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Less pain: Debt collecting made easier

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Legal Matters

If you supply goods or services without written terms it can lead to disputes and bad debt that can easily be avoided.

If there had been clear, written, terms of trade from the start that detailed your rights and the buyer's responsibilities many problems would be more easily sorted.

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?



There are ways to make debt collecting less painful.

PHOTO: FAIRFAX

- Failing to specify that interest at X per cent and collection costs are payable on the unpaid debt if payment is not made by the due date.
- Not getting a guarantee if you are giving credit.
- Not specifying who should insure the goods. At what time does risk in the goods pass to the buyer?
- 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?
- Failing to have a Reservation of

Title clause and failing to register that security interest.

The Consumer Guarantees Act 1993 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.

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ENDURING POWER OF ATTORNEY

Asks if 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, perhaps concerning insurance or mortgage, or sell the property.

■ Column courtesy of Rainey Collins Lawyers, 0800 733 484 or raineycollins.co.nz. Email akincosley@raineycollins.co.nz