

Protect Your Right to Get Paid

Practical Advice for Collecting Your Receivables

By Gary M. Heller, Hodgson Russ LLP

It is no secret that full and prompt payment from customers is the lifeblood of any home business. Unfortunately, most home business owners quickly learn a hard truth: Some customers simply do not pay their bills. It is, therefore, absolutely essential for all home business owners to establish internal procedures directed toward ensuring timely payment, while simultaneously maintaining awareness of the most effective ways of dealing with delinquent customers.

THE IMPORTANCE OF WRITINGS

Because many home business owners rely on referrals from people they know, the temptation exists to conduct transactions informally. This is a mistake as the people we know best often assume that timely payment is not an issue of concern. Recognizing this, be sure that all transactions are evidenced by a confirmatory writing. The form of that writing may vary depending on the goods or services you are selling, but it is a good rule of thumb to create clear receipts when the transaction consummates, and thereafter timely deliver monthly invoices, all of which identify your company by name and address and include the customer's name, the goods/services purchased, the deadline for payment, and the penalty if payment is delinquent (usually in the form of interest). The specter of paying penalties creates an incentive for prompt payment. For transactions involving payment over time, it is advisable to request up-front money, particularly from customers who are not well known to you.

If the goods or services you provide call for periodic billing, enter into a formal contract (drafted with the assistance of an attorney) that more specifically describes the terms and conditions of the relationship and includes a penalty provision for delinquent bills. Also include a provision for payment of your attorney's fees if you are forced to seek legal relief. In all events, keep good records of all

invoices, payments, and communications, including emails and other correspondence, as they will come in handy later on if things go south.

If you anticipate a customer's accrual of bills into the thousands of dollars or more (or if you are concerned about a customer's credit worthiness), have the principal owner(s) sign a guaranty that mandates his or her personal liability for paying debts owed by the defaulting company. This is particularly helpful in situations where the customer has closed its doors and/or has no money. Hint: if any contract or guaranty is signed and transmitted by fax or email, insist on delivery of the original signature to protect against future claims of inauthenticity. Also, where a contract or guaranty has been signed by a company representative, to prevent legal challenges later on, always confirm with the owner(s) that the person was authorized to do so.

WHAT DO I DO WHEN A CUSTOMER DOESN'T PAY?

Collecting a delinquent bill can be awkward and unpleasant, but a lack of communication often ensures that you will never be paid. So what is the best way to proceed?

First, the ability to collect is greatest when the debt is new. Therefore, when a payment is missed, promptly contact the customer by phone and attempt to make payment arrangements. This personal approach is effective because it forces the customer to address the problem with you directly. If you prefer to communicate by email, understand that your message may get lost in a forest of other emails.

Set up a system for contacting your delinquent customers no later than one week following each due date. Be friendly, cordial, and non-accusatory, as customers

sensing hostility will tune you out. Approach the situation as if you are trying to help the customer keep current with his or her bills, particularly if you want the relationship to continue. Sometimes the customer has simply forgotten to send payment and your minimal effort will immediately yield the desired result. Other customers may be going through hard times that may call for negotiating a new payment schedule or even a reduction in your bill (an oft-made business decision), but be clear on the payment terms and communicate strict deadlines. Confirm your new agreement in writing. Then mark a date on your calendar and contact the customer shortly before the new deadline to determine payment status. This will make it clear that you are not going away.

Second, if the phone contact is unsuccessful (or if your initial perceived success resulted in another missed deadline), then send a demand letter to the customer (some prefer to send the letter first and thereafter follow up with a phone call). The letter should be polite and identify your company's name, the invoice number(s), the invoice amount, and a statement informing the customer that if she does not dispute the unpaid amount in writing within 30 days, this will constitute its agreement that the debt is valid. You should also attach copies of all relevant receipts, bills, or invoices at issue.

Inform the customer of the steps you will take if full payment is not received. It is best to state your hope to resolve the matter amicably, but caution the customer that, if necessary, you will pursue legal remedies. Be prepared to move forward with a lawsuit, as empty threats simply

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embolden a delinquent customer. Another approach involves waiting until a second demand letter becomes necessary before mentioning a potential lawsuit.

To ensure that demand letters are received, transmit each by email, regular first-class mail, **and** certified mail.

