

Debt Collection

Show Me the Money

*Collecting Debts in
Difficult Financial Times*

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Collecting Debts - Are you happy to fund someone else's lifestyle or business?

Easy does not do it!

In these difficult financial times, individuals and businesses alike are more acutely aware of the need to collect monies due to them and to do so in a stricter time scale than before. In Ireland we have a history of being lenient when it comes to money collection. We favour issuing umpteen letters and telephone calls from our accounts department even when the debt is way beyond stated credit terms, rather than strictly adhering to terms and issuing timely instructions to solicitors. Not any longer. The fast changing economic scene has made everybody sit up with a jolt and realise that the relaxed approach to collecting overdue debts has to be replaced by a smarter, stricter method to ensure survival in this current financial climate.

Take action

Many businesses are now finding that a timely letter from a solicitor can yield far better results than months of gentle prodding by the creditor. Sometimes this is all it takes for the debtor to realise that the creditor is indeed serious about collecting money due and this generally encourages earlier settlement. If not, the Court procedure commences, resulting ultimately in judgment being obtained and enforced in various ways by the creditor.

Heads in the sand.... or in the clouds?

Debtors generally fall into three categories; those who dispute that the amount is due at all, those who admit they owe the money but just will not pay it and those who admit they owe the money but simply do not have the means to pay. The debtor who, regardless of category, decides to stick his/her head in the sand will fare the worst. Given the plethora of enforcement options available in the Courts, it is of the utmost importance that Court proceedings are not ignored by debtors. Such proceedings should be dealt with promptly with the correct legal advice and in a manner geared to achieve a positive result with the least pain for all involved.

Benefits

And what are the benefits to the creditor in promptly handing matters over to their solicitor? It frees up management time for more positive activities. As the creditor's "no-nonsense" reputation spreads and it becomes clear that endless promises will not work, monies due are paid more quickly. In addition the real problem is identified quicker: whether it is a temporary difficulty for a good customer where an arrangement is appropriate or just a bad customer that you need to pursue. Further, by handing matters over to your solicitor without delay, you are more likely to "get ahead of the queue", if the particular debtor owes money to others as well. In next weeks article we will outline what is involved when you ask your solicitor to issue proceedings for the recovery of a debt owed to you.

Collecting Debts - The First Steps to Recovery

In this chapter we will look at what is involved once you have decided to pass your debts to a solicitor for collection.

Accurate Instructions

You will need to give accurate and detailed instructions to your solicitor who will then send a formal demand in writing to the debtor giving seven days within which to pay. If this yields no response, legal proceedings are commenced.

Size does Matter - Which Court?

The Court jurisdiction in which the case will be taken will depend on the size of the debt – the District Court deals with debts up to €6,348, the Circuit Court deals with debts between €6,348 and €38,092 and the High Court deals with amounts upward of €38,092. The proceedings brought for the collection of a debt are known as “summary” proceedings. The aim is to obtain Judgment against the person who owes the debt, the debtor, in the relevant court office based on an Affidavit (a sworn statement) of Debt. There will not be an actual Court hearing unless the case is defended by the debtor.

Judgment Day at the Office of the Court

Once the Court proceedings have been issued and served in the appropriate manner and the requisite period of time for the debtor to pay up has passed, an application is made to the Court office for Judgment and draft judgement papers are submitted. The Court will check the papers and once satisfied, they will issue the Judgment Order against the debtor. On the date that Judgment is given, the Court will also apply interest on the sum due, currently at a rate of 8% per annum. Judgments take approximately one to two months to issue from the District and Circuit Courts and generally two to three months to issue from the High Court.

Tying it down - the Business of Payment

The next stage of the process is getting paid! – In legal terms “enforcing the Judgment” against the debtor. There are many options available to the creditor, depending on whether or not the debtor is a company or an individual. These options include:

- sending the Judgment to the Sheriff’s Office for collection of money or goods to the value of the debt,
- registering the Judgment in the High Court Central Office and having it subsequently published in a trade gazette,
- registering the Judgment as a Mortgage over the debtor’s property,
- obtaining an Instalment Order (this option is not available against a Company) for repayment of the debt with an option for the committal (imprisonment) of the debtor in default of agreed repayments, and
- petitioning for the Winding Up of a Company or Bankruptcy of an individual.

