Effective options to recover debts in NSW

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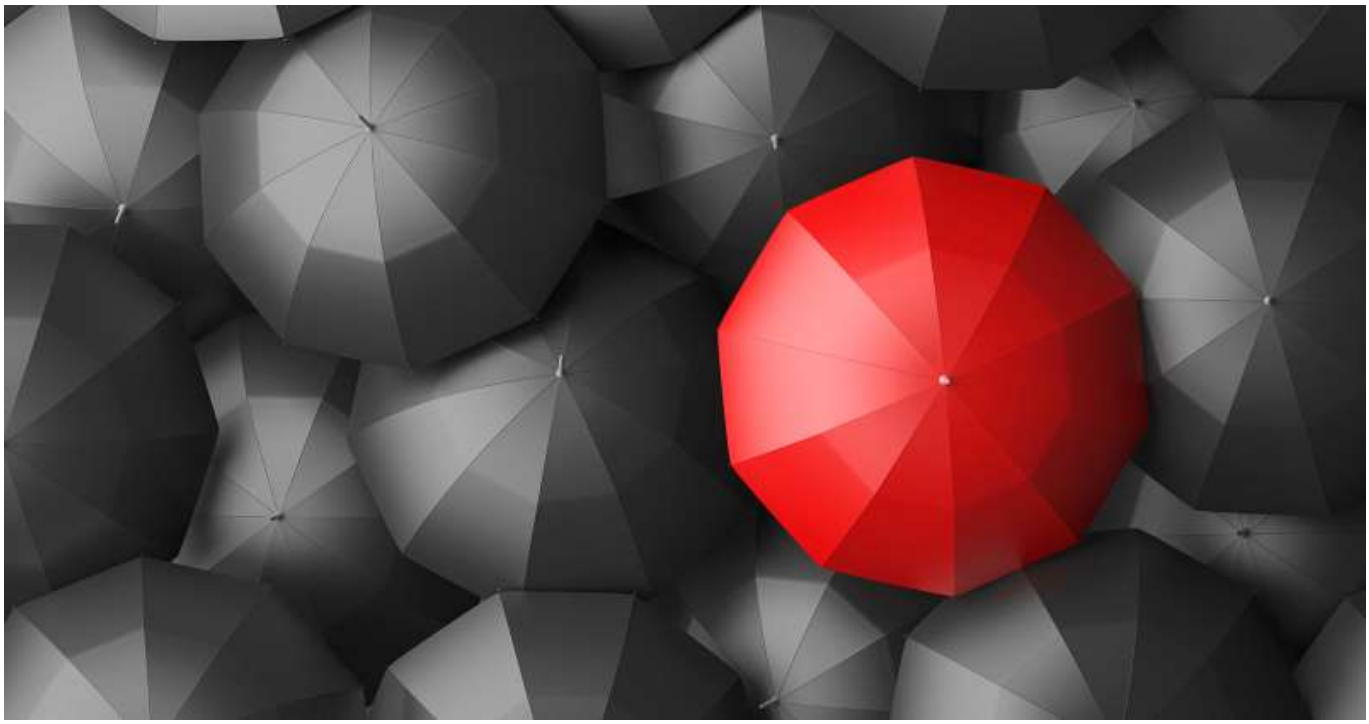

Effective options to recover debts in NSW – What can I do to maximise success

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With changing economic landscapes in New South Wales, the need to recover debts can often pose challenges for creditors. However, there are a range of actions that you can take to maximise your process to recover debts. Here are some steps that you can take to ensure your debt recovery process has the best chance of success:

1. Alternative Dispute Resolution

Before resorting to legal action to recover debts, it is beneficial to attempt to negotiate or mediate with the party that owes a debt. Open communication with the debtor or the debtor's solicitor in an attempt to reach a resolution without engaging in legal proceedings can often be beneficial to both parties as legal costs can be reduced significantly. Payment options may also be agreed upon to enable a flexible and fair debt recovery process.

To gain assistance on negotiating debts with a debtor, you may wish to contact a law firm. By engaging a legal representative, you and the debtor can engage in constructive discussions with the aim of reaching a fair and just resolution. In the event that negotiation processes break down or are unsuccessful, parties may result to mediation.

Mediation as an alternative process is highly encouraged by Courts. In this process, an independent third-party mediator (either chosen by agreement of the parties or Court appointment) acts as a facilitator, assisting parties in reaching a solution. Such processes are conducted “without prejudice” to the parties’ interests and rights. It can also be a more cost-effective means of recovering debts.

2. Issuing a Letter of Demand

Where communications or alternative dispute resolutions fail to yield favourable results, a Letter of Demand (LOD) may be issued. LOD’s are formal letters that inform the debtor of the following:

a. The particulars including monies owed from the contracted agreement;

b. The payment deadline that the debtor must abide by; and

c. Consequences if payment is not made, including the recovery of monies through legal proceedings.

By issuing such a letter, a creditor encourages action on the part of the debtor, and gains some protection on legal costs as well. A well drafted LOD lays the foundation for creditors to ensure the timely and cost-effective recovery of their debts. It is best to engage legal professionals who can assist in ensuring your debts are recovered.

Alternatively, if the debtor fails to comply with the LOD, legal proceedings can be commenced in the appropriate court.

3. Go to Court

To commence legal proceedings in New South Wales as part of a debt recovery process, a Statement of Claim must be completed and filed at the Registry of the court with jurisdiction to hear the matter. A Statement of Claim.

As a precaution, it is important to note that the size of the recoverable debt will impact upon the jurisdiction of the court. The following table generally outlines the jurisdiction of Courts, and the debt amounts that are recoverable:

Court	Minimum Debt Amount	Maximum Debt Amount
NSW Local Courts	· Claims of up to $20,000 should be filed in the Small Claims Division.	· Claims of up to $100,000 should be filed in the General Claims Division.
District Courts	· The District Court hears claims between $100,000 and $750,000.	
Supreme Court	· Claims that exceed $750,000 should be filed in the	

Supreme Court.

If you are successful, the Court will issue an order in your favour for the debtor to pay your debt. However, in some cases, debtors may fail to comply with a court judgment or may refuse to pay the monies owed. In instances such as these, creditors can take further action by seeking a judgment debt.

4. Post-Court – Enforcing Debt Judgments

Judgment debts can be enforced up to 12 years after the date of the judgment in NSW. Usually, judgment debtors are given 28 days to pay the judgment debt against them. Where judgment debtors fail to pay the amounts owed, a few enforcement options can be explored such as a Garnishee Order for wages or salary or Writs of Levy Of Property. Generally, you should seek legal advice before seeking to enforce judgment debts.

Matthews Folbigg Lawyers has a specialist team dedicated to Insolvency, Restructuring and Debt Recovery. If you would like more information or advice in relation to Insolvency, Restructuring or Debt Recovery practice and procedure, please contact Stephen Mullette or Jeffrey Brown on (02) 9806 7459 or (02) 9806 7446,or
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