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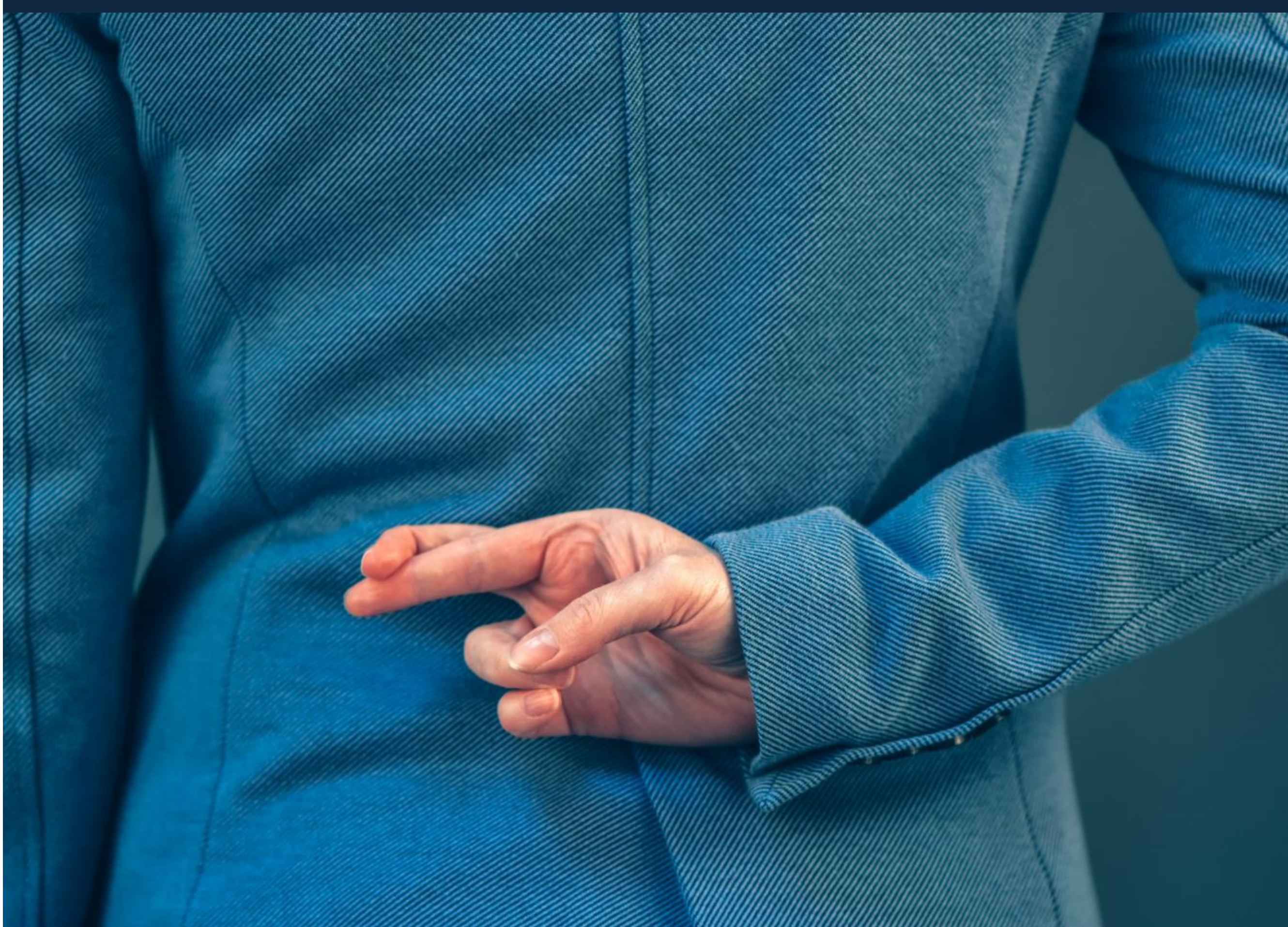
Non-Paying Customers Again



The Law Offices of Thomas F. Nowland

I'm Good For It
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Accounts Receivable

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Thomas F. Nowland is a Southern California Business Lawyer located in Newport Beach, California, and is experienced in all areas of business and personal bankruptcy. Call Nowland Law today.

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Current State of Outstanding Accounts

While 80% of businesses have some sort of credit management policy, only 50% of businesses actually check a buyer’s credit worthiness. Subsequently, a little less than 39% of all B2B invoices are paid on time.

This is not an uncommon issue. One third of survey respondents said that maintaining cashflow has been their greatest challenge.

For medium and large companies, an average of 4% of their invoices are written off as bad debt. That’s nearly half a million dollars for a company that does 10 million a year. For different industries, such as construction, that number can jump to 25% of billings. For smaller companies, a big client that doesn’t pay their bill can cause serious and even existential issues.

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The Solutions

Deflect the Risk

You need policies. Write them in a word document, print them out, follow them.

The simplest way to help reduce cash flow risk is to ask your customers to pay upfront; or at least submit deposits before work starts. You can have a plan to waive this requirement but operating under the assumption that new client work will require upfront payment should be the default.

When you risk losing customers if you don’t relent, then consider offering them outside financing. Both b2b and b2c companies can partner with a leasing or finance company to finance their customers. This does add additional friction to the sales process. Some finance companies are downright lazy when it comes to working with your clients, especially if they are at all difficult. They don’t care as much about getting the deal done as you do. Delays or even losing customers can be possible.

