy.com and join now.

All the best, Flor

14th October 2012

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DIY Debt Collection

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DIY Debt Collection

Prevention is Better Than Cure.

I can't emphasise this enough. Put the measures in place to ensure debtors don't become a problem in the first place. For example, see the Top Ten Tips for Getting Paid by Helen Cousins.

Terms and Conditions

The first things you need are clear terms and conditions, so that the contractual terms with your customers and clients are clear and incapable of dispute. Have these drafted properly before you start and make sure that they are communicated to every account you deal with from the start.

Make sure your terms and conditions are drafted properly by someone who knows what they're doing. You should only need to do this once for your entire business, so it's well worth a little extra care. Be careful about sourcing what might seem like standard terms and conditions online. Often these refer to different legal systems and are not suitable for use in Ireland.

In particular be careful of terms and conditions obtained online which contain foreign jurisdiction clauses or are stated to be governed by the laws of a different country or state.

If you do end up wanting to recover from someone who owes you, you do not want to find when you do go to a solicitor that your terms and conditions state that the contract is governed by the laws of somewhere like Delaware and submitted to the exclusive jurisdiction of the courts there. That will not help with recovery before a court in the Republic of Ireland.

Interest

Be careful about interest. You are entitled to it and the European Communities (Late Payment in Commercial Transactions) Regulations 2002 (SI 388 of 2002) set out clear enforceable provisions in relation to interest (at the time of writing at a rate of 8% per annum from 1st July 2012). After judgement is entered you are entitled to interest under the Courts Act, 1981 automatically, which is also currently at 8%.

But, and its and important BUT, if you need to initiate legal proceedings afterwards the amount of any interest claimed needs to be kept separate from the underlying amount due for the goods supplied or services rendered by you. So, account for, and charge, interest as permitted by the regulations but keep the interest figure separate from the underlying principal amount due and always quote the principal amount in your recovery correspondence.

Make Sure You Have The Right Party

You need to be clear on the entity you are dealing with. Is it an individual who is simply a sole trader? Is it an individual trading under a registered business name? Is it a partnership? Is it a company or other corporate body?

You need to have the entity right as, if necessary, your proceedings will be based on this afterwards. You should have covered this at terms and conditions stage. If not, don't worry, you can still deal with it now, but do make sure you get your terms and conditions right for next time.

If the entity you are dealing with is anything different than a single individual operating under their own name, you can go to the Search Area of the Companies Registration Office website to search to see if you are dealing with a company or a registered business name:

Send Regular Statements.

You shouldn't consider escalating the matter to legal proceedings until you have exhausted some reasonable internal credit procedures. The debtor should get a 30 day, 60 day and 90 day statement. This is not essential before taking the legal route but it just makes good business sense as regular reminders are far likelier to make people get on with it and just pay up.

And be imaginative in this. I have one very wealthy and successful client who told me he always has a soft spot for paying when he gets a statement with the stamp of the fellow down on his knees crying for payment because it makes him laugh. Use whatever works. Remember, persistence is the key to success in all areas of business. So don't expect to get paid if you don't stick at it.

If the Regular Statements Don't Work: Escalate It.

Here's where the DIY Debt Collection Pack kicks in. I've given you four sample suggested letters that you might use after the debt is outstanding for more than 90 days.

The first is an urgent demand that suggests the possibility of legal proceedings for the first time.

The second is designed to be sent 14 days after the first and reinforces the message in the first final demand.

The third is a final demand and is intended to be sent 7 days after the second letter.

And the fourth is the formal 7 day warning letter giving notification of the intention to refer the matter to solicitors to commence legal proceedings setting out the consequences of such proceedings in detail.

While these letters seem repetitive; again remember the importance of persistence. They may ignore or not even open one, but when they start to get a succession of them,

all escalating in terms of the consequences of ignoring them, you have a much better chance of successful payment.

Ultimately, if the letters are ignored, you can consider following up with a solicitor's initial 7 day letter of demand at the very least. This is an inexpensive legal option and may have a very potent effect coming on the back of an organised sequence of warning correspondence.

You might consider sending these letters, or just the last one by registered post. This won't make any difference from a legal point of view, but the registered letter may have a psychological effect. If the registered letter is returned not called for, send it again by ordinary post.

Let them know you're relentless. If they see you're this determined yourself, they may well get the impression that you might take the same approach when you put it into the hands of your lawyers.

