

FIVE TIPS FOR BUSINESSES TO INCREASE THE CHANCES OF COLLECTING RECEIVABLES

By Richard A. Joel, Jr., Esq.

1. **Investigate the Buyer and the Ability to Pay.** Before conducting business with a prospective buyer, you should determine who the buyer actually is. Ascertain whether the buyer is a corporation, a limited liability corporation, a limited liability partnership, a limited or general partnership or an individual person and whether the buyer is conducting business under any other names. You have to determine whom you will be doing business with and whether you trust the buyer. Trust your gut instincts. Next, investigate the buyer's ability to pay. Provide the buyer with a credit application to complete. Obtain detailed information regarding the buyer's assets, liabilities, bank accounts and references. Verify the bank account balances and assets and call the references. You may also want to obtain a credit report. With this information, you will be able to determine the level of risk in dealing with this buyer. To increase the probability of a satisfactory outcome, you may wish to make certain payment arrangement provisions to increase the likelihood of being paid. Such arrangements may include a cosignor, guarantee, surety, promissory note, bond, deposit, security, down payment, trust arrangement or letter of credit. Of course, the depth of your investigation and requests will depend upon the risks and sums involved in each transaction.
2. **Get it in Writing.** In each transaction, you should have a complete and clearly written contract with all of the terms including the parties, subject matter, quantity, goods and/or services to be performed, price, and terms of payment. The contract should include provisions for any defaults and provide for interest, late charges and costs of collection including reasonable attorney fees. If there is to be a personal guarantee, cosigner or other similar provision, make sure that it is in writing. In providing your goods and services, you should obtain an acknowledgment from the buyer setting forth that the buyer has received the goods and/or services and is satisfied with them. If you do not have a written contract and an agreement is oral, memories and understandings of the parties may differ and problems may occur if there is a dispute. Remember, make sure you get it in writing.
3. **Keep Good Records.** You should make sure that you have an original copy of the contract and acknowledgment that were signed by the buyer. Keep copies of all correspondence and documents exchanged between you and the buyer. Send confirming letters for telephone conversations. Document all collection efforts. If you receive a check from the buyer, make sure that there are no notations that the check represents payment in full. Make a copy of any checks you receive from the buyer. A copy of the check is helpful in locating the buyer's bank account if you should be forced to file a lawsuit and pursue the buyer through the legal process. Documents will be important if a law suit is necessary and can make the difference between winning and losing in Court or collecting on a judgment.

4. **Watch What You Say and Do.** Be mindful that anything you say or do can be an admission and used against you. Do not harass or threaten the buyer. It is not good business practice and may be illegal. You should keep it professional. If you do not heed this warning, you may subject yourself to unnecessary claims or liabilities.

5. **Consult an Attorney to Determine Your Rights.** If you cannot resolve a dispute with the buyer, you should consult an attorney. In discussing a matter with an attorney, you should provide a chronology of events and all of your documentation. The attorney will review the facts with you as well as the terms of the agreement and the responsible parties. An attorney can advise you of the strengths and weaknesses of your case and the prospects for enforcing the contract and collecting on your receivables. The attorney will review and discuss your options with you.

This article provides general advice and is not to be a substitute for consulting with an attorney.

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