

## **“HOW TO DEAL WITH SLOW PAYING CUSTOMERS”**

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During an economic downturn, customers are usually slower to pay your invoice. You may have called, sent letters, faxes and emails without getting them to pay anything for a while. You've considered calling a lawyer but you might not have done so because you might have been concerned about the additional costs for the lawyer's time. Determining whether litigation (going to court) is necessary is most times a very difficult decision because of the money involved in hiring a lawyer and the prospect of disintegrating any chance of settlement. But, unless instructed by you, lawyers don't necessarily jump to go to court right away. Rather, a good lawyer simply puts your interests paramount and does what's best for you, which usually involves discussing and implementing some type of settlement strategy.

### **Here are some tips on resolving such disputes with customers:**

1. Offer to lower the amount due by an acceptable discount amount, say 20% or maybe even up to 40% (depending upon whatever you can afford) off of the amount due (set a deadline date for the offer to be accepted and the manner in which it can be accepted).
2. Offer to set up an acceptable payment plan, perhaps even without charging interest. If possible, couple the promissory note with a security agreement so that you have a lien against the customer's assets and can preserve your right to get paid in the event of a customer's refinancing, sale, liquidation or bankruptcy. It's very important that you perfect the security interest by filing the appropriate documents and paying any applicable fees with the state; otherwise, you'll still be an unsecured creditor. Automatic payments from a credit card would be mutually advantageous so as to eliminate the need for writing, delivering and cashing checks.
3. Offer to forgive a small amount of principal each time the customer pays a large amount of the principal balance. The customer will likely want a written agreement for this alternative.
4. Write a very reasonable and articulate demand letter offering to settle the matter with various settlement alternatives. I recommend you at least use a lawyer to review it but having it on a lawyer's letterhead (stationary) gets more prompt attention.
5. Write a demand letter threatening to sue the customer by a certain date if no payment or response is received. Again, having this letter coming directly from the lawyer's office is usually more conspicuous (less likely to be thrown in the trash) and effective.

Each of the above methods has worked for my business clients at one time or another. Each case is different because each customer may have different ability to pay. It is important to know when to use your lawyer to write the letter and get involved directly with the customer. Most importantly, seek counsel so you can be advised of your rights and strategies under the particular circumstances.

Most lawyers will write the demand letter for either or both an hourly fee and/or a contingent fee. There should be a pre-litigation contingent fee that is less than the contingent fee when litigation is necessary. For example, the lawyer might only charge a 15% contingent fee for a pre-litigation settlement but a 33.33% (one-third) contingent fee if the lawyer has to go to court for you, which means that if the matter is settled prior to filing the complaint, then you only pay the lawyer 15% of the amount recovered but once the complaint is prepared and filed, the lawyer is entitled to one-third of the amount recovered. Also remember that negotiating the details of the settlement agreement may take some time, possibly a few days or longer, which may add some cost to you if the lawyer is charging an hourly fee.

However, remember, getting some money now is better than some more money two years from now or never. Always try to work with the customer to get some payments coming in, even if they are very small payments. Helping to keep the customer in business goes a long way to generating the goodwill that might be fruitful in having that customer use your services or buy your product in the future. And they just might refer you some other business in the meantime and in the future.

If you cannot resolve the matter prior to litigation, you might have no choice but to sue the customer. And, never forget, you can always maintain the opportunity to negotiate a settlement even after you've filed the lawsuit against the customer. Starting the lawsuit starts the clock ticking in your favor and gets you closer to a judgment, which makes you closer to becoming a secured creditor. Don't quit after you get a judgment. You need to docket the judgment in order to get a state-wide lien against the assets of the customer by filing the judgment with the county clerk and paying the required docketing fee. Only then can you become a secured creditor.

There's no telling whether a customer will go out of business or file bankruptcy. If the customer files for bankruptcy protection, make sure you file your proof of claim to preserve any rights you might have in collecting at least some money from the customer notwithstanding the bankruptcy. As mentioned above, a payment plan that gives you a secured lien (remember to perfect the security interest) on the customer's assets and docketing the judgment are the best ways to preserve your rights to collect because secured creditors are much more likely than unsecured creditors to get paid from the bankruptcy. Take action now to start collecting!

**Darren M. Baldo, Esq., CPA, LL.M., Attorney at Law, LLC** focuses primarily on small business owners and individuals with increasing net worth that have needs involving business planning, contracts, corporations, LLCs, taxation, wills, trusts and estate planning and administration. He is an attorney, a CPA and has a Masters Degree in Taxation.