

Mistakes make it hard to collect debts

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LEGAL MATTERS

If you supply goods or services without written terms, it can lead to disputes and bad debt that could have been avoided if from the start there had been clear, written, terms of trade that detailed your rights and the buyer's responsibilities.

Common mistakes made by creditors are:

- Failing to specify exactly the legal entity you are contracting with. Is it a company, society, partnership or individual?
- Failing to clearly set out the price. Does the price include GST? Is the price a quote or estimate? What happens if you discover new circumstances not covered in the price?
- Not putting a time limit on acceptance of a quote. Can you change the quote if material costs change in the interim?
- Forgetting to specify when payment is due. Is the price payable in advance, "cash on delivery", or on the 20th?
- Failing to specify that interest at X per cent and collection costs are



The last thing anyone wants is to end up in court because of a dispute over bad debts. Precautions are needed.

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payable on the unpaid debt if payment is not made by the due date?

- Not getting a guarantee if you are giving credit.
- If you, the seller, are to install the goods, failing to specify who will bear the risk of damage while

the goods are being installed?

- Not specifying who should insure the goods. At what time does risk in the goods pass to the buyer?
- Failing to have a reservation of title clause and failing to register that security interest.

The Consumer Guarantees Act 1996 requires that for a "reservation of title" clause to be enforceable, it must be explained fully to the consumer. The consumer must acknowledge this in writing and the consumer must be given a copy of the agreement.

You need to get them to sign the terms of trade to enforce this clause.

- Forgetting to check that all the details in the terms of trade have been completed before giving credit.
- Failing to get the terms of trade signed. It is a good idea to have them do this in all cases so you can prove they agreed to the terms. Omitting any of these steps may mean you cannot collect the debt at all, or that you might at least be secretly out of pocket for the costs of delay in getting paid and the costs of chasing the debt.

Enduring Power of Attorney Looks if an Enduring Power of Attorney is still needed if the property (family home) is held in joint names? Can a spouse manage/dispose of their joint property if the other spouse is injured or unwell?

An Enduring Power of Attorney is still required. Holding property in joint names makes no difference to the need for one. Without it, a spouse cannot make any major decisions, such as arranging insurance, remortgaging or selling the property.

Column courtesy of Rainey Collins Lawyers, raineycollins.co.nz, or 0800 733 484 if you have a legal inquiry email aknowsley@raineycollins.co.nz.