

DEBT RECOVERY – BE PROACTIVE

If someone owes you money for goods or services supplied, a letter of demand from a solicitor is often the first necessary step.

Sometimes it's necessary to take a range of steps including filing court proceedings and obtaining judgment. Others can include:

- Doing bankruptcy and property searches, and examining the debtor under oath as to their financial capacity;
- Applying to the court for an order that part of the debtor's wages be re-directed to you;
- Obtaining the court's approval to seize and sell the debtor's assets.



It makes more sense however to focus on getting your terms of trade right *before* your next defaulting customer comes along. You should consider ensuring that your terms of trade include:

- A clause that charges the customer's property in favour of you to secure payment of all monies due to you. This can entitle you to lodge a caveat and/or mortgage over the customer's land if there is a default. This will put considerable pressure on the customer to rectify any default in payment.
- If the customer is a company, a personal guarantee from the director/s in case the company doesn't pay you.
- A term that ownership of any goods that you supply is not transferred to the customer until full payment for the goods has been made.



- A provision that entitles you to recover interest on any unpaid invoice at a specific rate from a specific date, such as the date you supplied them.
- A term that you are entitled to be indemnified by the customer for your legal costs if you need to take legal action to enforce payment.

If you are running a business and you want to ensure that your terms of trade are as effective as they should be, telephone Chris Kohler or Luke Skinner on (07) 3123 5700 for advice.

INTRODUCING CHRIS KOHLER

Chris is the leader of our litigation team. He has twenty years of experience in a broad range of areas

including:

- debt recovery
- business disputes
- contract disputes
- negligence claims
- lease disputes
- property disputes
- resumption claims



Career

Chris joined Hollingworth & Spencer in early 2009.

Previously he worked for legal firms in Townsville, on the Sunshine Coast, and in Toowoomba where he was a partner at Dean Kath & Kohler Lawyers.

Interests inside the law

Chris enjoys working in all the areas of law listed above. He is a keen proponent of utilising mediations and settlement conferences to resolve disputes and thereby dispense with costly court hearings. He has a strong track record of resolving disputes in this way.

Interests outside the law

Chris is a keen surfer and often spends his weekends looking for the best waves on offer between Noosa and Coolangatta. In the colder months he prefers to hang up his wetsuit and take the occasional family snow holiday.

HIGHLIGHTS AT THE FIRM

- Recently at Hollingworth & Spencer we've had some good results in court:
- We obtained judgment and a costs recovery order against a professional firm which had wrongfully applied money in its trust account in payment of an invoice.
- We settled out of court a defective workmanship claim in respect of hydraulic plumbing services supplied.
- We settled a long-running dispute about the supply of a substantial amount of paint alleged to be the wrong colour.

SEE YOUR SOLICITOR FIRST BEFORE SIGNING THAT CONTRACT

Signing a contract to buy a home or investment property may seem straightforward. After

all people do it every day. Unfortunately, as solicitors, we are regularly called upon to help clients who

have been caught out by signing contracts which do not always reflect what they thought they were agreeing to. We recommend that before you sign any contract you have a solicitor consider these sorts of issues with you:



- Does the contract correctly identify you and the property?
- Are all the items you intend to acquire with the property (eg dishwasher, pool equipment) actually included in the contract?
- Is the contract subject to finance?
- Is the contract subject to a building and pest inspector's report?
- Do you need to ensure that the sale of your current home is completed before you can settle the purchase of your new home?

At Hollingworth & Spencer we are happy to review any standard sale or residential contract prior to signing as part of our standard conveyancing retainer. Review of a proposed contract is part of our allowance of half an hour of solicitor's time included with each fixed fee conveyance. Please contact property lawyer, Sue Fleming, on (07)3123 5700 for advice.

WEALTH CREATION TIPS

- All savings should be in the name of the lesser income earner, unless they are involved in a risky job or occupation.
- All deductions (e.g. donations to School Building Fund) in the name of the larger income earner.
- Always keep a folder for all legitimate tax deduction receipts as received throughout the year.
- Pay credit card off by the due date each month to avoid interest payments
- Do a monthly family budget and plan your bill payments, expenses and saving creation.
- Have specific saving goals and share them with your children to demonstrate a good example.
- Accumulate your superannuation records in one place and keep a watchful eye on the fund. Seek advice.

- Ensure you hold a current Will and review this every five to seven years.
- Organise life insurance and income protection on your superannuation as this is the cheaper option.
- Keep a motor vehicle Log Book for business or employment income (excluding travel to/from work).
- Check that your bank has your Tax File Number registered to avoid paying withholding tax.
- If in-between jobs, keep a list of expenses related to finding your next job.

For information specific to your situation, contact the author of this article, Kerry Parry at Gap Tax and Accounting, Unit 3/23 Glenaffric Street Tel: (07) 3300 6485

SELF MANAGED SUPERANNUATION FUNDS

Do you want to have a greater say and control on how your funds for retirement are invested? Are you not satisfied with the performance of your current retail or industry superannuation fund? Then a Self Managed Superannuation Fund (SMSF) may be right for you.

SMSF's provide a customised wealth creation and succession vehicle for you and your family and often represent the most effective tax investment structure available.

Benefits of an SMSF include:

- Control of your investments
- Wide investment choice including property
- Flexibility
- Concessional tax treatment
- Under bankruptcy laws, SMSF assets are usually protected from creditors
- Less administration costs when compared to traditional funds.

If you want to find out more about SMSF's please contact the author of this article, Jim Walker of Super Solutions* on 07 3300 4633.

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