WARNING: Nothing mentioned here forms part of any formal legal process and it will not make any difference in terms of your legal ability to recover in the event that you do subsequently issue proceedings. The purpose of this suggested process is to encourage payment before embarking on the route of legal proceedings and incurring costs. However, if you overstate your case, you exaggerate the consequences or the legal remedies available to you or you act in a menacing way towards your debtors you will do your prospects of recovery far more harm than good.

Follow Up On The Phone

At every stage in the process, follow up the debtor on the phone. Make a list of your aged debtors and schedule outstanding ones for a call in the days following receipt by them of their 30, 60 and 90 day statements. If it makes it easier for you develop a simple script for these calls. The written communication combined with the personal follow up call can be very effective.

It helps to keep brief notes of your conversations. Use a diary. Jot down in the diary when you spoke to someone, who it was and what they said. Get them to make a commitment to pay and set a fixed deadline for doing so. Record this deadline in your diary and when it comes up, call them again to chase it up.

Use the diary when you come to use the sample letters. Send them in the sequence suggested and be consistent with the timing. If you threaten to send the next one in 7 or 14 days, make sure they receive it within that time frame. This will make much more impact; it will show that you mean what you say and that you do not make idle threats. It will make the debtor much more likely to believe that when you say you are going to bring legal proceedings and pursue them for costs, that you will do it.

When you escalate it to warning letters of legal action, continue to follow up on the phone, but be clear and firm with the debtor that if the debt is not paid, you will pursue

it. You can reinforce the message in the letters that if legal action is commenced it will be pursued and will have very serious consequences for the debtor.

Be Honest and Act With Integrity.

It's really important to get paid. But make sure you're on the right side of the argument at all stages. Don't make stupid threats or exaggerate what you might be able to do to the debtor for non-payment.

If there is a genuine dispute or complaint, deal with it. On the other hand, don't let someone raise a spurious claim or dispute simply to put you off or thwart recovery, that's the oldest trick in the book.

But do be straight and act with integrity at all times. The last thing you want is to commence debt collection proceedings against a person and find yourself on the wrong end of a judge's wrath because you've told porkies or abused your position.

Credibility is an important point to bear in mind in this context. Be careful making threats you don't seriously intend following through on. Remember the boy who cried wolf and consider that in order to be effective at this, you need to be capable of being taken seriously.

If the Debt's Really Old; Don't Mess Around with This Stuff: Take Legal Advice and Issue Court Proceedings.

All of what we are discussing here assumes that the debt is recent, i.e. within the last 120 days, certainly within the last 12 months. If the debt is an old one, do not take any risks with missing any statutory time limits for recovery of your debt and get legal advice immediately. Generally speaking, legal proceedings for recovery of debts for goods and services must be brought within 6 years of the date the debt first became due. If you are anywhere near such a statutory deadline, unless you issue court proceedings immediately you may never be able to pursue a claim for recovery of the debt.

Is It Worth Pursuing Further?

Well, before deciding on proceeding any urther than an initial solicitor's letter, you need to consider whether the debtor is able to pay. If they are genuinely unable to, don't bother, you can't get blood from a stone and you are only wasting money on the legal process if they can't pay.

Check the entity you are dealing with. Again you can do a search in the Companies Registration Office.

You need to know what you're looking for. If it's a business name, get a printout of the business name (anyone with a credit card can do this on the CRO site) and see who is the registered owner of the business name. If the owner of the business name is an individual person, that's who you're pursuing. If it's a company, you need to do a search on the company. The first thing is to see if the company is designated as normal (as opposed to dissolved, in liquidation, or in receivership in which case, for the most part, forget about it. However, there is one possible exception to this that I will mention briefly under other options below.)

After that, you might want to consider looking into the company in a bit more detail to see if it's worth pursuing. The most recent B1 filed will show you the last annual return with accounts and will tell you who the owners of the company were at that stage. It may not be reliable in terms of the current worth or level of solvency of the company but it's a good start. A basic printout of the company will show you who the current directors are and give details of any charges registered against the company. B10's will show details of changes of directors.

You might also want to consider title searches to see if the individual or company is registered owner of land or property. If they are it may be worth pursing them and registering a judgment mortgage over the land or property in respect of the debt. Title searches can be done in the Land Registry and the Registry of Deeds. Land Registry searches are relatively easily carried out but may not be conclusive. Registry of Deeds searches are trickier and you need to know what you're looking for.

