

Guide: Legal remedies for debt

Legal Remedies for Debt — Disputes Tribunal and District Court

Introduction

The last resort for pursuing stubborn debtors is the legal system. It can be costly, time consuming and frustrating. And it takes you away from what you really want to be doing in your business. It's much better to have a rigorous in-house debtor management system which still manages to preserve the customer relationship. But sometimes the legal remedies are the only ones left.

If you're not ready to take it to court yet, and you have called, emailed, and sent letters to no avail, then, for a fee, your lawyer will send out a legal letter.

This is more likely to impress honest customers than hardened payment evaders and it puts some distance between you and the customer because legal letters are a threat to the customer. The door is starting to close on the relationship.

If it does not result in payment, consider whether to take it further.

The Disputes Tribunal

The Disputes Tribunal is a small claims court which provides New Zealanders with a quick, inexpensive, informal and private way to help resolve a wide range of civil disputes.

There are no lawyers or judges. A referee who has been carefully selected and trained hears a dispute. Any ruling they make is binding and will, if necessary, be enforced by the courts.

If your claim is for \$15,000 or less (or \$20,000 if both parties agree) and is disputed then it may be able to be heard by the Disputes Tribunal.

The Disputes Tribunal can help with the following kinds of disputes:

- whether work has been done properly
- whether goods purchased were what the customer asked for
- the amount charged for work done
- damage to or loss of property, for example during installation of new equipment
- payment for a loss caused by misleading advertising or misleading statements made by someone selling goods or services, for example an advertisement that suggests speakers are included in a sound system when they are an extra cost
- hire purchase agreements
- denying that you owe money for an account sent to you

The Tribunal only has jurisdiction to deal with debts that are in dispute — in other words, it cannot be used as a debt collection agency.

Matters where there is no dispute, but the debtor just has not paid the debt, are processed through the District Court.

The District Courts

District Courts can be used by businesses for the collection of small debts through the Notice of Claim process.

Civil claims

A civil claim involves formal legal action against a person or organisation.

A person or organisation can make a claim after they have tried other methods to resolve a dispute but have not been successful, or if they want to recover money they believe is owed to them.

Once a claim is filed in court, the person who made the claim is known as the plaintiff. The person whom the claim is against is called the defendant. They are both called the parties.

The claims process

The claims process starts when someone files their claim form at the District Court. This formalises the claim but does not mean that the claim will progress to a court hearing. The claims process is designed to help both parties reach agreement so the dispute does not end up in court.

You can pursue this process yourself. However, as legal processes can be complex it is wise to ask your lawyer to advise you throughout the process.

The Civil Justice website has more information as well as links to the relevant forms.

Steps in the Claims Process

Notice of claim

As creditor pursuing a debt, you would file a Notice of Claim form. A notice of claim tells the defendant and the court what your claim is about.

Response by the defendant

On receipt of the notice of claim, the defendant will respond to the claim, outlining their version of the facts about the claim.

Plaintiff's information capsule

As a plaintiff you lodge an information capsule form to give the defendant a summary of the information you intend to rely on for your case.

Defendant's information capsule

The defendant lodges an information capsule form to tell the plaintiff the most important information about their case.

After reading the defendant's version of the case, you might decide you can reach an agreement with the defendant and proceed to settle the claim with the defendant.

Notice of pursuit of claim

After reviewing the information, if you decide to pursue the case, you lodge a notice of pursuit of claim form to tell the defendant and the court that you will pursue your claim in the District Court. Pursuing a claim means you plan to continue with your claim through the court system.

Application for judgment

If the defendant has not returned their documents or information in time, you can apply for judgment if you want the court to judge your claim in your favour.

Judgment is a process that deals only with uncontested claims (that is, when a plaintiff starts a claim, but the defendant does not respond in time).

Proceed to court

If the defendant has returned their documents and there is a case, it will proceed to a court hearing.

Outcomes

If the matter proceeds to court and the judgment is in your favour, then the court order will include the

following:

- the original debt
- interest at either the rate agreed in the terms of trade, or at 7.5% (a standard rate set by legislation), or at some other rate that the court decides
- legal costs and disbursements associated with obtaining the judgment (these will not cover all your expenses)

Enforcement

If you've obtained judgment for the debt, note that you are responsible for pursuing the debt, not the court. However, if the debtor still does not pay, you can use the court to enforce payment of the debt. The most common enforcement methods are:

- Order for Examination
- Attachment Order
- Distress Warrant (for personal property)
- Charging Order and Writ of Sale (for land)

Order for Examination

This is a court order to have the debtor brought before the court Registrar and examined about his or her financial situation. If the Registrar decides the debtor can pay the debt, the Registrar will make an order for payment. Usually, the Registrar will try to negotiate an arrangement for payment that suits both parties. The Registrar can also make several other enforcement orders (including the ones listed below).

Attachment Order

An Attachment Order instructs the debtor's employer to make regular deductions from the debtor's wages or salary (including bonuses and incentive payments). It can also order ACC or Work and Income to make deductions from ACC payments or welfare benefits. An Attachment Order can also be made against commissions and payments received as an independent contractor. An Attachment Order can't be made unless there has first been an Order for Examination.

Distress Warrant

A Distress Warrant authorises a Collections Officer from the court (a "bailiff") to seize goods from the debtor to the value of the debt. These are held for 5 days and then sold, usually by public auction.

Charging Order and Writ of Sale

The registration of a charging order puts a stay on the debtor's property, preventing him or her from selling the property until the debt is satisfied; the property can be sold to satisfy the debt by a writ of sale.

Debtor bankruptcy

If the debtor is bankrupt or has no assets, seek legal advice to fully understand what is involved. A bankruptcy notice and bankruptcy proceedings in the High Court is a separate set of court proceedings against the judgment debtor. The costs for a court case in the High Court include filing fees, disbursements such as other service fees (which could be up to \$150), and solicitor's costs calculated on an hourly basis. The other enforcement steps are also separate proceedings.

Disclaimer

Stephen Larsen and Co has provided this report on the understanding that:

1. The report is a guide only and should not form the sole basis for any decision without first obtaining proper professional advice.

2. We will not be responsible for and expressly disclaim liability, whether under contract or negligence:

- a) For the results of any use made by users of the report
- b) For any errors or omissions in this report
- c) For any direct or consequential loss or damage to arising from the use of this report, whether to a direct purchaser of this report or to any other person who may borrow or use them
- d) If any part of the report, whether used in its original form or altered in some way by the user, proves invalid or does not attain the result desired by the user
- e) For any negligence in the publication or preparation of these reports

3. This disclaimer extends to the user and to any client of the user who suffers loss as a result of the use of these reports.

4. The user acknowledges that it has not told us any particular purpose for which this guide is required and that it has not relied on our skill or judgment to provide a paper suitable for any such purpose.

Intellectual Property Notice

Stephen Larsen and Co is the owner of, or has the right to use, all copyright, trademarks and other intellectual property rights comprised in this paper, and all related documents, and in providing this guide does not allow these rights nor any part of this paper to be used, sold, transferred, licensed, copied or reproduced in whole or in part in any manner or form whatsoever without its prior written consent.

Last reviewed on 23 August 2021