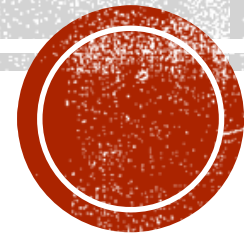


# LIFE AFTER DEBT

Steps for collection on past/over due balances.



# CREDIT APPLICATION

- All collection activities start with a great credit application!
    - Signed by correct parties
    - Personal guarantee
    - Terms of agreement including collection actions
    - Venue for legal actions and the state laws that will govern transactions
    - Legal/collection fees and finance charges covered
    - Include protection against Purchase Order (PO) over ride.
- \*Credit applications are a legal, binding contract. Do not allow terms and conditions to be changed without discussion/negotiation.**



# NO CREDIT APPLICATION?

- Boiler plate language on back of invoices
- Signed invoice copy (with name of signer printed clearly)
- Sale of goods – Governed by four (4) year statute of limitations as part of the UCC
- Verbal contract – 4 years statute of limitations (may vary from state to state)
- Implied contract – can establish a history of customer purchasing and paying as normal course of business



# FIRST CONTACT

First contact is meant to establish communication. Whatever your customer tells you (order is disputed; can't/won't pay) is a starting point.

- Reason(s) for non payment
  - Didn't receive invoice or product
  - Received incorrect product
  - Invoicing/PO or pricing error
- Seven year statute of limitations to collect on old debts.
- Phone calls – must be documented with time and date.
- Text messages – keep copy of original message and any responses.
- E-mails – same as text messages.



# DEMAND LETTERS

- Five or Ten Day Demand letters can be very effective – send both certified and regular mail or other traceable mail courier service
- Intent to Pursue Small Claims – Basically a copy of your small claims form with a note attached stating that, if the balance isn't paid by a specific date, you will file small claims.
- If a corporation, LLC, partnership, etc. and you have personal guarantee(s), have the guarantor(s) served separately from the business, so you will have two actions under the same small claims filing – one for the business and one for the personal guarantor(s)



# DEMAND LETTER / SMALL CLAIMS EXAMPLE

Owner/Personal Guarantor Name  
Company Name  
Mailing Address  
City, State and zip

**Date**

Certified Letter # 0000 0000 0000 0000 0000

Re: Past Due Account

Dear **Customer**,

My name is **(your name)**, I am the **(your title)** for **(your company name)**. Your account has been referred to my office by our **(location/branch if applicable)**. Office/Branch for a past due amount of **\$(past due amount)** for purchases charged **(date of purchase(s))**. These products were sold to you in "good faith" and payment is expected.

**THIS LETTER SERVES AS FINAL DEMAND FOR PAYMENT.** If payment has not been received or contact been made before **(Day, date and year of deadline)** your account will be forwarded to our legal department for collections which may substantially increase the amount owed due to collection/court costs and legal fees. **Additionally, you have signed a personal guarantee for this account so any future collection active may result in a judgment and negative credit rating on your personal credit.**

**Please contact us by phone before (Day, date and year of deadline) at (your contact information) to pay by credit card/EFT or mail your check for payment in full today.**

We report all past due accounts to the appropriate credit reporting agencies.

We remain hopeful, but please govern yourself accordingly.

Sincerely,

Your Name  
Your Title  
Your Company Name

D'Ann Johnson, Credit Manager,  
Roofers Supply  
My Name  
3359 South 500 West  
Address  
Salt Lake City, UT 84115  
City, State, Zip  
801-266-1311  
Phone  
djohnson@roofers.cc  
Email

**DO NOT DISREGARD THIS NOTICE!**  
This document will be filed in South Salt Lake Justice Court on **Thursday, October 1, 2015** unless you resolve this matter. Do not delay! Call 801-506-7537

I am the  Plaintiff  
 Attorney for the Plaintiff and my Utah Bar number is \_\_\_\_\_

In the Justice Court of Utah  
South Salt Lake Justice Court  
Court Address 220 E. Morris Ave, Salt Lake City, UT 84115

Plaintiff v. Defendant And Defendant	<b>Affidavit and Summons</b> Case Number _____ Judge _____
--	--

I swear that the following is true.