The Land Registry has recently introduced a consumer site where you don't need a corporate account to search. It's here: https://www.mypropertytitle.ie/praMap.aspx

However, you can't do a search by name on this site and you need to know the property you are looking for in advance. More detailed searches by reference of the names of potential debtors can be done in the Land Registry by corporate account holders. For this you need to either engage a solicitor with a Land Registry corporate account or talk to a specialist law searcher. (Of course, you can always get a corporate account yourself, but they tend to look for a minimum deposit payment upfront, which is unlikely to be worthwhile for a once-off search.)

You can also carry out judgment and credit searches to get a picture for a debtor's credit worthiness or ability to pay. There are a variety of sites, http://www.vision-net.ie is one that I find useful, but again you need to have a corporate account to be able to access the more powerful elements of the searches.

Be sure that the debtor is worth pursuing and CAN PAY before incurring any more money on debt collection. You can carry out many searches yourself but you can also waste a lot of time and money on this with little to show for it if you don't know where to look or what you are looking for. So, bear in mind that it may be more cost effective

and you may get much more useful results if you engage someone who knows what they're doing to do a preliminary investigation for you.

Next Steps

If you consider it worth pursuing, the next step is to instruct a solicitor. If you've followed the procedures in this pack, the solicitor's job will be considerably easier. The first thing they will do is send a 7 day letter of demand. This in itself can be very effective, particularly if it is co-ordinated to follow on from your own series of demand letters which you send before you instruct the solicitor.

After that the procedures are as follows:

Judgment

- If the debt is worth from €0 to €6,348.69 your claim will be in the District Court.
- If the debt is worth from €6,348.70 to €38,092.14 your claim will be in the Circuit Court.
- If the debt is worth more than €38,092.14, your claim will be in the High Court.

In each case the procedure involves issuing a summons against the debtor. If the summons does unanswered and undefended, judgment can be entered what is called summarily in the office of the court concerned without the necessity of a court appearance. This is where the warning regarding interest referred to above comes in, if you're claiming interest you can't have judgment entered summarily, so for practical purposes it's easier to waive interest at this stage. If the claim is disputed you can always claim it. Interest will accrue automatically at the Courts Act rate (8%) after judgment is entered.

After you have succeeded in having judgment entered you can proceed with enforcement of judgment.

Registration of Judgment

The first and simplest step is to register the judgment in the Judgment Section of the High Court. This will have the effect of publishing the judgment and it will be picked up in the journals such as Stubbs Gazette and the Irish Credit Bureau.

Judgment Mortgages

The next step is to consider registration of the judgement as a judgment mortgage if the debtor is registered owner of land or property. Your searches will have told you whether this is an option.

Once you have registered a judgment mortgage on the property, you may either decide to sit a wait: the judgment mortgage is valid for 12 years. Or you may bring

further legal proceedings seeking what is called a well charging order leading to a forced sale of the property by the court.

Instalment Orders

The next step is to consider applying for an instalment order in the District Court. No matter what the amount of the debt, once judgment has been entered the appropriate court for enforcement by way of instalment order is the District Court. This is done by means of a system called a Summons for Attendance of a Debtor. This is a court summons obliging the debtor to attend court personally and provide a sworn statement of their means. They can be subjected to cross examination publically in open court by reference to this statement of means.

This may be the first physical court appearance a debtor may have to make and can have a significant psychological effect. It is also the first and simplest opportunity to force the debtor to provide a sworn statement of their means and to subject it to close scrutiny.

After an instalment order is made the debtor is obliged to pay the debt in the instalments ordered, depending on his or her means.

Committal Orders

If the debtor fails to pay the instalments, an application can be made to commit the debtor to prison for failure to pay. Practically speaking, unless the debtor is very obviously able to pay and is simply refusing to, the option of committal to prison is one that I am slow to recommend to anyone as the courts are extremely reluctant to jail people for private debts if there is any genuine inability to pay.

Debtors must now be have legal representation at committal applications and may qualify for free legal aid in the process. You will end up having to pay your own legal costs, with very little prospect of recovery if the debtor is genuinely unable to pay. It's rarely worth it.

Other Options

Depending on the nature of the debt and the debtor there are a variety of other options that can be considered:

If the debtor is owed money by others, the concept of a garnishee order can be considered, which is an order seeking to have the money owed to the debtor paid directly to you.

If the debtor is a company, the question of liquidation can be considered but it will only be worthwhile if there is sufficient value in the company to pay a liquidator. I mentioned above that there is one instance where it may be worth having a closer look at dissolved companies. If a company shareholder or director has allowed a company to be struck off for failure to file returns, the benefit of limited liability may be lost. If there

is evidence of breach of the Companies Acts and abuse of the limited liability provided by company status the question of pursuit of the people behind the company personally arises. There may also be grounds for an applicant to restrict those involved in acting as directors of other companies. It's not always possible or practical, but if the shareholders or directors are worth pursuing and they have been flouting their statutory duties and obligations under the Companies Acts, it may be worth looking into in more detail.

