



# United Water Managing Our Water Supply

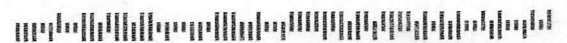
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# Business Wi\$e

## Getting Paid Without Resorting to the Courts

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Most if not all business owners are aware of the problem. In a bad economy, customers increasingly argue over bills or claim an inability to pay bills promptly, in full or sometimes at all. At the same time, collection agencies typically charge 30 percent to chase outstanding accounts. Most attorneys will charge an expensive hourly rate (with no guarantee of success) to pursue the matter in a court system that, despite its many merits, is not known for speed or efficiency. When dealing with consumers, debt collectors must comply with an extensive set of rules to prohibit overly aggressive collection tactics.

In sum, a bad economy combined with a system that seems to provide all of the advantages to the account debtor can result in a situation not only incredibly frustrating, but also one which can threaten the survival of your business. There are, however, a number of proactive strategies a business owner should consider to prevent these situations from developing or to level the playing field if they do occur, including:

1. **Online Database Searches:** Many businesses rely on information supplied by potential customers on credit applications or in third party reports such as Dunn & Bradstreet. There are, however, readily available online sources of information that do not rely on self-reported information. For example, before you do business with an entity, you should conduct a search of the entity with the applicable secretary of state or state division of revenue. In New Jersey, the Division of Revenue maintains a website for all domestic and foreign business entities registered to do business in the state, with online reports available for only \$5. This report will tell you if the business has had its charter revoked and provide you with the name of the registered agent, officers of the company, and the entity's correct legal name and all associated names. A large amount of information on publicly traded companies is available through the SEC's Edgar system. You can also search the federal court records through the PACER system to see if the individual or entity has been or is involved in litigation, the types of litigation, the allegations against the entity, judgments, bankruptcies, etc. Much of the same information is increasingly available online for state court systems, as it is in New Jersey. Finally, do not underestimate the information otherwise available on a company's website or through a Google search.

2. **Personal Liability:** A personal guarantee by a customer's principal is usually an incredibly valuable tool when trying to get an entity to pay a bill, especially an entity with little or no fixed assets. In many cases, however, a personal guarantee is difficult to obtain by companies not wanting to offend or scare off potential customers. There may be other ways to establish individual liability for a company debt, including instances where the principal

makes misrepresentations of the creditworthiness of the company, where the individual signing the contract does not clearly indicate they are doing so in a representative capacity on behalf of the company, or where the entity has been used to work an injustice or fraud and corporate formalities have been disregarded. Investigation of the potential personal liability of a debtor's principals for the debt should be standard operating procedure when considering collection options and can be very effective in convincing a debtor to pay.

3. **Collateral:** The Uniform Commercial Code, enforced in various forms across the United States, permits a creditor to take a security interest in goods, including goods it has sold to an account debtor. If done properly with a signed security agreement and filed financing statement, this device permits repossession of collateral in the event of non-payment, even without judicial process in certain circumstances. In addition, for companies providing almost all types of improvements to buildings or land, the filing of a construction or mechanics' lien can be incredibly effective in achieving prompt payment. Because construction liens are one of the few ways of obtaining a lien on property without the consent of the owner or tenant, the statutes in this area provide for harsh sanctions if not done strictly according to the required and fairly rigorous procedure.

4. **Critical Provisions in the Contract:** All business owners are aware of how expensive legal fees can be. Most business owners are aware of the "American Rule" which requires each party to a legal dispute to bear its own legal fees no matter which side wins. The exceptions to this rule are where there is a statute or contract provision that stipulates the prevailing party can get its attorney fees paid by the losing side.

The inclusion of such a provision in a signed contract is often a critical piece of



leverage in convincing a customer to pay a bill rather than contest it in court. The contract should also require the payment of interest at a specified rate as measured from the date of the invoice if not paid within the agreed upon timeframe.

In the absence of such a provision, New Jersey Courts will add interest at a very modest rate on contract claims—currently only a half percent. When dealing with an out of state customer, the contract should include a clause stipulating that New Jersey State or Federal Courts are the exclusive “venue” for all legal disputes. Such a clause may even designate the particular county within New Jersey for a state court action or the district for a federal court case. In addition to reducing your potential legal bill, such a clause may have the effect of preventing a non-local debtor from using its regular counsel, either because regular counsel is not licensed in New Jersey or because travel to the local court would significantly increase the time spent by its regular counsel and therefore the fees charged.

Alternatively, a business should consider including a clause in its contract requiring mandatory mediation and/or arbitration of the dispute. Non-binding mediation can be very cost effective in getting to a quick resolution of a dispute and binding arbitration is generally less expensive and faster than litigation in the court system.

This article has been prepared for general information and is not intended as legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.



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