



Serving debtors who don't want to be found

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By Andrew Behman, an Associate of Matthews Folbigg, in our Insolvency, Restructuring and Debt Recovery Group

In an earlier blog "[When is an old debt too old to collect](#)", we discussed how some of the more difficult to collect debts are often placed in the 'too hard basket'. An all too common reason that these debts are in the 'too hard basket' is because you can't find the debtor. They've moved address and you can't find them to be able to serve them with legal documents. However, this is not the end!

Yes, the law usually requires that legal documents be served personally. This is to make sure the defendant *actually* receives the legal documents and knows about the legal proceedings against them.

However, the court rules allow for you to serve legal documents in other ways. This is known as "substituted service". Legal documents served by substituted service are deemed to be served and will allow you to continue proceedings to recover your debt. Some examples include serving legal documents by email, or even by leaving them at the last known address of the debtor and sending them a text to let them know where the documents have been left. In the social media era the courts are also becoming more prepared to make substituted service orders involving use of social media such as Facebook.

Obviously whether or not there is any point obtaining orders for substituted service will depend upon the purpose behind pursuing the debt, and so investigations regarding likely assets may also need to be undertaken at the same time.

It is important to remember, however that there are many other ways to serve recalcitrant debtors who are difficult to serve personally. So if you have debts sitting in the 'too hard basket' because the debtor is proving elusive, or you don't have a current address, it might be time to think about whether you can serve them by substituted service.

If you would like more information or advice in relation to insolvency, restructuring or debt recovery practice and procedure, contact Andrew Behman on (02) 9806 7490 or abehman@matthewsfolbigg.com.au, or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

Jeffrey Brown on (02) 9806 7446 or jeffreyb@matthewsfolbigg.com.au

Stephen Mullette on (02) 9806 7459 or stephemm@matthewsfolbigg.com.au