



Ballard Spahr LLP attorney Ethan Minkin says business owners have to be careful they're not throwing good money after bad in trying to collect a debt from someone who simply doesn't have the money to pay.  
JIM POULIN | PHOENIX BUSINESS JOURNAL

# Collection conundrum

Business owners faced with collecting debts must decide when to pursue legal action

BY LINDA OBELE | Contributing Writer

If you're a business owner trying to collect on bad debt, you're in good company.

According to a recent report from Dun and Bradstreet, small-business failure rates across the United States rose by 40 percent during the recession, between 2007 and 2010. Business and individual bankruptcy filings also continue to climb.

In July alone, Chapter 11 filings nationally increased 24.3 percent over June, based on data from Automated Access to Court Electronic Records (AACER).

That leaves plenty of survivors and a long line of creditors on the hook for payments they may never see.

Valley bankruptcy attorneys say debt collecting can be a frustrating and tiresome—not to mention, expensive—process.

For instance, a business that starts out chasing down \$6,000 from a customer who's fallen behind on payment easily can turn that \$6,000 problem into a \$10,000 problem if he's not careful, especially if becomes necessary to get an attorney involved.

How do business owners know where the tipping point lies between paying an attorney to pursue, and possibly sue, delinquent payors, and simply trying to go it alone?

It's a fine line, say Valley legal experts.

"A lot of times a business owner ends up throwing good money after bad," said Ethan Minkin, a bankruptcy attorney at Ballard Spahr LLP in Phoenix. "If the matter goes to Superior Court, it gets even more expensive. Right out of the gate, you've got a filing fee, and a fee for the process server, and the money you have to pay attorneys to draft and file a complaint.

"All of a sudden, you're into it for \$1,500, and that's just the ticket to get through the door."

Attorneys say there are several low-cost or no-cost measures business owners can execute on their own when trying to collect on bad debt.

The first step is the most obvious: talk to the person who owes the money and try to work out a payment plan. Some creditors find success by offering concessions and rebates in order to collect at least a portion of the amount owed.

If friendly negotiations fail, work with an attorney to draft and issue a demand letter. This step also can be completed without legal assistance.

"Sometimes a simple demand letter will produce a good outcome," said Minkin. "For a minimal investment, it scares some companies and can prompt resolution quickly."

Phoenix bankruptcy attorney Diane Drain of the Law Offices of D.L. Drain is a big fan of mediation and arbitration, two methods of settlement that can be cheaper and faster than hiring a lawyer.

"This is where the majority of creditors should go before ever filing a lawsuit," she said. "Nobody completely wins or loses. If it goes to litigation, the people who are being sued have to get their own lawyer; they have to incur fees and it can be a mess."

Filing an action in small claims court also is a cheaper alternative to hiring a lawyer if the debt amount is less than \$2,500.

Nat Handler, president and director of client services at Vendara Group, is in the process of taking a former client to small claims court over failure to pay on a marketing assignment more than a year ago.

"It's not costing me anything except \$20 to \$30 dollars to file the paperwork and send a couple registered letters," he said. "If I win, all the court costs come back to you, so I think, what do I have to lose? Even small

amounts (of debt) in this economy make a difference—it pays a bill."

Debra Krol, a freelance writer and owner of Jolon Indian Publishing, on the other hand, decided not to pursue legal action against a national magazine she says stiffed her for a contracted writing assignment three years ago.

"I had thought about it, but I'm glad I didn't (sue)," said Krol, who says she contacted the publication numerous times about payment. "I feel the financial outlay and possible damage to my reputation far outweighs the money I'm just going to write it off and eat (the fee)."

If filing a lawsuit ends up being the best solution, attorneys say the trick to successful collecting—aside from ensuring there's money available to collect—is getting in line at the right time.

"You don't want to be the seventh creditor to sue a debtor," said attorney Stan Hammerman of Hammerman & Hultgren PC. "If you wait, it could be too late."



Handler



Krol



Hammerman