WHAT DO I DO WHEN MY COLLECTION EFFORTS ARE UNSUCCESSFUL?

Dreading the prospect of going to court is understandable, but you may have no choice if other efforts prove ineffective. Because lawsuits can be scary propositions, engagement of a collection agency to recover the debt is an avenue to explore. This path can be effective in dealing with customers concerned about damage to their credit rating if the delinquency is reported.

If you decide to commence a lawsuit, your good record-keeping will pay dividends. If the amount owed is small, you likely will file in small claims court. Although procedures and threshold amounts vary by jurisdiction, small



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claims cases typically will not require an attorney's assistance. For larger debts, hiring a good attorney with knowledge of contract and commercial law is key. It is no secret that this can become a costly proposition. You will be responsible for filing fees and expenses, and the attorney will charge you at an hourly rate or on a contingency basis, typically at least 25 percent of the amount recovered. These

cases usually settle out-of-court, often for a sum significantly less than the amount owed. You should also anticipate that some delinquent customers will go on the offensive and file a countersuit claiming that your company failed to perform its obligations. If this occurs, having kept good records, particularly of communications with the customer, will provide you with a decided advantage when there have been no prior complaints.

Finally, if the debt is not significant or the customer has ceased operations, sometimes it makes sense just to let it go and claim a

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bad debt tax deduction. Some transactions simply do not work out and it is not worth your time, effort, or aggravation chasing after a defunct or insolvent customer.

CONCLUSION

In short, the success of your business includes exercising the initiative to

establish solid record-keeping procedures and methods of communication, many of which are directed toward maximizing timely payment of your bills. They are easy to employ and likely will reduce instances of default. At the very least, you are now armed with the tools necessary to deal with delinquent customers with

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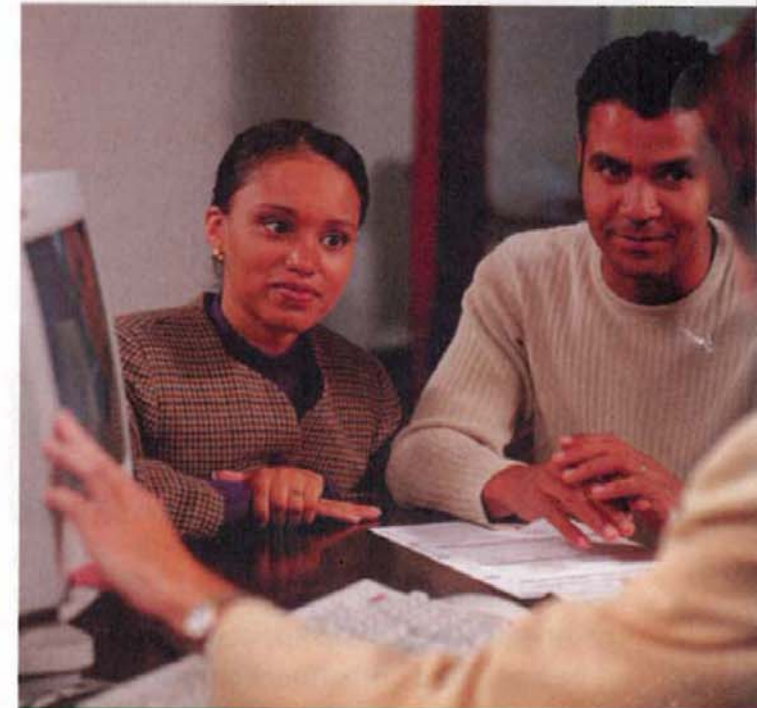
Compliance with the FDCPA

If you've engaged a collection agency to recover debts, keep in mind that collection agencies charge fees against the amounts they recover (usually less than the full debt) and must comply with the Fair Debt Collection Practices Act (FDCPA), which sets forth specific rules prohibiting, among other things, harassment, threats, and calls at odd hours.

Any violation of the FDCPA's provisions can result in compensation to the debtor. Therefore, be sure to perform thorough research to locate a reliable company. Note: as the original creditor, your collection efforts should also comply with the FDCPA (which can be reviewed online), and you may be subject to your own state's consumer protection laws. Speak with a lawyer for advice on the dos and don'ts in debt collection. **HBM**

confidence and purpose, and that usually leads to money in your pocket. **HBM**

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