However, if you find a good finance company and you involve yourself in supervising and moving along

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the finance process, you might see great success. Then you are paid upfront, never have to worry about defaults, and this entire problem is solved. It's up to you to assess your situation if it's worth it or not to incorporate outside financing for your customers.

Finally, there is the option of factoring. You take your unpaid invoices and work with a factoring company to essentially borrow the amount of the invoice. Most deals will go well, and you'll have no cashflow issues. The trouble will be when the customer greatly delays payments or doesn't pay at all. You'll be on the hook to the factoring company to pay back that loan.

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Know What You’re Getting Into

An ounce of prevention is worth a pound of cure.

We are hungry for business, and in general, it makes sense to take the risk of giving payment terms to customers. It keeps you busy, and most of the time it works out. However, if customer non-payment, delays, and cashflow wasn’t an issue, you wouldn’t be reading this book. The fact is, you likely do have cashflow problems that you would like to solve ASAP.

The time to solve them is at the beginning. For any customer who is not willing to pay upfront, shift your thinking. Consider that you are giving this client or customer a loan. You’d be a terrible loan officer if you did zero due diligence on your borrower.

Have your customers fill out a formal ‘Internal Credit Application’ for the payment terms. Do the due diligence. This could include paying for D&B, Hoover or other business credit worthiness reports. You could even run credit reports on the top level decision makers at your client’s business.

Hired Guns

Let’s fast forward a week from now. You’ve written up formal policies. You’ve adopted some of your favorite ideas from this book. You’re making more customers than ever pay up front; pay partial deposits, get outside financing, sync payment terms with your obligations, you’re making us of Merchant Cash Advances or Invoice Factoring. However, you still have non paying clients from the past. Occasionally an invoice factoring deal goes bad. Perhaps you slipped and didn’t want to let a customer walk out the door, so you threw your internal credit policy manual out of the window for this particular customer, and the payments never came.

In other words, when push comes to shove, what are you going to do?

Refer to your written and printed “In House Collections Manual” of course. You’re going to write that tomorrow, right?

Having a formal, clearly specified, step-by-step checklist of in-house collections actions is the first step of how you respond. These checklists can look something like this.

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Day 15 – Payment Reminder via Email

Day 25 – Payment Reminder via Email

Day 30 (Due Date) – Payment Due Notification

Day 32 – Phone call reminder

Day 35 – 2^{nd} Phone call reminder

Day 37 – 3^{rd} Phone Call reminder

Day 40 – Send out bill in mail

Day 47 – Send out firmly worded bill in the mail

Day 52 – Final phone call reminder

Day 54 – Send out final payment reminder and advise that bill will go to collections.

Day 60 – Report to credit bureaus, send to outside collections partner.

Collections Partners

There is an entire industry built around collecting your outstanding bills. Many will even appear as ‘in-house’ with your letterheads, email headers, or present themselves as with your company on the phone. There are different billing tiers for this type of service.

Make sure that any collections agency you work with has the proper license for their State, or simply work with a business law firm.

Out of House Collections

From 60 days to 180 days past due, things will look dire. You certainly needed your cash a long time ago, but now it is a big ‘maybe’. Thankfully, collection agencies are geared up to collect during this time period and don’t charge for hourly work.

The vast majority will charge a contingency percentage of whatever is recovered, but a few might charge a small flat fee per account and conduct guaranteed collections activities on each account.

Your hope should be that they refine their communications to produce more recoveries, and you need to ensure that the collections agency is in full compliance with all regulations. If they break any compliance codes, you could be dually responsible for their actions.

Working with a business law firm is a safe bet. Those with collections programs will often try ‘soft collections’ first, which can replace a collections agency entirely.

The tone of the conversation is different between a collection’s agency and a lawfirm.

After a certain amount of days of non-payment, you are looking at a law firm anyway. After a certain number of days (90 to 121) it is clear that the customer didn’t just forget. You’ve reminded them dozens of times through email, phone, and mail. A collections lawfirm at this point will send a legal demand letter.

Either your customer responds and attempts to negotiate, hires a lawyer to negotiate or claim the debt is invalid, pays, or ignores the letter. The next step is that your lawfirm files a lawsuit on your behalf. If all goes well, you’ll have a court judgement that will allow you to forcibly collect what is due, including attorney and collections fees.

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Alternatives

The prospect of actually filing a lawsuit against a customer is a tough decision. Sometimes, it is not such a black and white situation. Perhaps there are disputes surrounding the services/products offered.

Maybe it’s not a guarantee a court would side with you.

Perhaps you don’t want the distraction of litigation or make a policy never to sue customers.
At this point, if you are trying your hardest to avoid the court system; right before the step of having lawyers file a complaint in court, you can discuss the numbers with your accountant. In some cases, you can absorb the loss by writing off the amount in tax savings.

In a round about way, you will have been made whole by saving money that would have went out the door anyway.

In that situation, you decide to ‘write the debt off’ in taxes, and you end your collections activity and move on.

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Hopefully by beefing up your formal procedures and including new strategies throughout the entire cycle of your outstanding business credit, you should greatly reduce the volume and impact of non-paying customers.

If you ever have any questions on how to handle a particular situation of non-payment from a client or customer, contact an experience business law firm.

FREE CONSULTATION

Nowland Law is a California Law Firm dedicated to representing business interests.

We’ve been down dangerous legal paths before and know how to guide a business out of them.

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