

Debt Collection Done Well

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In everyday life, we all become, in one way or another, involved in civil law relationships, making verbal and written agreements. Despite the famous "pacta sunt servanda", counterparties do not always behave well and sometimes fail to fulfil their obligations. A buyer does not pay for the goods delivered, or the debtor does not return the amount loaned, which leads to debts. Here is an overview of how such debts can be recovered, what steps to take, and what to bear in mind to enforce the debt in a less costly and troublesome manner.

There are two main possible ways of enforcing an unpaid debt:

a) a **notarial writ of execution**

b) the **court**.

A **notarial writ of execution** is a non-judicial legal instrument, which is an order of a notary public to collect a certain amount of money due to the debtor or to seize movable property. Creditors should note, however, that such collection is possible **only on indisputable claims** (e.g., on obligations arising from notarised transactions; obligations based on a written transaction, the due date of which has arrived and the default is acknowledged by the debtor; obligations to foreclose on the collateral upon expiry of the loan payable by a pawnshop). Whatever method is chosen by the creditor, before collecting the debt, you had better make certain...

1. ...the limitation period is active

The limitation period is the period of time during which the creditor can make claims about violation of their rights. General limitation period is three years by statute. For obligations with a certain period, the limitation begins from the date of expiration, that is, in our case, from the date of debt repayment specified by the agreement. If three years have passed since this date, try to find the latest possible documentation, correspondence, or partial payment which would confirm the debtor acknowledges their debt. At the same time, missing the statute of limitations does not deprive the creditor of the opportunity to go to court. If the debtor does not dispute and does not indicate the omission of the limitation period, the court is obliged to consider the dispute on the merits of the case.

2. ...the claim procedure for claiming debt is followed

Both the notary and the judiciary require the mandatory presence of pre-trial settlement of the dispute. In the other words, the creditor must send a pre-trial claim to any known addresses of the debtor, which should contain: the grounds for the debt occurrence, the debt amount, the period for voluntary debt repayment, and the details for money transfer. Ignoring or refusing to repay the debt gives green light for the creditor to enforce debt collection.

3. ...you have all the necessary documents for the collection

Despite the seemingly simple debt collection procedure, in practice, difficulties and obstacles constantly arise due to the lack of all the necessary documents for the creditor to substantiate his claims or amounts to be repaid. So, when collecting a debt with the help of a notary writ of execution,

the notary requires the original contract on the basis of which the debt was formed, as well as the document to confirm the debtor recognises the debt (reconciliation act, debt repayment schedule, a letter from the debtor with the obligation to repay the debt, etc.). d.). The notary also requires an electronic charter, a certificate of state registration, a decision or protocol on the director appointment, an identity card or passport of the director, delivery notes confirming the release of goods, unpaid invoices, and other documents required by the notary. When collecting debts through the court, all the documents on which the plaintiff relies as evidence to substantiate his claims are also attached to the claim statement.

4. ...the notary/court location is correct

Due to recent changes to the Law of the Republic of Kazakhstan “On Notaries”, when making a writ of execution by notaries, the requirements for the territorial nature of the activities of the private notary chosen must be observed. So, for example, if the creditor is registered in the Almaty region, they cannot apply for a writ of execution to the notary in the Almaty city. Otherwise, this circumstance is the basis for the cancellation of the writ. As to the courts, a claim is filed in the court at the place of the defendant residence:

- for individuals, including individual entrepreneurs, the place of residence is the locality where the citizen permanently or predominantly resides;
- for legal entities - at the location of the legal entity in accordance with the constituent documents and (or) the address entered in the National Registry of Business Identification Numbers. A claim against an organisation without the formation of a legal entity is presented at the place of the organisation’s location.

Also, remember about the notary or a judicial authority service fees. The fee for a notarial writ of execution is calculated according to the following formula: amount of debt * 1%¹ (for legal entities) + 0,5 MCI². The fee for writ of execution may not exceed 100 MCI (or KZT 306,300 for 2022). The state duty payable on property claims when filed in the court, in accordance to the tax legislation, is as follows:

- for individuals - 1 % of the claim amount;
- for legal entities - 3% of the claim amount;

Once the writ of execution or court order has been issued, further action to collect the debt is taken in the context of enforcement proceedings.

Thus, the state grants the creditor the right to enforce the collection of overdue debts by issuing a writ of execution or based on a decision of a judicial authority. Compliance with these practical recommendations will prevent creditors from possible cancellation or refusal of the notary to issue the writ of execution, return or non-acceptance of a claim, and will save their time and money.

¹ Sub-par. 22-1) par. 1 Article 30-1 of the Law of the Republic of Kazakhstan "On Notaries", a fee of 0.2% of the recovery amount is levied on natural persons and 1% of the recovery amount on legal entities;

² Sub-par. 23) Article 611 of the RoK Tax Code, a state duty of 0.5 MCI is payable for the notary writ of execution.