Collecting Debts – Daze of Judgments

In the last chapter, we covered the steps leading to Judgment against the debtor and touched on the various ways of getting payment - “enforcement options“ available once Judgment is received. We will now examine these enforcement options:-

Saddle up and pull out the whip?

The Sheriff is an Officer of the Court who is entitled to collect cash or seize goods from the debtor which can be sold to realise funds for the payment of the debt. Recovery of a debt through the Sheriff’s Office is a cost effective method of recovering debts, particularly those of relatively low value. This method has the advantage that a member of the Sheriff’s staff actually calls on the debtor personally and this can be enough to prompt the debtor to pay. Quite often, the Sheriff will enter into an agreed repayment schedule with the debtor. However, it can be a slow affair and in unsuccessful cases, the Sheriff will return the Judgment to the creditor when the debtor fails to pay and where the Sheriff is of the opinion that the debtor has no goods which can be seized.

Who’s got a good record? – Registration of Judgment

Registering a Judgment in the Central Office of the High Court with subsequent publication in a Trade Gazette, usually “Stubbs”, is often an effective method of securing payment of a debt, particularly if the debtor is still trading. The Central Office Register is open for public inspection and the Gazettes are circulated nationwide in trade circles and provide unwanted exposure from the debtor’s point of view.

Whose Property now? - Registering a Judgment Mortgage

In this option your solicitor will make enquiries in the Property Registration Authority and Registry of Deeds to see if the debtor owns any property and if so, your Judgment can be registered as a charge over the debtor’s property without the consent of the debtor. If there are other charges already registered e.g. a mortgage for a Bank or County Council loan or other judgments registered before yours, your Judgment lines up behind them. If however there are no other charges registered, then your judgment is secured against the property for payment. It becomes a Judgement Mortgage. The Judgment Mortgage remains valid for twelve years (though it must be re-registered every five years) and during this time if the debtor either re-mortgages or sells the property, all registered charges will have to be paid off, starting with the first that was registered. Whilst the Judgment Mortgage may take time to secure payment, it should be noted that it can be used in conjunction with the other enforcement options. Furthermore, if the size of your debt and the value of the property make it worthwhile, you can take further proceedings to force a sale of the property in order to have your bill paid.

Pay up or be Put up at the State's Leisure - Obtaining an Instalment Order

This option is available against an individual only and involves the examination by the Court of the debtor as to his means and his ability to pay his debt, e.g. from a salary. The proceedings are taken in the District Court regardless of the size of the debt and the debtor is ordered to appear in Court and to give an account of his financial situation. In most cases, the debtor is not inclined to appear and the creditor's solicitors ask the Court to grant an Instalment Order for specific monthly or weekly payments and perhaps a lump sum payment, depending on the size of the debt. This Order is then "served on" the debtor and if he/she defaults on the instalments, the creditor can apply to the Court for an Order for the debtor's arrest and imprisonment. It is rare that a debtor actually goes to prison under these Orders as the debtor will almost always come up with the arrears at that stage.

Endgame - Winding Up/Bankruptcy

You can at any stage send a formal notice under the Companies Act 1963 to a Company Secretary threatening that unless payment of the debt is received within 21 days, a petition will be taken to the High Court to have the Company wound up. It is however considered wise to have your Judgment first before proceeding with this option.

In the case of an individual person you can commence Bankruptcy proceedings. This is a lengthy and expensive process and will not give you priority over other creditors. However, in such cases the threat of bankruptcy proceedings may be sufficient to induce payment.

Your Choice Now!

It should be noted that many of these options can be carried out simultaneously and your solicitor will give you advice as to which combination of options will best suit your circumstances. Whilst most people normally only give solicitors instructions to sue as a last resort, legal action can be a highly effective method of recovering debts.

However ...the sooner you take action and call your solicitor, the more effective it is likely to be. Not least, it also frees you up to run your business in the knowledge that your debt collection is in the hands of professionals.

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This article deals in general terms with a complex subject. Whilst we believe the contents to be correct they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situation referred in this article.

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