(1) Defendant owes me \$ \_\_\_\_\_ for the claim described in paragraph (2).  
plus the filing fee of \$ \_\_\_\_\_  
plus an estimated service fee of \$ \_\_\_\_\_  
plus estimated attorney fees of \$ \_\_\_\_\_ (Attach statute or contract showing you are authorized to claim attorney fees.)  
for a total of: \$ \_\_\_\_\_



# COMMITMENT TO PAY

- Payment agreement – signed and notarized
- Confession of Judgment – allows judgment without court hearing if payment is not made as stipulated in the agreement
- If small payment is made on day 2554, the seven (7) year statute starts over again.



# PAYMENT AGREEMENT EXAMPLE

## MONTHLY PAYMENT AGREEMENT

Date of Service: 01/01/18 thru 08/21/18

Company Name: XYZ Company  
Person signing  
Address, City, State and Zip  
SS# XXX-XX-1111

Account Number: Past Due Invoices:  
OGD00809883-004 \$3,456.02  
OGD00813625-003 \$1,957.24  
OGD00815816-001 \$ 45.19  
OGD00816366-001 \$2,119.77

Total Due: \$7,578.22

Payment Amount: \$1,000.00 per month (minimum)

I, **CUSTOMER NAME**, hereby agree to pay **YOUR COMPANY NAME** the UNPAID BALANCE shown above of \$7,578.22 in consecutive, monthly installments of \$1,000.00 (minimum) per month until balance is paid in full. Said payment must be received in the **YOUR COMPANY NAME** location on or before the 1<sup>st</sup> business day of each month in order to receive credit for on-time payment. Additionally, I understand that interest on any unpaid balance will accrue at **X.X%** per month and payments will be applied to interest first and then oldest balance forward. The first payment installment will be due on or before **DAY, MONTH & DATE, YEAR** and can be made at **YOUR COMPANY ADDRESS OR BRANCH LOCATION**.

I understand that **YOUR COMPANY NAME** may, at their discretion, demand payment in full if I default on this payment plan or fail to notify **YOUR COMPANY NAME** of any circumstance that would affect my ability to repay my obligation. I also understand that default of this repayment plan may result in additional collections costs and legal fees which may negatively affect my credit rating.

I hereby certify that I have read and received a copy of the Monthly Payment Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Print Name \_\_\_\_\_





# 1099C'S

- 1099C – Form can be submitted to the IRS showing that debt to your company has written off can be considered as income for your customer if it is for rental of equipment or something that you company financed as a normal course of business.
- Sometimes, just the threat of reporting will spur customer to pay
- Form is submitted the same year that your company writes off the debt
- Forms must be obtained via mail from the IRS

<https://www.irs.gov/forms-pubs/about-form-1099c>

<https://www.irs.gov/pub/irs-pdf/f1099c.pdf>



# **SMALL CLAIMS**

- **Small claims – filing/case takes place in the county/court that your business resides in if specified in agreement. Otherwise, case is filed and heard in the county/court in which the action took place.**
  - **\$2,500.00 to 25,000.00 limit (depending upon State)**
  - **Most courts require arbitration before hearing**
  - **Sometimes, the threat of court action is motivation to pay the bill**



# SMALL CLAIMS LIMITS PER STATE

Small Claims Court Limits for the 50 States\*

State	Dollar Limit
Alabama	\$6,000
Alaska	\$10,000
Arizona	\$3,500
Arkansas	\$5,000
California	\$10,000, except that a plaintiff may not file a claim over \$2,500 more than twice a year. Limit for a local public entity or for businesses is \$5,000. \$6,500 is the limit in suits by an individual against a guarantor that charges for its guarantor or surety services.
Colorado	\$7,500
Connecticut	\$5,000 (except in landlord-tenant security deposit claims).
Delaware	\$15,000
District of Columbia	\$10,000
Florida	\$5,000
Georgia	\$15,000 (no limit in eviction cases).
Hawaii	\$5,000; no limit on landlord-tenant residential security deposit cases. For the return of leased or rented personal property, the property must not be worth more than \$5,000.
Idaho	\$5,000
Illinois	\$10,000
Indiana	\$6,000 (\$8,000 in Marion County)
Iowa	\$5,000
Kansas	\$4,000
Kentucky	\$2,500
Louisiana	\$5,000 (city court); \$5,000 (justice of the peace, but no limit on eviction cases).
Maine	\$6,000
Maryland	\$5,000
Massachusetts	\$7,000; no limit for property damage caused by a motor vehicle.
Michigan	\$6,500
Minnesota	\$15,000 (\$4,000 for claims involving consumer credit transactions, \$15,000 for claims involving money or personal property subject to criminal forfeiture)

