

Charging clauses

Are you secure?

If you are in the building supplies industry, odds are that you have been supplying goods or services to your clients and customers on credit. If you are a landlord, or a property manager, you will often have to trust that your tenants will continue to pay rent for terms of three years or more.

If the customer, client or tenant falls on hard times and stops making payments, do you have sufficient security to ensure that you can recoup any outstanding amounts from them?

If the answer is 'no', then you should consider adding an additional security measure to your credit contracts, leases and personal guarantees by way of a charging clause.

Why? Because such a clause enables you to take a secured interest in the real (e.g. land, houses) and personal property of the client, customer or tenant.

Adding such a clause tends to be more effective than some other measures that you are probably already taking, including:

Personal guarantees – yes, you can obtain a personal guarantee from directors and/or shareholders, however, by the time a company stops making payments, or you decide to draw the line in the sand, those directors and shareholders, whose livelihoods are tied up in their companies, often have nothing to contribute.

Security deposits or bank guarantees – you could require a security deposit or bank guarantee to use as security for future payments, however, if you are dealing with builders and developers a request for such security is unlikely to be favourably received as they are often reliant on the usual credit terms and simply cannot afford to provide such up-front security.

If your commercial relationship with your client, customer or tenant goes pear-shaped, a charging clause will allow you to lodge a caveat over the real property of any recalcitrant debtor as soon as that debtor falls into arrears of its financial obligations. It will also allow you to register a security interest over the personal property of the debtor in accordance with the *Personal Property Securities Act 2009*.

Often, the mere registration of a caveat over property is sufficient motivation for the debtor to make suitable arrangements to pay the debt **and costs**. After all, nobody wants their home to be in danger.

If payment is not made, you can seek an order allowing you to sell the property to recover your debt and costs. And, if the customer, client, tenant or guarantor should become insolvent, you should get to bypass the long, winding line of creditors and recover your debt in priority from the equity in the property.

I appreciate that sometimes matters like this can be pushed to the side for another day. However, in today's economy, I think there is great benefit in securing payment before a default even occurs.



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