In the case of abuse of corporate status or breach of company law, a complaint to the Director of Corporate Enforcement may be warranted.

Ultimately, the possibility of an application for personal bankruptcy may be worth considering.

Get More Free Helpful Stuff

This pack is a useful resource that I have developed to help you to get paid without incurring legal costs. I intend developing different products in a variety of areas that may be very helpful for you.

I will be sharing these products free with people on my e-mail list. So, if you found this information useful and you are not already on my list, please go to www.flormccarthy.com and join now.

Sample Demand Letters

I have provided a series of suggested demand letters, which can be described as follows:

NB: all text highlighted in square brackets [like this] in the text, is intended to be removed from the final form of the letter and replaced by you with the text relevant to your situation.

First Letter: Urgent Demand

The first is intended to be sent after the expiry of your 90 day period of three statements. You can adjust the wording to suit your own circumstances, e.g. if you don't issue regular statements or if you've allowed more than 90 days to elapse you might not want to refer to any period of time that the debt has been outstanding.

I have made reference to an enclosed addressed envelope in the letter, this is obviously optional. But it strikes me that you might think of doing everything possible to make it easy for the debtor to pay at this stage. (I'm talking addressed envelope only here, I'm not suggesting you to pay for the stamp. If you can't be bothered enclosing the envelope, just leave it out.)

Second Letter: Second Urgent Demand

The second is intended to be sent 14 days after the first. Obviously, change the reference to the number of days the debt is outstanding to suit our circumstances.

Again, see the reference to the envelope, this is optional and can be omitted as you see fit.

Third Letter: Final Demand

The third is intended to be sent 7 days after the second. At this point we've dispensed with niceties like envelopes and the progression towards legal action is quite clear.

Fourth Letter: Threat of Immediate Legal Action for Non-payment of Debt

The fourth is intended to be sent 7 days after the third. This is akin to a solicitor's letter threatening debt collection proceedings and sets out in detail for the debtor the consequences that he or she may face if that route is taken.

You might want to consider sending this final letter, or indeed any of them, by registered post. Registering the letter will not have any effect legally, but receipt of a registered letter may have more impact. Of course, if you do register the letter and it is returned because it is not collected, send it again by ordinary post.

WARNING: None of these letters form part of any formal legal process and will not make any difference in terms of your legal ability to recover in the event that you do issue proceedings. The purpose of these suggested letters is to encourage payment before embarking on the route of legal proceedings and incurring costs. However, if you overstate your case, you exaggerate the consequences or the legal remedies available to you or you act in a menacing way towards your debtors you will do your prospects of recovery far more harm than good.

And remember, none of this is legal advice, if that's what you want, engage a qualified professional.

[First Demand Letter]

[To be placed on your headed paper]

[Name of Debtor]

[Address of Debtor]

[Date of Letter]

Re: Outstanding Debt of € [Insert Amount]

URGENT DEMAND

Dear [Mr/Ms Surname of Debtor],

You will note that the sum of **€[Amount Due]** is due by you. This amount is now outstanding more than **90** days.

We would like to draw it to your attention that in the event of non-payment by you we will commence our legal Debt Collection procedure in respect of your case and we will pursue the amount due by you together with legal costs until settled in full.

It is strongly in your interests to avoid the additional expense and embarrassment of a court appearance. We strongly advise you to take this opportunity to reach an amicable solution.

Please now pay the sum of **€[Amount Due]** due by you and return it to us by return of post [in the attached addressed envelope].

Yours faithfully,

NB: When we instruct solicitors to ligate on our behalf, we pursue all cases to judgment and pursue recovery of all associated legal costs. We publish all registered judgments in trade journals including Stubbs Gazette and the Irish Credit Bureau. Appearing in trade journals such as Stubbs Gazette and having a judgment registered with the Irish Credit Bureau will have a severe impact on an individual's or a company's credit rating and will make it considerably harder and more expensive for them to obtain credit in the future.

[Second Demand Letter]

[To be placed on your headed paper]

[Name of Debtor]

[Address of Debtor]

[Date of Letter]

Re: Outstanding Debt of € [Insert Amount]

SECOND URGENT DEMAND

Dear [Mr/Ms Surname of Debtor],

We refer to our letter to you of [insert date]. You will note that the sum of **€[Amount Due]** is due by you. This amount is now outstanding more than **104** days.

