



A Credit Manager's Guide to Effective Demand Letters



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It may be time to “up the ante” with a formal demand letter to a problem customer who has not budged on payment, despite all of your best ninja collection moves. Calls are easily avoided, and emails may be piling up, sitting in an inbox of a recipient who may shiver at the notion of talking with their boss about taking care of payment. A smartly crafted demand letter to the right people at your customer's company can be a game changer, increasing your chances of payment and making your bottom line shine.

Is a Demand Letter Required?

Although your contract may require payment without prompting, if you don't ask, you may not receive payment with some customers. Problem customers may need you to do more than ask nicely for compliance. As a practical matter, these troubled accounts may require you to demand payment, regardless of the customer's stated contractual obligations.

Alternatively, your contract may require you to provide written notice of default (e.g., failing to timely pay). Your contract may even require that you provide the customer a certain amount of time to cure their default. As such, a formal demand letter may be a contractual requirement for perfecting your claim against the customer for their failure to pay and their breach of the applicable agreement. The contract may further require the demand letter be transmitted to a certain person at a particular contracted notice address or that such correspondence be transmitted through a certain method, such as certified mail or hand delivery.

Demand Letter Goals

A demand letter should demonstrate that you and your company are confident, organized and committed to pursuing the debt owed. It is a tool to help you apply pressure, remind the debtor that you and your company are not going away, and to call attention to your claims to realize the ultimate goal of the letter—payment.

Getting Started

To prepare an effective demand letter, it is important to pull together all pertinent documentation pertaining to your customer and the account at issue. You may already have

a customer file. Review it and make sure it contains at least the following documents:

- All applicable contract(s), including all amendments and modifications
- All outstanding invoices
- All statements of account
- All pertinent communications with the customer and
- Documentation on any defenses or excuses asserted for non-payment, such product or service defects or problems

Confirm that the contract in your file is up to date and you have all amendments or modifications; if you are not sure, ask about it. Follow up on any missing information or documentation. The more you know now, the better positioned you will be for any ensuing exchange with your problem customer. If your customer has already disputed the debt, do some due diligence on the customer's assertions so you will be armed with the facts and documentation debunking the customer's claims and excuses. This process will help you prepare a strong and accurate demand letter, and it will help you, overall, organize your file, which will be essential for any coming legal battle.

Commercial or Consumer Debt?

Before firing off a demand letter, consider whether you are dealing with commercial or consumer debt. Consumer debt is subject to special legal requirements, including the Fair Debt Collection Practices Act (FDCPA or the Act) and may be subject to state law equivalents or other state laws. The FDCPA generally applies to debt for personal, family or household purposes. The Act requires third-party debt collectors to make certain disclosures and advisories in demand letters to consumers. The Act also prohibits, among other restrictions, threatening a lawsuit when not permitted or contemplated and requires a 30-day debt validation period. The FDCPA requires debt collectors to disclose in the initial communication to a consumer debtor that the collector is attempting to collect money and any information obtained will be used for that purpose.

Basic Anatomy of a Commercial Demand Letter

Recipients: Consider who should receive your demand letter. Read and comply with

all applicable contractual notice requirements. Document and state how the letter will be transmitted, such as via certified mail, regular mail, email, fax or hand delivery. Consider if others at the customer company should receive a copy of your letter. The contract may have a generic address care of the "legal department," or the person identified for notice may no longer work for the company. Look for additional decision makers at the debtor company to notify.

Sending demand letters to the president, vice president, and the chief financial officer by name may ruffle some feathers, but it may also result in someone taking action by elevating your payment problem above the accounting department. Internet sleuthing, including running searches on applicable Secretary of State corporate websites, can yield names, emails and physical addresses of key company players. To call attention to your demands, the old adage, "the more the merrier," may help you see results.

However, generally avoid sending a copy of your demand letter to third parties, since doing so could potentially expose your company to liability for defamation or tortious interference claims, among other legal risks.

Subject Line: The subject or "RE" line may be a minor detail, but it is also an opportunity to call attention to the urgency of your demand and to focus your reader on action items. By clearly labeling your demand letter as a "Notice of Default" or "Demand for Payment," someone may be inspired to take a closer look and follow up. If your subject line also contains a few key reference points, such the pertinent contract description, your company's name and/or account number, and the total due, your recipient(s) may take faster action.

The Basis of the Demand: Your demand letter should briefly specify the basis of the demand being made. Be specific and provide only the necessary details and facts, which (because you went through your due diligence process) are confirmed and accurate. Consider whether appropriate, helpful and productive to briefly address and dismiss any previous excuses offered by the customer for nonpayment.

The importance of correct factual statements in your demand letter cannot be underestimated. Inaccuracies can and will be used against you, including in litigation.

Making the Demand: The letter should clearly and correctly demand the amount due and owing. Consider carefully the amount demanded and whether it is necessary or appropriate at the time the demand letter is being sent to include interest. Are the interest rate and amounts sought appropriate and supportable under applicable state law? Making demand for usurious interest may entirely derail the payment claims against your customer and expose your company to liability. If you are not sure about the interest rate or calculations, consider leaving them out and making a demand for the principal amount "plus applicable interest."

Providing a Deadline: Provide a deadline for payment to be made. This deadline may be "immediately." It may be practically appropriate or contractually, or otherwise legally, required to provide a period of time for payment to be made (e.g., five days or 10 days). Some state laws may require a reasonable or certain amount of time for payment to be made before attorneys' fees may be claimed in any ensuing litigation, typically if the applicable contract does not provide for the recovery of attorneys' fees.

Providing an Ultimatum: Provide an ultimatum if your demands are not met. You may want to start with the possibility of referring the account to your attorney or referencing the possibility of a civil lawsuit. Importantly, you should leave your options and remedies open and not overstate your intentions. You may want to explain that a failure to pay within the timeframe demanded will result in your company "considering pursuit of all available legal options," including but not limited to filing a lawsuit or an arbitration (as applicable). Criminal action or sanction should rarely, if ever, be threatened for a civil dispute. Consult with your attorney before making any criminal threats.

Conclusion: Tell your customer where and how you want payment to be made. Provide contact information to facilitate communication with your customer to close out payment.

Enclosures: Think about what documents should be enclosed with your demand letter. Consider whether to include a copy of the contract at issue or copies of the outstanding invoices or statements of account. A lengthy or unfavorably written contract may not be helpful or productive for your payment goals. Likewise, confusing or inaccurate invoices or statements may not further your cause either and may instead cause more issues with your customer, who may be looking for ways to dispute the debt.

Should Your Attorney Send the Demand Letter?

Be sure to work with your company's legal department or consult with your outside legal counsel for any and all state-specific requirements or restrictions, including with respect to interest rates, usury laws and relevant consumer requirements, applicable to any customer demand letter.

Consider whether the timing is right to involve your attorney more substantively and whether your outside legal counsel should send the demand letter on their law firm's letterhead. It may be appropriate to first send a formal demand letter on your company's letterhead, but if you have already had many predicate communications with your customer, it may be time to further elevate the dispute and "go legal." Your attorney can work with you to make sure all contractual, statutory or other legal requirements are met to lay the foundation for a successful lawsuit.

An attorney demand letter is yet another tool to apply pressure to help you realize payment, hopefully before a lawsuit becomes necessary. But if a lawsuit is required, your attorney can confirm that all conditions to perfect your claims are met so you are in a strong position going into litigation.

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