



The Demand Letter

A commonly used tool to resolve business disputes

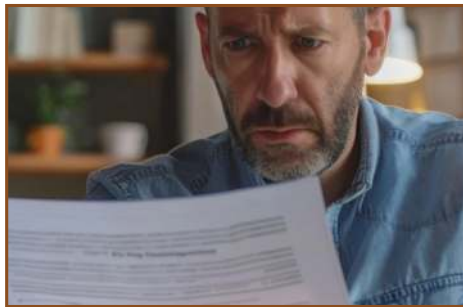
by: Greg Goldberg, BTA General Counsel

What do you do when a customer falls behind on lease payments or, worse yet, defaults? What if a rogue sales rep runs off with your customer list or recruits half of your sales team to work for a competitor? What if a vendor or a strategic partner does not deliver on a contractual obligation? Chances are you fire off an email to your local attorney or (shameless plug alert!) place a call to the BTA Legal Hotline to inquire about your legal options.

In the most extreme cases, the threat to your business may be so severe that you are left with no choice but to file a lawsuit immediately. Oftentimes, however, launching into full-scale litigation does not make sense under a basic cost-benefit analysis. The amount of money in controversy may be too small to justify the financial burden of steep attorneys' fees. The likelihood of receiving compensation from an individual with limited assets or a business with insecure financials may be too remote. The disputed language in a contract may be too vague or too ambiguous to ensure a favorable outcome in court. In those cases, or in others where the threat to your business is not existential, a more measured approach is advisable. This month, Legal Perspective examines a commonly used legal tool that, depending on the circumstances, may be the first or last step in resolving a business dispute: the demand letter.

A demand letter is a formal communication that places the recipient on notice of a potential legal claim. The claim may arise from a variety of sources, such as breach of contract, employee misconduct or violation of a law. A demand letter does far more than just make a request or express a grievance. It communicates a seriousness of purpose, informing the recipient of the nature of the dispute, detailing the legal rights of the sender and proposing a remedy to resolve the situation. The recipient should always be reminded that ignoring a demand letter is a risky choice. Even if a demand letter does not result in a resolution, it may become important evidence demonstrating to a court that the sender tried, but failed, to reach an out-of-court settlement in good faith. A demand letter is most likely to succeed when it satisfies four criteria.

First, a demand letter should be steadfast, making it clear to the recipient that the sender is prepared to file a lawsuit and is confident it can achieve a victory in court. A recitation of



the applicable language from a contract or a statute, followed by a description of the violation, can be highly persuasive.

Second, a demand letter should inform the recipient that working to resolve an issue is always less costly than a legal fight. The prospect of paying for attorneys' fees or even for an insurance deductible can serve as an effective deterrent against mounting a full legal defense.

Third, a demand letter should be emotionless. The language should be clear and literal, favoring strong nouns and verbs over colorful or inflammatory rhetoric.

Fourth, a demand letter should illustrate how the recipient can solve the problem. It may include a call to cease and desist offensive conduct, propose a payment plan to settle a debt or a course of performance to comply with an obligation.

Although there is no requirement that a demand letter be written by an attorney, it is highly recommended for purposes of effectiveness and persuasion. Receiving a letter written on an attorney's letterhead sends a strong message to the recipient that the sender is invested in the problem. An attorney will outline arguments in a linear fashion and identify the full extent of the consequences the recipient may be facing. For example, an attorney will point out whether the sender is entitled to attorneys' fees or other relief that might influence the recipient's response. An attorney will also strike an appropriate tone, taking care not to inject inappropriate or irrelevant information.

There is no guarantee that sending a demand letter will be the last word in a dispute. In fact, depending on the recipient, a demand letter may yield the opposite result, raising tensions or escalating a conflict. But, in any case, setting out to prepare a demand letter is a worthwhile exercise. At a minimum, going through the process of reviewing pertinent documents, researching applicable law and honing arguments will stress test a potential legal claim, helping to set expectations for a business owner before making a consequential decision. I encourage all BTA members to reach out with any questions about asserting their legal rights. ■

Greg Goldberg, partner at Barta | Goldberg, is general counsel for the Business Technology Association. He can be reached at ggoldberg@bartagoldberg.com or (847) 922-0945.

