

The Creditor Increases His Chances of Collecting by Following Certain Rules

The creditor with a claim increases his chances of collecting on the claim if he follows certain routine procedures. A debtor is less inclined to assert a bogus defense and more inclined to pay the claim if the debtor knows that the creditor's claim can be proved with certainty. A Judge or jury is more inclined to award a judgment to a creditor who dots his "i's" and crosses his "t's" before and after the transaction.

First, attempt to obtain a purchase order from the debtor or get a written contract signed by the debtor prior to furnishing goods or services. If this is too burdensome confirm the agreement by letter.

Second, if you are extending credit, get a written credit application from the debtor with as much data as possible so that you can find the debtor, locate assets and collect on a judgment. Be certain to include a clause allowing for recovery of interest at 18% per annum on delinquent sums, court costs and reasonable attorney's fee.

Third, if the debtor is a corporation, attempt to get a personal guaranty signed by one or more principals. The personal guaranty can be a single sentence at the bottom of the credit agreement.

Fourth, if you are delivering goods, get proof of delivery. If delivery is by a common carrier or by your own truck, get a signature from the driver confirming delivery. It is even better to get a signature from the debtor confirming receipt.

Fifth, attempt to get the debtor to also confirm in writing that the goods or services are satisfactory and accepted.

Sixth, if the debtor objects to the goods or services, send a confirming letter to indicate your willingness to remedy any defects. Above all, the Court is looking for good faith and reasonable behavior by the parties.

Finally, if there are extended conversations concerning a dispute, confirm the substance of such conversations by letter. Maintain a paper trail. At trial, the debtor is bound to exaggerate and possibly lie concerning the dispute. His testimony will likely be rejected if he has failed to document the dispute in writing. Given conflicting testimony, the Court will probably decide in favor of the party who has created a paper trail and has demonstrated good faith and reasonable behavior.

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