We would like to draw it to your attention that we have now commenced our legal Debt Collection procedure in respect of your case and we will pursue the amount due by you together with legal costs until settled in full.

It is strongly in your interests to avoid the additional expense and embarrassment of a court appearance. We strongly advise you to take this opportunity to reach an amicable solution.

Please now pay the sum of **€[Amount Due]** due by you immediately and return it to us by return of post [in the attached addressed envelope].

Yours faithfully,

NB: When we instruct solicitors to ligate on our behalf, we pursue all cases to judgment and pursue recovery of all associated legal costs. We publish all registered judgments in trade journals including Stubbs Gazette and the Irish Credit Bureau. Appearing in trade journals such as Stubbs Gazette and having a judgment registered with the Irish Credit Bureau will have a severe impact on an individual's or a company's credit rating and will make it considerably harder and more expensive for them to obtain credit in the future.

[Final Demand Letter]

[To be placed on your headed paper]

[Name of Debtor]

[Address of Debtor]

[Date of Letter]

Re: Outstanding Debt of €[Insert Amount]

FINAL DEMAND

Dear [Mr/Ms Surname of Debtor],

We regret to note that despite previous letters the above balance is still outstanding.

Unless you contact us within 48 to agree payment:

1. We will commence our legal Debt Collection Procedure against you and place the matter in the hands of our solicitors to issue legal proceedings against you for the full amount overdue including interest and legal costs.
2. In the event that judgement is entered against you in those proceedings, we will register the judgment and publish it in all relevant trade journals, including Stubbs Gazette and the Irish Credit Bureau.

Yours faithfully,

NB: When we instruct solicitors to ligate on our behalf, we pursue all cases to judgment and pursue recovery of all associated legal costs. We publish all registered judgments in trade journals including Stubbs Gazette and the Irish Credit Bureau. Appearing in trade journals such as Stubbs Gazette and having a judgment registered with the Irish Credit Bureau will have a severe impact on an individual's or a company's credit rating and will make it considerably harder and more expensive for them to obtain credit in the future.

[Letter in Advance of Legal Proceedings]

[To be placed on your headed paper]

[Name of Debtor]

[Address of Debtor]

[Date of Letter]

Re: Threat of Immediate Legal Action for Non-payment of Your Debt to Us

Amount of Debt - €[Insert Amount]

Dear [Mr/Ms Surname of Debtor],

We refer to your overdue account full details of which have previously been supplied to you in writing. We note that the amount of €[Insert Amount] is currently outstanding and payment has not been made in respect of your account in over 120 days, despite our repeated reminders.

We wish to inform you that we have a strict policy of pursuing all debts owed to us. Accordingly if payment is not made in respect of the above account within **SEVEN (7) DAYS** of the date of this letter we will be forced to instruct our solicitors to initiate legal proceedings to recover the debt owed by you.

Please note that in the event that we instruct our solicitors initiate legal proceedings against you an application will also be made to the court to have you fixed with the legal costs of these proceedings along with any other fees which are necessary and incidental to the same, including any barristers' fees, court stamp duty and any other associated costs.

Please further note that an application will also be made to have you fixed with interest on the amount owed by you pursuant to the Courts Act 1981. The rate of interest applicable will be 8%.

In the event that proceedings are issued and judgment is obtained against you, arrangements will be made for the immediate publication of the judgment in all appropriate trade journals, including Stubbs Gazette and the Irish Credit Bureau.

This will have an extremely adverse, and potentially permanent, effect on your credit rating.

In the event that judgment is entered again you, and not paid in full, we will be obliged to instruct our solicitors to issue a court summons requiring you to appear personally before a court, provide a sworn written statement of means and then be publically cross examined in open court on your personal financial circumstances.

If we are forced to retain our solicitors to pursue this debt on our behalf, they will also be instructed to register any judgments obtained against any property you may own and to pass the same to the sheriff to levy execution against you. In the event that judgments are registered as mortgages against property owned by you we may then take action to force the sale of such property in order to satisfy our judgment.

If we do not receive your payment in the amount of €[Insert Amount] within **SEVEN DAYS** of the date of this letter we will instruct our solicitors to commence legal proceedings against you immediately without further notice.

Please give this matter your immediate attention and contact us immediately to settle this outstanding debt in order to avoid legal action being commenced against you without further notice.

Yours faithfully,