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How can we help you recover debts?

It can be challenging for individuals and businesses to manage their personal finances or manage their cash flow and keep their business running if they don't take adequate steps to recover debts due to them. If you, or your business, is owed money you should aim to recover that debt as soon as possible.

There are different ways that you can seek to recover a debt in Scotland depending upon the level of debt that is owed.

Methods of Recovery

Pre-Litigation

Demand Letter

Where you are owed a debt, you can instruct a lawyer to issue a Demand Letter. This letter will provide the debtor with details of the debt that is owed, but more importantly, impose a timeframe for the payment of that debt. Your lawyer can also inform the debtor of what steps will be taken next should the debt failed to be paid within the timeframe such as raising an action at court.

Statutory Demand

Where the debt owed to you is owed by an individual, and is for a sum more than £3000, you can serve a Statutory Demand. This type of demand must be served by Sheriff Officers and gives the Debtor 21 days to make payment. Where the Debtor does not make payment, and does not provide a 'denial slip' then you are able to apply immediately for the Debtors sequestration without having to raise any other court proceedings first.

Short Form Demand

Where you are owed a debt by a limited company with a Registered Office in Scotland which has not been disputed by them, you can ask your lawyer to arrange service of a Short Form Demand. This provides the company with 48 hours, from the date of service of the short form demand, to pay the debt or make an arrangement. If they company fails to pay the debt within this time period, liquidation proceedings can be presented to the court after the time period has expired. Once the liquidation petition is received by the court, the Sheriff or Judge has the power to appoint a provisional liquidator. They have the ability to freeze accounts of the company and assume control of their assets. Provided that the company has money to meet the debt owed, this can be an effective way to making a recovery.

Litigation

Simple Procedure

Where you are owed a debt that is less than £5000 you can raise a Court Action under what is known as the Simple Procedure. In order to do so, you must prepare a claim form and provide supporting evidence such as invoices and statements of account. You will also have to advise the Court of whether there is any additional witnesses who can provide evidence in relation to the contract and the debt owed.

A copy of the Claim Form is sent to the debtor together with other documentation required by the Court such as a Time to Pay Application and the Court Timetable. The Timetable will provide the debtor with the last date of a response. If no response is received then you can ask the Court to make a decision about the claim.

If the claim is disputed, then the Sheriff has a number of options available to them (1) refer the case to mediation, (2) arrange for a case management discussion, (3) arrange a hearing, (4) make a decision without a hearing or (5) dismiss the case.

Ordinary Actions

Where you are owed a debt over £5000 then you require to raise an Ordinary Action. This is a different process than the Simple Procedure. Where instructed by you we will prepare a document known as an Initial Writ (or if in the Court of Session the document is known as 'Summons'). It will set out the details of the Order that you are asking the court to make, why you are asking the court to make that order and what your legal basis for it is. Once the Initial Writ is prepared and the Court have given you authority to raise the court action it will be served on the debtor meaning a copy of the court papers and certain forms are sent to the debtor either by Recorded Delivery or Sheriff Officer.

If the debtor does not dispute the orders you seek in the initial writ within twenty-one days of the date of service then you can ask the Court to grant the orders you have sought. Once they are granted, you can enforce the Court Order (see below).

If the debtor accepts that they owe you the debt, but wishes for time to be able to pay the debt back, then they can complete a form and submit this to you. If you do not agree with the proposal they have made, then you can dispute this. In those circumstances, the Court will assign a Hearing and will make a decision about whether the proposal is to be accepted.

If the debtor does not agree that the debt is due then the debtor will lodge defences. A court process will then follow and ultimately the Sheriff will make a decision about whether the debt is due.

Enforcement

Enforcing an Order

The enforcement of a Court Order is known as diligence. Sheriff Officers have the responsibility of enforcing a Court Order and there are different options available for how they can go about doing this and we can assist you with the instruction of this.

Recovering interest on debt

Where you are owed money, you can seek to recover interest at a rate of 8 % per annum from the date when the Court document is served upon the debtor until the principal sum is paid (and more if a contract allows). The due date for payment in respect of services or goods is the later of either the date of delivery of the goods or services, or the date on which notice (such as in the form of an invoice) was given to the purchaser of the amount of the debt. The important point to note is that if debt is due to you or your business and the payment late, we will always seek to recover interest on that debt for you and we appreciate how significant the recovery of such sums can be for your business.

The information and opinions contained in this blog are for information only. They are not intended to constitute advice and should not be relied upon or considered as a replacement for advice. Before acting on any of the information contained in this blog, please seek specific advice from Clarity Simplicity Ltd.



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