

## **Creditor agents ( viz. debt collection agencies) applications and appearances – enforcement of debts**

It has been frustrating that over the last 3 years the Ministry of Justice have steadily tried to make the work of debt collection companies more difficult to help filter landlords and property managers away from making direct approaches to Courts to enforce (collect) their debts via the District Court civil collection system.

Most first time landlords complain about the frustrations of dealing with District Court system of collecting Tenancy Tribunal debts as they don't understand the time issues which can be quite lengthy and that the Court expects them to provide new addresses to serve court processes, or make arrests, as the Courts don't trace debtors (ex tenants).

In July 2003 the collection industry was invited to attend discussion groups to assist the Ministry of Justice in a 2 pronged review, firstly of their fee structure, and then of their processes and involvement in collection of civil debt. I commented at the time that it appeared to be simply a way to soften up the industry with a view to expect price increases and surely they should look at the processes first to make them more efficient first, before putting their prices up.

It would appear that I was correct in my assessment as the Ministry has only conducted the meetings to discuss their fees, and have since increased them in some areas, and then didn't proceed with any further meetings.

It is noteworthy that the laws that regulate what is required are the nearly sixty (60) year old District Courts Act 1947 and the 1992 District Court rules. However all the changes have occurred since December 2003.

1. In December 2003, at 3pm one Friday afternoon a fax was received from one local Court that debt collection agencies and other representatives, not being solicitors, were not allowed to appear on behalf non-incorporated entities (i.e. individuals, family trusts, partnerships) at examination hearings nor sign applications for District Court enforcement (collection) of civil debt, with effect from the following Monday. As you can imagine we have at least 20 hearings per week in various parts of the country so this decision was met with angst among the debt collection industry. It meant that we could only appear for companies, unless we employed solicitors on every case which takes time to negotiate deployment contracts and could be simply in place over a week-end. We now employ contracted solicitors to appear on our behalf at very reduced rates as they know we can only add \$65 for each hearing to the debt that the debtor has to repay.
2. In March 2006 we were advised that the Courts were now also not allowing debt collection companies or creditor's representatives, that were not solicitors, to sign ANY applications for District Court enforcement including incorporated entities which means the policy

now included companies such as property management companies and LAQC set up by investors. This new promulgation was due to an April 2005 case which a Judge had passed down a decision at this time to this end. The Ministry took that long to decide that any applications from March 2006, and any that were in the system and that hadn't been actioned by the Court, would be sent back unless signed by the individual creditor, company director/secretary or other officer, or solicitor, with immediate effect. We now employ a solicitor to complete and sign all applications.

However all this adds to time and [solicitor's] costs to creditors with the hope that they might be recoverable, in part or full, from their debtors.

One can be a cynic and say that the only beneficiary, from these belated changes to Court practice, can be solicitors who have put these matters before the Judiciary for clarification of legal procedure.

What effect they have had to a debt being collected is ..... nil!

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