State	Dollar Limit
Mississippi	\$3,500
Missouri	\$5,000
Montana	\$7,000
Nebraska	\$3,600 from July 1, 2015 through June 30, 2020 (adjusted every five years based on the Consumer Price Index)
Nevada	\$10,000
New Hampshire	\$10,000
New Jersey	\$3,000 (\$5,000 for claims relating to security deposits); certain landlord-tenant suits cannot be brought
New Mexico	\$10,000
New York	\$5,000 (\$3,000 in town and village courts)
North Carolina	\$10,000
North Dakota	\$15,000
Ohio	\$6,000
Oklahoma	\$10,000
Oregon	\$10,000
Pennsylvania	\$12,000
Rhode Island	\$2,500
South Carolina	\$7,500
South Dakota	\$12,000
Tennessee	\$25,000; no limit in eviction suits or suits to recover personal property
Texas	\$10,000
Utah	\$11,000
Vermont	\$5,000
Virginia	\$5,000
Washington	\$5,000
West Virginia	\$10,000
Wisconsin	\$10,000; no limit in eviction suits
Wyoming	\$6,000



# JUDGMENT AND ATTORNEYS

- Perfection of judgment is easier through an attorney as they have broader access to garnish wages, bank accounts, tax returns, etc.
- Attorneys – research to ensure you find one that is easy to work with and will handle cases the way YOU want them handled.
- If there is a personal guarantee on file, pursue filing a trust deed filing on customer's home and/or personal property.



# NONSUFFICIENT FUNDS CHECKS

- Don't wait! As soon as you are notified bank the bank, call the customer and ask for repayment plus the NSF check fee.
- If the customer isn't available, call the bank the check is drawn on and ask if there are funds available to cover the check. You can always present the check directly to the bank, in person, and ask for a cashiers check to be drawn if funds are available.
- Have an NSF check letter that clearly states the laws governing returned checks in your state. In Utah, the statue states that you can collect treble damages or up to \$300, whichever is greater, in addition to court fees, etc.
- Letter should be sent certified mail (or other verifiable currier service) with an additional copy sent regular mail. You might consider sending a copy of the NSF letter via fax or e-mail if you have a verified e-mail or fax number. USE CAUTION when sending this way as you do not want this to go to the wrong person.



# NONSUFFICIENT FUNDS CHECKS

- Your NSF letter must clearly state a deadline that payment must be received by to avoid further action. If your customer hasn't responded within five days of this deadline, prepare and send a small claims notice if applicable.
- Depending upon the amount of the check and your state law, you can make a report with your local police department for check fraud – normally it is \$5,000 or greater but check the laws in your state or with legal counsel.
- If the amount of the NSF check is within the small claims threshold in your state, proceed with the small claims processing.

(Helpful Hint – if your customer contacts after you've paid fees for small claims filing and/or service or after they've been served, you may be able to include any processing or legal fees that you have incurred while trying to collect the debt.)



# LIENS AND UCC FILINGS

- Protect your companies interests by filing UCC's or preliminary lien/liens whenever possible.
- You can file UCC's and Lien's yourself, NACM offers services that will file for you at a nominal cost.
- Check your state laws to find out what, if any preliminary lien notices must be made, when and to whom. All filings have a deadline to be sure to calendar those dates so you don't miss the window of opportunity!

**\*Be sure to send all notices certified with return receipt requested. Returned service cards may be used as evidence should any legal matter arise\***



# BANKRUPTCY FILING

- Not always a bad thing
- Chapter 7 – personal. Total liquidation of all assets to pay debt
- Chapter 11 – business debt reorganization. Debtor in possession could mean that you will continue to do business with the same people or it may mean that there will be a court appointed overseer.
- Chapter 12 – Farmers or Commercial fisherman reorganization
- Chapter 13 – Personal/consumer credit reorganization.
- Always file Proof of Claim with copies of all supporting documentation (application, personal guarantee, copy of most recent statement, etc.)

